

**CONSERVATION COMMISSION
MINUTES OF JUNE 12, 2008**

Meeting was held in the lower conference room at the Mary A. Alley Building, 7 Widger Road

Meeting was called to order at 7:00 PM

Present were: Commission Members Ken Fisher, Walt Haug, Fred Sullivan, Don Tritschler and Brian LeClair Also present were Doug Saal, Conservation Administrator and Jan Smith, Associate Member.

The hearings were conducted under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

Note: The commission currently has seven members. Per the MACC Handbook, section 4.1.2, most lawyers agree that a quorum is "...a majority of commissioners currently serving". The quorum for this meeting is therefore four members.

40-948 26 STRAMSKI WAY M'HD HARBORS & WATERS BOARD

Resource Area: Coastal Beach, Coastal Bank, Land Under the Ocean, Stream

Interests of the WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: No one

Control Drawings: Proposed Pier, Ramp and Float System, Town of Marblehead, Harbors & Waters Board, dated 07/01/02, latest revision 04/06/08, prepared by D.J. Lynch Engineers

This was a continuance from 04/24/08. A memo from C. Dalferro, Marblehead Harbormaster, dated June 2, 2008 requested a further continuance to June 26, 2008. All members voted to continue this hearing to June 26, 2008.

Approve Minutes: A motion was made and seconded to approve the minutes of 05/22/08. All members voted in the affirmative.

Sign Documents: All documents per the agenda were signed.

Enforcement Order: 40-914 11 Goodwin's Court Bitman

Per the minutes of 05/22/08: "Landscape work was done at this site. In the OOC no condition was included regarding such work, nor was a landscape plan required. This was an oversight by the commission. Therefore, the commission could not consider this

work in violation of 40-914. However, this work was done without a review with the commission and an E.O. was issued in order to follow established procedures. The applicant will appear before the commission to insure he/she is aware of the necessity of obtaining a permit prior to any further work. No fine will be levied.” A letter from P. Lynch, representing the applicant, dated June 3, 2008 requested an amendment to 40-914 and the letter included the landscape plans which have already been done. The landscape work was landward of the house, small in scope and did not impact the resource area. The commission did not elect to view this as an amendment due to reasons stated on 05/22/08 but the applicant has been duly alerted as to proper procedures to follow in the future.

40-952 216 OCEAN AVENUE LUDINGTON

Resource Area: Coastal Beach, Coastal Bank

Interests of the WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: S. Patrowicz of Patrowicz Land Development Engineering, G. Smith and E. Falk, architects and Mr. Ludington

Control Drawing: Site Plan of Land, 216 Ocean Avenue, prepared by North Shore Survey Corp. and Patrowicz Land Development Engineering, dated May 20, 2008.

Per the control drawing, there are two coastal banks concerning this site. The proposed house is approximately 210 feet landward of bank #2. Therefore, this coastal bank is not pertinent to this application. The proposed house, as well as the existing house, forms a part of coastal bank #1. Bank #1 is within an AO (over wash) area. The proposed house will only slightly alter the shape of this bank compared to the existing house/bank. This change will have no impact on water flow into neighboring properties.

Another area of concern is the Land Subject to Coastal Storm Flowage. This is not a resource area and there are no performance standards for this area. The applicant proposes to remove soil from this area and replace it with material with better drainage characteristics, thus making the top surface of this area more suitable for lawn. This will not alter the hydrology of this area and will not increase drainage into neighboring areas. Nor will it effect the storm flow quantity or direction from over wash.

All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Pre-construction:

1. In accordance with General Condition No. 8 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this

Order. Failure to submit said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.

2. All federal and state building codes for structures in AO zones must be followed.
3. The proposed terrace will be replaced with landscaping.
4. A landscape plan must be submitted to and approved by the commission prior to any landscaping work.
5. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
6. A drawing of the erosion control techniques to be used on site shall be included in the construction contracts between the applicant and his/her contractor.
7. Prior to commencement of construction activities, the Applicant shall obtain all federal, state and local permits (in addition to this OOC) that may be required for the proposed project.

During construction:

8. The driveway will be constructed of pervious material.
9. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).
10. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces will be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site
11. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.
12. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

Post-construction/in perpetuity:

13. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or

herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawncare published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass, published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.

14. Invasive plants shall not be used nor maintained in the landscape of the project site. This applies to the existing landscape as well as to any proposed landscape. A list of invasive plants in Massachusetts can be found in the latest update of The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts (with annotated list) produced by the Massachusetts Invasive Plant Advisory Group. For most recent update, visit www.mnla.com or www.newfs.org.

15. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an "as built" drawing (signed and stamped by a Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E

40-000 6 NONANTUM ROAD PHELAN

Resource Area: Coastal Beach, Coastal Bank

Interests of the WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: S. Byrd, President of Bessom Associates, Inc. and S. Kerr, tenant of 6 Nonantum Rd.

Control Drawing: Photos of work already performed

No DEP File number was received. The hearing will be discussed but cannot be closed without this number. The first item for discussion was the Enforcement Order issued April 23; 2008. Work was performed without the filing of an NOI. The NOI was filed on May 17, 2008. A letter dated July 17, 2006 from the ConCom to Bessom Associates, Inc. was read into the file and is a part of this hearing. The letter clearly stated that Bessom Associates, Inc. is the land owner of all residences within this association and is responsible for all activities impacting jurisdictional areas of the ConCom. The current hearing deals with the second violation of this responsibility. Based on the time lapse defined by the guidelines for fines, the maximum fine could be \$7,200. The commission voted to levy a fine of \$300.

The second item is the issuance of the OOC. All members voted to close this hearing. All members voted continue this hearing to June 26, 2008. The OOC will contain the following special conditions.

Pre-construction:

1. The fine of \$300 must be paid in full before this OOC will be issued.
2. In accordance with General Condition No. 8 contained in this Order of Conditions, the applicant shall record this Order at the Registry of Deeds and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order prior to the commencement of any work authorized by this Order. Failure to submit said recording information prior to the commencement of work may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E.
3. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
4. A drawing of the erosion control techniques to be used on site shall be included in the construction contracts between the applicant and his/her contractor.

During construction:

5. There shall be no cleaning or rinsing of cement concrete ready-mix trucks, or cement concrete mixing equipment, such that the byproduct of the cleaning or rinsing operation finds its way to any resource area by any means, especially, but not limited to, by means of a storm drainage system (catch basins, pipes, drainage ditches, etc.).
6. All demolition debris will be removed from the site ASAP and not stored within a resource area or a buffer zone. If a dumpster is used to contain the debris, the dumpster shall be covered. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.
7. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

Post-construction/in perpetuity:

8. By voluntary agreement with the applicant, only organic fertilizers are to be used on the property landward of the resource areas. Fertilizers should not contain pesticides or herbicides; should contain slow release nitrogen and should not contain more than 3% phosphorous. To mitigate chemical runoff, do not fertilize directly before a rainstorm and do not over fertilize. Apply fertilizer in late April and in September (refer to: A Homeowner's Guide to Environmentally Sound Lawncare published by the Massachusetts Department of Food and Agriculture and the booklet, Don't Trash Grass,

published by the Massachusetts Department of Environmental Protection). This condition shall survive this order.

9. Upon completion of the work allowed under this Order of Conditions, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an “as built” drawing (signed and stamped by a Registered Professional Engineer) with the application for the COC. Failure to submit said application within 30 days may result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E

40-950 11 NEPTUNE ROAD KALOUTAS

Resource Area: Coastal Bank

Interest of WPA and Bylaw: Prevention of Pollution, Flood Control and Storm Damage Prevention

Appeared: K. Bradford of Bradford Design Associates, B. Fortin architect and D. Lynch of D.J. Lynch, engineers

Control Drawings: NOI Site Plan, Kaloutas Residence, dated 05/05/08, revised 06/12/08 prepared by Bradford Design Associates. The final revisions to this drawing have not yet been completed. Proposed Seawall, No. 11 Neptune Road, dated 05/20/08, prepared by D.J. Lynch, engineers. House drawings, Cover Sheet, Kaloutas Residence, 11 Neptune Road, dated 04/29/08, prepared by B. Fortin

This was a continuance from 05/22/08. Referring to the minutes of 05/22/08, following are the responses to the questions resulting from this prior hearing. (1) Only one wall is being removed. (2) Yes, the house existed all or in part before August 10, 1978. (3) None were suggested to the commission. (4) The discrepancy has been corrected. See revised narrative submitted by K. Bradford. (5) Figure 2. (6) No definition offered. (7) K. Bradford considered the bank as a structural buffer, not requiring any vegetation buffer. (8) Erosion control is shown on a revised control drawing. (9) The slopes will be properly stabilized during the growing seasons. [This will be included with special conditions.]

The seawall drawing by D.J. Lynch will be revised to show an opening in the seawall. The opening will measure ca. 4 ft. wide with a bottom elevation of 13.5 ft. This opening is to provide access to removable steps down to the water. The DEP commented that they need more detail on the seawall construction. This has been provided to DEP by Lynch via the above referenced control drawing. The commission will await any further DEP comment. Lynch said it is anticipated that the new seawall will not be tied into the old seawall. The joints between these two seawalls will remain open to serve as weep holes. If, however, any movement between these walls is observed, vertical rods will be inserted to tie the walls together.

As a result of the site visit on May 28, 2008, changes in the landscaping were agreed upon and documented by the commission in the following memo.

Memo to file

Subject: NOI 40-950 11 Neptune Road Kaloutas
Site Visit on May 28, 2008

The following revisions were agreed to by all parties and will be made to the proposed landscaping plans and seawall.

Seawall: The final height of the new proposed section will match the height of that section of the existing seawall constructed of 4' x 3' x 3' cement blocks (16 ft. NAVD 1988). The proposed new seawall will be tied into the ledge outcropping running from the existing cement block seawall to the northern end and will sit on a footing approximately 48 inches wide. The northern end of the proposed new seawall will tie into ledge (and the end of the seawall of the adjoining property or will have a return.) The final design will not increase any wave reflection onto the adjacent property.

Landscape: The revised plan will locate the proposed retaining wall (the more seaward wall) further back from the top of coastal bank. On the northerly end, this wall will remain a straight line in the same location as shown on the control drawing up to the landing (18.68). This wall will then follow contour 20 from the proposed landing (18.68) in a southerly direction and transition to contour 22 at the end. The minimum separation between the top of coastal bank and this retaining wall will be 4 feet measured at its narrowest point. At all other locations, this separation will measure greater than 4 feet and will expand up to 16 feet (at the northern end). At the southern end it will measure no less than 6 feet.

The proposed stairs running in a north-south direction at the northern end will be eliminated.. New stone steps (a stone path) will start at the base of the proposed steps exiting from the proposed terrace and run in a circular fashion down to the proposed landing (18.68) for the proposed pier. The remaining area within the NDZ will be covered with much, not lawn.

The 06/12/08 revision of the control drawing for landscaping agreed in most aspects with the changes documented in the above memo. However, the location of the steps running in a north-south direction at the northern end were not eliminated. After much discussion, the applicant agreed to review the location of the steps once again. Erosion control will be via filter socks, not hay bales.

With the consent of the applicant, all members voted to continue this hearing to June 26, 2008.

Old/New Business:

Approve Minutes: see above

Sign Documents: see above

Other Matters: see above

The meeting was adjourned at 10:00 PM.