

**CONSERVATION COMMISSION  
MINUTES OF MAY 22, 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 and Brian LeClair Also present was Doug Saal, Conservation Administrator.

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.

**Discussion: BESSOM ASSOCIATES 6 NONANTUM ROAD**

Appeared Susan Byrd, President of Bessom Associates and Sherry Kerr, tenant at 6 Nonantum Road. In response to the Enforcement Order issued on April 23, 2008 by the commission, an NOI has been filed for this property. All parties agreed to conduct the hearing for the NOI on June 12, 2008. The commission reminded Ms. Byrd that a fine may be levied for failure by Bessom Associates to file an NOI before the work was started and for which they are ultimately responsible. (see the ConCom letter dated July 17, 2006 to Bessom Associates, Inc., c/o Robert Marsilla, relating to ultimate responsibility.)

**Discussion: NOI 40-921 14 NONANTUM ROAD THIBODEAU**

Appeared Greg Thibodeau regarding the DEP superceding order for 40-921. The original OOC had been appealed to the DEP but not under the Marblehead Bylaw, Chapter 194. The applicant has agreed to and accepted the conditions of the DEP superceding order. The question arose if the commission would require a new filing under the Bylaw primarily with regard to the seawall/revetment.. The original OOC from the commission contained the special condition: "Maintenance pointing of existing stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. This condition shall survive this order."

The superseding order from DEP contained the special condition: "Minor repairs may be

made to the stone revetment wall that includes replacement by had of stones that may have fallen out. Replacing or a major repair of the structure shall require the filing of a Notice of Intent.”

The commission concluded that these two conditions complement one another and no new filing under the Bylaw is necessary. The commission authorized the applicant to begin the work.

**NOI 40-949 PHILLIPS & GOLDTHWAIT STREETS GOLDTHWAIT RESERVATION, INC.**

Resource Area: Coastal Dune, LSCSF

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

Appeared: No one

Control Documents and Drawings: As submitted with the NOI

The DEP file number had been received for this application. Comments from the DEP were that the work is in a resource area and that permanent structures (stone benches and a fire pit) are involved. The commission stated that the proposed work is in the buffer to the cobble dune and that the stone benches and fire pit are not permanent structures. They are proposed to set on the surface of the land with no underpinnings and, in essence, are similar to boulders. The commission will so inform the applicant and advise him/her to contact the DEP. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

**Pre-construction:**

1. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.

**During construction:**

2. 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.
3. 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:**

4. 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.

5. 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](http://www.mnla.com) or [www.newfs.org](http://www.newfs.org).

6. 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:** The minutes of 04/24/08 were approved as modified.

**40-951 295 OCEAN AVENUE GERATY**

Resource Area: Coastal Bank

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

Appeared: Jeff Tucker of Siemasko + Verbridge

Control Drawings: Site Plan prepared for Ron and Sheila Geraty by Siemasko + Verbridge, dated May 6, 2008

Much of the proposed work is outside the 100 foot buffer zone with a small portion seaward of this buffer zone. The work lays well landward of the No Build Zone and will have no impact on the resource area. 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 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.

4. 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:**

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. Maintenance pointing of existing stone masonry walls including the replacement of occasional, missing stones in the wall is allowed as a surviving condition to the Order of Conditions. The future razing, any rebuilding of entire wall sections or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. This condition shall survive this order.

10. When a pool/spa/hot tub is drained, no chlorine or other chemicals are to be added to the pool water for a period of at least four (4) days prior to draining. The method of pool drainage shall be such as to prevent any soil erosion by the draining water and to allow the draining water to seep into the ground prior to entering any resource waters. No direct discharge to resource waters is allowed. This condition shall survive this order.

11. 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](http://www.mnla.com) or [www.newfs.org](http://www.newfs.org).

12. 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

#### **Sign Documents:**

**40-607 10 Mariner's Lane Hathaway:** All members voted to sign this COC.

**40-782 Causeway Seawall Town of Marblehead:** All members voted to extend this OOC for one year to July 1, 2009

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

**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, prepared by Bradford Design Associates

The proposed pier is not included with this NOI. The commission raised a number of issues. (1) How much of the house will be demolished? (2) Was the existing house constructed all or in part before August 10, 1978? (3) What alternatives were considered to building a vertical seawall (see section 5.5 of the Marblehead regulations)? (4) Is there a discrepancy between section 2.1 and 3.3 of the project narrative? (5) What figure of coastal bank as defined in DWW 92-1 most closely represents the coastal bank in this application? (6) How is “minimal amounts of sediments” defined (see project narrative, section 2.2)? (7) As a minimum, why was a vegetated buffer strip in the No Disturb Zone not included (see above Interest: Prevention of Pollution)? (8) On the above referenced control drawing, where is the erosion control? (9) How will the coastal bank be protected from erosion while the new plantings are taking foot?

During the hearing, a drawing, Proposed Seawall, No. 11 Neptune Road, dated 05/20/08 and prepared by D.J. Lynch, engineers and a drawing, Kaloutas Residence, dated 04/29/08 and prepared by B. Fortin Design were submitted to the commission. This information was not discussed due to its late submission. Copies of these drawings will be sent directly to each commission member. This will be done to facilitate a site visit agreed upon for Wednesday, May 28 at 6:00 PM. All members voted to continue this hearing to June 12, 2008.

**Regulations: Marblehead Stormwater Management and Erosion Control:** The proposed regulations for the Marblehead Stormwater Management and Erosion Control Bylaw (195) were presented. Copies had previously been sent to all members for review. The “Application for a Land Disturbance Permit” (included as part of the regulations) will be modified to replace “Conservation Commission” with “Authorized Enforcement Authority” wherever “Conservation Commission” appears. All members voted to adopt the regulations with the above modification.

**Regulations: Marblehead Wetlands Protection Bylaw:** One change (section 5.7) of the Marblehead Wetlands Protection Bylaw (194) was presented. Copies had previously been sent to all members for review. The change to section 5.7 was initiated to provide comprehensive protection regarding stormwater management with individual single family residences without requiring the extensive documentation for larger projects. Section 5.7 now will read:

**5.7 Stormwater Management.** MassDEP's Stormwater Management Policy and Stormwater Management Standards, as last revised, shall apply under Marblehead's Wetlands Protection Bylaw and Regulations to the same extent that they apply under the Massachusetts Wetlands Protection Act and its Regulations (310 CMR 10.00) with the following exception. There shall be no discharge of untreated stormwater directly into any wetlands or resource waters for any project nor shall such discharge cause any erosion. Rooftop runoff, except from metal roofs, can be considered as treated since it is considered uncontaminated for purposes of the Stormwater Standards. Driveway runoff is not considered as treated runoff. Refer to the Massachusetts Stormwater Handbook for guidance in implementing the Stormwater Management Policy and Standards.

Section 5.7 previously read as follows:

**5.7 Stormwater Management.** The provisions of the DEP's Stormwater Management Policy (March 1997) shall apply to all projects subject to the Wetlands Bylaw. The DEP's WPA Appendix C – Stormwater Management Form shall be completed and submitted with all applications to the Commission under the Wetlands Bylaw. The Stormwater Management Standards shall apply to industrial, commercial, institutional, residential, and roadway projects, including site preparation, construction, redevelopment, and on-going operations. There are no exceptions to the applicability of the Stormwater Management Standards.

All members voted to adopt this change to Section 5.7.

For both of the above regulations, a single resident was present, Carl King. He supported this effort at stormwater management and encouraged the commission to continue and expand this effort.

**Old/New Business:**

**Approve Minutes:** see above

**Request for COC:** see above

**Request for Extension:** see above

**Request to Amend OOC 40-921:** see above

**Minor Activities:** D. Saal reviewed these and the commission concurred.

**Sign Documents:** All documents per the agenda were signed.

**Other Matters:** see above

The meeting was adjourned at 9:10 PM.