

**CONSERVATION COMMISSION
MINUTES OF JUNE 26, 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, Deb Payson, Craig Smith 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.

Approve Minutes: The minutes of 06/12/08 were approved without change.

Sign Documents: The Sexual Harassment Policy was signed.

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: G. Gregory of the M'hd Harbors & Waters Board, W.Kelley of Kelley Marine Resources and D. Lynch of D.J. Lynch, Engineers

Control Drawings: Proposed Pier, Ramp and Float System, Town of Marblehead, Harbors & Waters Board, dated 07/01/02, latest revision 06/25/08, prepared by D.J. Lynch Engineers

This was a continuance from 04/24/08 and 06/12/08. W. Haug reiterated his commitment to vote on this application solely on the basis of the WPA and the local Bylaw. He read the minutes from 06/12/08. The correct NOI (date of form 02/21/08) was submitted. The commission made the following corrections to the form as submitted. Page 2 of 8: under "A", check "Other". Page 3 of 8: under "B", check "Riverfront Area", 200 ft., No on f.5 and Yes on f.6.

The commission stated this application deals with two resource areas (1) Coastal Bank and Beach/Land under the Ocean and (2) Riverfront area. Regarding the Coastal Bank,

the commission addressed the DEP comment about storm damage prevention to the pier. To resolve this comment, the applicant agreed to raise the top of the pier deck surface (walking surface) to 18.5 feet, MVD. This will require the ramp leading down to the floats to be lengthened as agreed to by the applicant. The control drawing now shows a lifting mechanism for raising the ramp.

Regarding the Riverfront area, per the 1985 version of the USGS map, the stream under discussion is a perennial stream. The single item of discussion was the location of the parking area with respect to this stream. The applicant had previously been asked at the last hearing to keep the parking area out of the 100 ft. inner riparian area. The latest revised control drawing still showed the parking area partially within this inner riparian area. The applicant reviewed previous actions by the Marblehead Recreation, Parks and Forestry Department regarding parking and used this information to try to convince the commission to allow parking inside the 100 ft. inner riparian area. At this point, in order to help the applicant understand the rationale for remaining outside this area, he was given the document, Coastal Bank Buffer Zone. This document refers to studies performed by two universities on the value and performance of buffer zones and synthesizes their findings. The commission then referred to sections 10.58(4)(d)1 and 10.58(5)a of 310 CMR to define the rationale for restricting work in the 100 ft. inner riparian area. Portions of these sections were read aloud to the applicant, again, to help him understand. The commission then pointed out that this application will significantly increase the vehicular traffic and pollution. This park is currently used only for a sailing program, for dinghy storage and the occasional family visit. With the new pier, using the Village Street pier as an example, the traffic will probably increase by a factor of 5-10 times. The commission could not get the agreement of the applicant regarding the location of the proposed parking area and it was decided to address this in the special conditions.

This discussion was then opened to the public.

D. Borden: said the Marblehead Water & Sewer Dept. is planning to install a new pumping station in this area. The commission had no knowledge of this and will investigate. He also questioned the applicability of 521 CMR 19.00 Recreation Facilities and it was determined this did not apply to this hearing.

J. Goodman: said the handicap access path should be pervious. She also asked if the Division of Marine Fisheries had been notified and if a their response was known. Per the applicant, they have been notified but no response has yet been received. She also asked about eel grass beds. The 2001 version of the DEP Eelgrass Mapping Project, Salem Harbor, shows none or very little eel grass in this coastal area. Per D. Lynch, the pier will not impact any eel grass beds.

J. Friedman: expressed concern about the parking near the stream

S. Andolaro: asked about disturbance of contamination from the ocean bottom when the pier is built. D. Lynch responded that most of the pilings for the pier will be driven, thereby minimizing any disturbance to the ocean bottom.

S. Goodman: said the pier will have a huge impact on the area.

? Maletz: asked about heavy metals under the mud cap. The commission explained this is not within the jurisdiction of the WPA.

? Fistel: questioned the adequacy of the depth of the pilings (10 ft minimum per the control drawing). The commission said it has worked many times with the people who designed this pier and has confidence in their expertise and professional ability. Therefore, it accepts the 10 ft. minimum as sound.

D. Borden: suggested off site parking and using a shuttle bus to transfer boaters to the pier.

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.

1. Proof of mailing to the Division of Marine Fisheries will be submitted to the commission before any work is started.
2. The lifting mechanism for the ramp must be approved by the Marblehead Harbor Master and proof thereof submitted to the commission before any work is started.
3. The top of the pier deck surface (walking surface) will be 18.5 feet, MVD.
4. The control drawing shall be revised to show the parking lot entirely outside the 100 ft. inner riparian area and shall be submitted to the commission for approval before any work is started.
5. The control drawing shall be revised to show a vegetated or hard barrier around the parking area to confine the parking to the parking area and submitted to the commission for approval before any work is started.

6. A planting plan shall be submitted to the commission for approval before any work is started.
7. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
8. 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:

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.
13. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks will conform to the requirements of Chapter 91.
14. Any pressure-treated wood proposed to be used in the construction of a structure for land -based use shall be arsenic-free. Any pressure-treated wood proposed to be used in the construction of a structure for salt water contact shall be treated with Chromated Copper Arsenate (CCA) or other preservative approved by the EPA and/or the MADEP which is less polluting and harmful to the salt water and its environment.
15. All piers, docks and floats must follow the guidelines established in the document, "Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers" dated November 2003. Float stops are permitted provided they meet the aforementioned guidelines.
16. The path for handicap access will be a pervious surface.

Post-construction/in perpetuity:

17. All gangways, docks or other items not permanently secured to the earth shall be stored during the “off season” (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. This condition shall survive this order.

18. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. This condition shall survive this order.

19. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides. This condition shall survive this order.

20. 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.

21. Minor maintenance repairs to the superstructure only of the pier are allowed as a surviving condition of this order. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of hand rails, etc. Complete new decking, complete new hand rails or other such large repairs require an NOI. Minor maintenance repairs do not apply to the main support structure (stringers, bents, etc.) and do require an NOI. This condition shall survive this order.

22. 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-xxx RFD 14 LESLIE COVE CASHMAN

Resource Area: Coastal Bank, Land Under the Ocean

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

Appeared: M/M Cashman

Control Drawings: As submitted with the RFD

A portion of the basement of this property forms a part of the Coastal Bank at this site. If this were not the case, this matter would have been processed as a minor activity. However, it was processed as a RFD. After review, all members voted to close this hearing. All members voted to issue a negative RFD with the following conditions.

1. A containment system to prevent any debris/material from entering the resource waters will be erected and approved by the commission before any work is started.
2. All construction debris is to be removed from the site on a daily basis.
3. All construction materials are to be stored outside the resource area.

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 and D. Lynch of D.J. Lynch, engineers

Control Drawings: NOI Site Plan, Kaloutas Residence, dated 05/05/08, latest revision 06/26/08 prepared by Bradford Design Associates. Stone Wall Detail, dated 05/05/08, latest revision –6/26/08, prepared by Bradford Design Associates. Proposed Seawall, No. 11 Neptune Road, dated 05/20/08, latest revision 06/25/08 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 and 06/12/08. It should be noted that this house was originally built before August 10, 1978. The house is not being razed. Only one wall is being demolished. One error on the NOI, page 2 of 8 was corrected. Under “B”, “Buffer Zone Only” was checked in error. The work is being proposed on the coastal bank as well as in the buffer zone. In order to inform the applicant as to the reasons for buffer zones, he was given the document, Coastal Bank Buffer Zone. This document refers to studies performed by two universities on the value and performance of buffer zones and synthesizes their findings. In her presentation, K. Bradford said the stairs in the buffer zone and on the coastal bank have been reduced in width to three (3) feet. Prior to this hearing, D. Saal and W. Haug had estimated the square footage of the foot print of the stairs in two areas. This was done for the original control drawing (05/05/08) and the latest revision, 06/26/08. These estimates are as follows.

	05/05/08	06/26/08
Sq. Ft. of stairs within the No Disturb Zone	89	44
Sq. Ft. of stairs on coastal bank	56	52

Since the stair width will be reduced from 4 ft. to 3 ft., a further reduction in stair footprint will be achieved. The commission voted to close this hearing. All members voted to issue an OOC with the following special conditions. Please note that, at the earlier hearing, the DEP file no. form had a question concerning the pier construction. Construction drawings have since been sent to DEP by the applicant. The commission reserves the right to revise the below special conditions based on the response from DEP.

Note also that the applicant waived the requirement that only those commission members who have been present for all hearings can vote on the application.

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 special conditions are to be included in the construction contracts between the applicant and his/her contractor.
3. 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. Filter socks will be used as erosion control devices.
4. The drawing, NOI Site Plan, Kaloutas Residence, dated 05/05/08, latest revision 06/26/08, will be revised to show the separation between the Top of Coastal Bank and the adjoining retaining wall. Currently, the narrowest dimension is four (4) feet. Two other dimensions will be indicated for the north and south end of the retaining wall. All dimensions are to be measured horizontally.
5. Plantings in the No Disturb Zone will be the same as those specified for the coastal bank. A planting plan will be submitted for approval by the commission before any work is started on the landscaping.
6. Construction drawings will be submitted to the commission for approval before any work is started.

During construction:

7. 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.).

8. 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

9. 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.

10. All construction material will be stored outside the resource area and its buffer zone or as far back from the resource areas as possible.

11. A lift mechanism will be provided for raising the aluminum stairs (said stairs for beach access).

Post-construction/in perpetuity:

12. 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.

13. 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.

14. 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

40-954 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: No one.

Control Drawing: Photos of work already performed

The DEP file number was received. All members voted to close this hearing. All members voted to issue an OOC with 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

Approve Minutes: see above.

Sign Documents: All documents per the agenda were signed.

The meeting was adjourned at 10:00 PM.