

**CONSERVATION COMMISSION
MINUTES OF OCTOBER 26, 2006**

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 Walt Haug, Craig Smith, Mark Klopfer and Fred Sullivan (representing a quorum – see below Note). 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 only five 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 three members.

40-861 436 ATLANTIC AVENUE GOLDMAN

Resource Area: Coastal Bank

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

Control Drawings: Amended NOI Plan, 436 Atlantic Avenue, dated 10/17/06, prepared by Hayes Engineering, Inc.; Goldman Residence/436 Atlantic Avenue, dated September 2006, prepared by For Seasons Ecological Landscape Design

Appeared: Ms. Goldman

40-861 was issued earlier for re-construction of the house. Subsequently, the coastal bank partially collapsed and an emergency permit was granted to temporarily shore up the bank. This hearing is for an amendment to include with 40-861 the permanent repair of the bank with landscaping. Although this is a major project, the interests of the WPA and the Bylaw will not be impacted by the permanent repair and the commission voted to review this as an amendment.

40-900 11 ROLLESTON ROAD KANTER

Resource Area: Coastal Bank

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

Control Drawings: Plan of Land, Owner Todd & Francene Kanter, #11 Rolleston Road, dated July 27, 2006, prepared by Hayes Engineering, Inc.

Appeared: No one

A letter from Hayes Engineering, Inc. dated October 26, 2006 requested a continuation of this application to November 9, 2006. All members voted to continue this hearing to this date.

Approve Minutes: The minutes of 10/12/06 were approved.

40-901 KIMBALL STREET AT NAHANT STREET McCARTHY

Resource Area: Coastal Beach

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

Control Drawings: Plot Plan of Land, Kimball Street, Anne C. McCarthy, Trustee of the D and K Realty Trust, dated April 28, 2006, prepared by North Shore Survey Corporation

Appeared: P. Lynch, atty.

The proposed house is located on a lot across the street from the resource area. A small section of the footprint of the proposed house is on the edge of the 100 foot buffer zone, outside both the No Disturb and No Build Zones. 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.
2. 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. No excavate, soil or sediment shall be allowed to enter the drain catch basins in the streets.

During construction:

3. 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.).
4. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces located within the buffer zone will be constructed as permeable surfaces to

allow water to infiltrate through their surfaces into the ground on site

5. 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.

6. 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:

7. 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.

8. 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.

40-904 133 FRONT STREET D'AMELIO

Resource Area: Coastal Bank

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

Control Drawings: Site Plan, 133 Front Street, Michael & Laura D'Amelio, dated September 18, 2006, prepared by Kane Land Surveyors

Appeared: Dan Lynch

It was noted that approximately 2,200 square feet of asphalt parking pavement will be removed and replaced by approximately 1,600 square feet of pervious paving blocks. The house footprint remains essentially the same (but with a very small added foundation outside the No Disturb and No Build Zones and two decks on sono-tubes). Driveway and roof drains will be directed to dry wells.

For reference, Lynch also submitted a landscape plan, “D’Amelio Residence, 133 Front Street, dated September 2006, prepared by For Seasons Ecological Landscape Design. The landscaping (as well as intended repairs to the seawall) is not part of this application but will be reviewed under a separate NOI.

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.
2. A drawing of the erosion control techniques to be used on site shall be included on the construction drawings and in the construction contracts between the applicant and his/her contractor.

During construction:

3. 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.).
4. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces located within the buffer zone will be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site
5. 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.
6. 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:

7. 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.

40-902 3 PARK LANE M'HD WATER & SEWER

Resource Area: Perennial stream

Interest of the WPA and Bylaw: Prevention of Pollution

Appeared: No one

Control Drawing: As submitted with the NOI

This was a continuance from 10/12/06. The DEP number was received. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

1. Remove sand and sediment at the upstream end of the stream by use of a vacuum truck.
2. Remove large rocks which are impeding flow by hand.
3. Remove a minimal amount of vegetation by hand
4. A member of the Conservation Commission will be on site to monitor the work.
5. No work is to be started by the Water & Sewer Department until a written statement is received by the commission from both Clifford and Wassman agreeing to either remove their bridges or raise them by approximately 18 inches over the ground level as measured at the top of the bank. The time for removing/raising the bridges will be at the discretion of the respective property owners.
6. For purposes of the record, the Conservation Commission strongly urged the owner of 3 Park Lane to install properly sized sump pump(s) to better manage the naturally occurring high ground water table.

40-903 CROWNINSHIELD ROAD & EUSTIS ROAD REDMOND

Resource area: Coastal Bank

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

Appeared: No one

Controlling drawings: NOI Schematic Design, Redmond Residence, Crowninshield Road, dated 09/06/06, revised –9/18/06, prepared by Bradford Design Associates

This was a continuance from 10/12/06. The DEP 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. All special conditions are to be included in the construction contracts between the applicant and his/her contractor.
2. 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 and shall comply with the Soil Conservation Service methods. Soil socks are preferred over hay bales.
3. See Brush Removal Plan, Redmond Property, dated 10/12/06. Per this plan the invasive plants Bittersweet and Japanese Knotweed on the main part of the Redmond property are allowed to be removed under this OOC.

Post-construction:

4. No fertilizers are to be used and no turf lawn is to be planted in the area described in this NOI. 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 or www.newfs.org. This condition shall survive this order.

AS BUILT: The commission agreed on the following new special condition: Upon completion of the work allowed under this OOC, the applicant shall within 30 days apply for a Certificate of Compliance (COC) and, if required by the commission, submit an “as built” drawing with the application for the COC.

The requirement of an “as built” drawing will be decided on a case by case basis taking into consideration such factors as sensitivity of the area and size and scope of the proposed project. Any project may be subject to this requirement.

ENFORCEMENT ORDERS:

321 West Shore Drive VFW: All members voted to approve this E.O.

318 Ocean Avenue Albanese: All members voted to approve this E.O.

40-896 59 NAUGUS AVENUE CLARK

Resource Area: Coastal Bank

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

Control Drawings: Stairway Plan, Clark Residence, dated October 2006, prepared by James K. Emmanuel Associates and Revise to Timber Pier, Clark Pier, dated 10/11/06, prepared by D.J. Lynch, engineers

Appeared: C. Clark

OOC, 40-896, was issued for work on a coastal bank and beach. This request for an amendment covers a change in material (from wood to masonry) for construction of the stairs leading over the bank to a boardwalk and a change for material (from steel to wood treated with CCA) in the construction of the pier. All dimensions, elevations, etc. remain the same as originally designed. All members voted to close this hearing. All members voted to issue an OOC with the following amended special condition.

7. Any pressure-treated wood proposed to be used in the construction of the pier shall be treated with Chromated Copper Arsenate.

ENFORCEMENT ORDERS:

44 Gallison Avenue Tetreault: Curt Young of Wetlands Preservation Inc.(WPI) appeared to explain the nature and scope of the work observed on this property on October 11, 2006. See his letter dated October 26, 2006. Originally, Saal had spoken with the Tetreault's a few weeks earlier about some proposed site work. This work was not the same for which the E.O. had been issued. The work covered by the E.O. was in the buffer zone, was very minor in scope (see the referenced WPI letter) and will not impact the resource area nor the interests of the WPA and Bylaw. For this reason no fine is levied. An NOI will be filed December 14, 2006 covering the aforementioned proposed work as well as the minor work under the E.O. (Note: A copy of this section of these minutes should be filed with the E.O.)

318 Ocean Avenue Albanese: Saal and Haug visited this site on October 24, 2006 to investigate a report of un-permitted work being conducted. Per their observations, under brush, a small tree and other vegetation had been and was being removed by a landscaper. This removal of vegetation occurred both in the No Disturb Zone and within the BVW along the driveway. In addition, a water retention basin, which had been incorporated into the master site plan for water storage appeared to have been filled and planted with grass. This area showed water at the surface. The purpose of this basin was to hold excess storm water during heavy rain events to prevent flooding of the houses constructed on this site and to direct the water into the replicated wetland. A sump pump had been installed at the head of the drain pipe under the driveway. Albanese said she did not install this pump and that the pump does not work. (The existence of the pump did raise the suspicion that some one, at one time, was trying to keep the area dry.)

Albanese said she did not fill this area and that her neighbor at 316 Ocean Avenue claimed not to have done so. This whole area was a wetland before house construction and has a high water table. It was the opinion of the commission that the storm water from this basin area will still reach the replicated wetland via the ground water connection and, therefore, will not interfere with the survivability of the wetland. However, the flood control function of the basin has been compromised and Albanese was accordingly advised that any future flooding problems are the responsibility of her and her neighbor at 316 Ocean Avenue.

As agreed to by Albanese, in lieu of filing an NOI in the interest of proceeding as quickly as possible before winter, Young will prepare a planting plan to re-plant the areas from which vegetation has been removed. This plan will be submitted to Saal for approval during the week of October 30. Planting will be done this fall as supervised by Young and be reviewed by Young in May-June 2007. Plants which have not survived the winter will be replaced by the owner under the supervision of Young. No fine is being levied. (Note: A copy of this section of these minutes should be filed with the E.O.)

Old/New Business:

Approve Minutes: See above

Request to Amend OOC: See above

Sign Documents: All documents per the agenda were signed.

Other Matters:

As Built: See above

Special Condition for Wood Treatment: All agreed to include the following special condition: 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 MADEP which is less polluting and harmful to the salt water and its environment.

E.O. 321 West Shore Drive VFW: See above

E.O. 318 Ocean Avenue Albanese: See above

Vegetation Removal Policy: All voted to replace the current section 209-5 of Bylaw, Chapter 209 (Rules and Regulations/Conservation Areas), with the following text:

Except pursuant to authority granted under paragraph 209-4 above, the following

applies:

1. DEFINITIONS:

“Vegetation” applies to trees, bushes, plants, shrubs, flowers, grasses. They can be live or dead, naturally occurring or human introduced.

“Removal” means cutting, pruning, digging, poisoning, damaging, covering with yard waste or any similar action resulting in the loss of the vegetation.

“Conservation Lands” means those lands currently under the jurisdiction of the Marblehead Conservation Commission.

2. POLICY:

No vegetation is to be removed from conservation lands without the expressed, written permission of the Marblehead Conservation Commission.

In the event vegetation is removed without the permission of the Marblehead Conservation Commission, all removed vegetation must be replaced or replanted with identical vegetation or its equivalent (to be approved by the Commission).

Example: a tree with a diameter of one inch (measured six inches from its base) should be replaced with the same size tree.

: a tree with a diameter of five inches (measured twelve inches from its base) should be replaced with five trees measuring one inch diameter six inches from their base.

All expenses incurred with the replacement or replanting are to be borne by the person or organization causing the original removal.

The replaced or replanted vegetation must have a survival rate of at least 70% of the replaced or replanted vegetation at the end of two years after the replacement or replanting. If the 70% survival rate is not met at the end of the two year period, sufficient additional vegetation must be planted to achieve the 70% survival rate at the end of an additional two year period.

In addition to the foregoing replacement or replanting, a fine in accordance with paragraph 209-14 may be levied against the person or organization causing the removal.

Altering or Dumping on Conservation Lands: All voted to add to the current paragraph 209-7 of Bylaw 209 the following text:

Any person or organization performing or causing to be performed the above described activities shall remove, restore and rehabilitate at their expense the area on which material has been dug, dredged, removed, dumped or otherwise disposed of. The removal, restoration and rehabilitation shall be done as defined by and within the time frame specified by the Conservation Commission. In addition to the foregoing removal, restoration and rehabilitation, a fine in accordance with paragraph 209-14 may be levied against the person or organization causing the removal.

Saal will prepare articles for the foregoing to be placed in the Town Warrant for the Town Meeting in May, 2007.

Robinson Farm: Saal will prepare an article to be placed in the Town Warrant for the Town Meeting in May, 2007 for the transfer of Robinson Farm to the Conservation Commission.

Harbor Glade: Don Morgan of the Marblehead Conservancy informed the commission of the current status of the work proposed to be performed in Harbor Glade. Soil samples examined by Essex Agricultural School indicated elevated levels of lead. Since their testing may not be equivalent to that which would be required by the state and, since this raises the question of condition of the soil in this area, the commission voted that no work shall be performed in this area. Morgan will supply the commission with copies of the documentation and data pertaining to this matter. The commission, in turn, will relay this information to the Assistant Town Counsel, Lisa Mead for her review. The OOC will remain open for the present time.

The meeting adjourned at 10:00 PM.