

Marblehead Conservation Commission
Minutes February 10, 2011

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, Fred Sullivan, Brian LeClair, Deb Payson, Don Tritschler and Ken Fisher. Also present was Willy Lanphear, 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.

Approve Minutes: A motion was made and seconded "to approve the minutes of 01/13/2011". Five members voted in the affirmative; one abstained due to prior absence.

Discussion Items:

Proposed changes to regulations for Town Wetlands Protection Bylaw and Stormwater Management & Erosion Control Bylaw: Per Town counsel notice will be posted and published in the local newspaper once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing.

Planning Board: The commission voted all in favor "to authorize the Marblehead Planning Board to act as the agent of the commission in granting a permit under the Marblehead Stormwater Management & Erosion Control Bylaw for the proposed project at 117-129 Pleasant Street".

40-1021 10 MARINER'S LANE DARING

Resource Area: Coastal Bank

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

Appeared: Mason Daring and Scott Patrowicz of Patrowicz Land Development Engineering

Control Drawing: Seawall Repair, 10 Mariners Lane, dated 02/10/11, prepared by Childs Engineering Corporation (SK-01 and SK-02)

Reference: Letter from Patrowicz dated February 10, 2011 and letter from Childs Engineering Corporation dated January 6, 2011.

This was a continuance from 11/18/2010 and 01/13/2011. The referenced letters were submitted by Patrowicz at the hearing. He was informed the commission needed time to review these letters and therefore could not conclude the hearing at this time. The commission requires further detail of the wall design including various cross sections along the length of the wall. The commission noted that the proposed wall will be in a "V" zone and must be constructed accordingly. The commission does not see any wetland issues regarding the added three foot projection of the proposed wall footing since this area is all ledge and does not supply sediment nor will the added projection interfere with navigation, fishing or fowling. Patrowicz will inform the DEP of these changes. A motion was made and seconded "to continue this hearing to March 10, 2011". All voted in the affirmative.

40-1019 99 PITMAN ROAD THOMPSON

Resource Area: Coastal Bank

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

Appeared: Scott Patrowicz of Patrowicz Land Development Engineering

Control Drawing: Drawings SKS-1, 2, 3, 4 and 5, prepared by Structures North, dated 12/29/2010.

Reference: Letter from Patrowicz dated February 10, 2011 and Project Manual, dated 12/29/2010, prepared by Structures North Consulting Engineers, Inc.

This was a continuance from 11/18/2010, 12/09/2010 and 01/13/2011. The referenced letters were submitted by Patrowicz at the hearing. He was informed the commission needed time to review these letters and therefore could not conclude the hearing at this time. All members voted to continue this hearing to 03/10/2011.

40-1026 18 GREGORY STREET MORELAND

Resource Area: Coastal Bank

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

Appeared: Sidney Moreland

Control Drawing: 18 Gregory Street, Existing Site Plan & Proposed Gangway and Float Plan, dated 11/08/2010, prepared by Vine Associates

Reference: Letter from Marblehead Harbormaster dated 01/04/2011 and letter from MA Division of Fisheries and Wildlife dated 12/29/2010

This was a continuance from 01/13/2011. The letter from MA Division of Fisheries and Wildlife stated this project is not within estimated habitat of rare wildlife and does not need their review.

The harbor master has no objections but did question the feasibility of using helix anchors. Mr. Moreland stated he does not propose to raise the height of the existing concrete pier even though it is under water twice each year. He proposes to construct a lifting mechanism for raising the gangway if this can be accomplished. He will verify to the commission if he has a valid Chapter 91 license. All members voted to close this hearing. All members voted to issue an OOC with the following special conditions.

Special Conditions:

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this original Order of Conditions and any subsequent amendments thereto at the Registry of Deeds in Salem and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order of Conditions prior to the commencement of any work authorized by this Order of Conditions or any amendments thereto. 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. See Attachment "C" for "Schedule of Fines".

21. Prior to any work authorized by this Order, a sign (1'x 2') shall be displayed in a conspicuous place at the site with the words "DEP File 40-1026"

22. Prior to any demolition, construction or earth moving activities on the site, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the conditions contained in this Order.

23. A copy of the Order of Conditions as well as the final approved plan/s shall be available for inspection on site while activities regulated by the Order are underway.

24. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.

25. The project shall be performed in accordance with the final approved plans and other documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions. Any deviation from this Order of Conditions and the approved construction plan/s and documents requires authorization from the Conservation Commission prior to implementation. Any deviation from the approved construction plans and documents commenced prior to authorization is subject to a fine of up to \$300 per day, issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. See Attachment "C" for "Schedule of Fines".

26. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

27. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

Pre-construction:

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

29. No erosion control measures are required for this application since all construction (gangway, float) will be done off site.

30. 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:

31. 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.).

32. All demolition debris will be removed from the site as soon as possible and not stored within a resource area or a buffer zone. If a dumpster is used to contain debris, the dumpster shall be covered after each work day. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

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

34. 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.

35. 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.

36. 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.

37. The float will be anchored using helical anchors and elastic rods. In the event this is not possible due to the type of ocean bottom, concrete block anchors with chains will be allowed. The applicant will inform the commission in writing before blocks and chains are to be installed.

38. A drawing of the proposed lift mechanism will be submitted to the commission for approval before construction.

Post-construction/in perpetuity:

39. 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. All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of an “as built” drawing (signed and stamped by a licensed Professional Engineer or licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. See Attachment “C” for “Schedule of Fines”.

40-1025 15 SPRAY AVENUE GROOM

Resource Area: Coastal Bank

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

Appeared: Paul Lynch, atty. and Peter Ogren of Hayes Engineering

Control Drawing: Plan Showing Proposed Additons and Grading for 15 Spray Avenue, dated 12/15/2010, prepared by Hayes Engineering. For this hearing, this plan was altered to show changed designs, was marked up by Hayes Engineering but was not submitted to the commission as a final plan.

This was a continuance from 01/13/2011. The commission is currently seeking a consultant. The applicant wishes to have the NOI revised to show only a part of the proposed renovations. The neighbors/abutter received the proposed revisions one day before the hearing and were not able to discuss the revision with their consultant, Bourne Consulting Engineering. Questions arose regarding the integrity of the seawall but it was recognized the integrity of the seawall was not a topic of the application. Rather, the main concern of the neighbors/abutter is the effect of the proposed change of seawall height (ca. 6 ft.) abutting the Selenkow property. The applicant requested to have any seawall changes in this area to be deleted from this NOI. He agreed to also have the cap on any part of the seawall to be deleted from this NOI.

NOI 40-1025 henceforth will deal only with the seawall to the northeast of a line defined by an outer wall of the proposed one story addition. See "Wall Section A-A" on Plan Showing Proposed Additions and Grading for 15 Spray Avenue, dated 12/15/2010, prepared by Hayes Engineering. This line, "Wall Section A-A", depicts the furthest extent of proposed work on the seawall. Note that the proposed garage has been reduced in size and the existing garage will now be retained. This reduced NOI 40-1025 will not include any seawall work directly adjacent to the Selenkow property. A new, separate NOI will be submitted to include seawall work abutting the Selenkow property.

The applicant wishes to proceed with a reduced project under this NOI 40-1025 as follows. The proposed garage will be reduced in size and the existing garage will remain. The buttressed cellar wall will be partially filled with a flowable material which hardens to the consistency of cement. Clean, permeable material will be filled over this to allow a deck to be installed over the filled material. The footprint in this area will not be increased. No cap will be installed on the seawall in this area. The area of pervious/impervious surface will be re-stated. A revised control drawing showing these changes will be submitted to the commission for approval before any work is started.

The neighbors raised questions about the proposed changes included in a reduced NOI 40-1025. They referred to 310 CMR 10.36. The commission responded that the proposed reduced work will not affect the stability of the coastal bank. They referred also to 310 CMR 10.37. The commission stated that this part of the coastal bank does not supply sediment.

The applicant will submit a revised control drawing for approval before the OOC is issued and before any work is started. The commission voted to close this hearing. The commission voted 5 yes, one no to issue an OOC for the reduced work with the following special conditions.

Special Conditions:

20. In accordance with General Condition No. 9 contained in this Order of Conditions, the applicant shall record this original Order of Conditions and any subsequent amendments thereto at the Registry of Deeds in Salem and shall submit the recording information to the Conservation Commission on the form for said information found at the end of the Order of Conditions prior to the commencement of any work authorized by this Order of Conditions or any amendments thereto. 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. See Attachment "C" for "Schedule of Fines".

21. Prior to any work authorized by this Order, a sign (1'x 2') shall be displayed in a conspicuous place at the site with the words "DEP File 40-1025"

22. Prior to any demolition, construction or earth moving activities on the site, the applicant shall make an appointment for a site inspection by the Conservation Administrator to review the proposed work and the conditions contained in this Order.

23. A copy of the Order of Conditions as well as the final approved plan/s shall be available for inspection on site while activities regulated by the Order are underway.

24. This Order of Conditions is issued under the Wetlands Protection Act and its Regulations (MGL Chapter 131, Section 40 and 310 CMR 10.00 et. seq.), and under the Town of Marblehead Wetlands Protection Bylaw (Marblehead Bylaws Chapter 194) and its Regulations (Wetlands Protection Bylaw Regulations for Administering Marblehead Bylaws Chapter 194, Sections 194-1 through 194-14). As such this Order constitutes a wetlands permit both under the Act and under the Bylaw.

25. The project shall be performed in accordance with the final approved plans and other documents referenced in Attachment A to this Order of Conditions, except as the project may be altered or amended by these Special Conditions. Any deviation from this Order of Conditions and the approved construction plan/s and documents requires authorization from the Conservation Commission prior to implementation. Any deviation from the approved construction plans and documents commenced prior to authorization is subject to a fine of up to \$300 per day, issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. See Attachment "C" for "Schedule of Fines".

26. The project shall be performed in accordance with the representations made by the applicant and his/her representative(s) and in accordance with the requirements of the Marblehead Conservation Commission, all as reflected in the public hearing record as documented in the minutes of the Marblehead Conservation Commission referenced in Attachment A to this Order of Conditions, except as the project may be specifically altered or amended by these Special Conditions.

27. These Special Conditions relate equally to both the Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw unless herein indicated otherwise.

Pre-construction:

28. The applicant will submit a revised control drawing for approval before the OOC is issued and before any work is started. The revised control drawing will show: The proposed garage will be reduced in size and the existing garage will remain. The buttressed cellar wall will be partially filled with a flowable material which hardens to the consistency of cement. Clean, permeable material will be filled over this to allow a deck to be installed over the filled material. The footprint in this area will not be increased. No cap will be installed on the seawall in this area. The area of pervious/impervious surface will be re-stated.

29. Any land disturbance of an area less than 40,000 square feet requires that Section II.C of the regulations pertaining to the Stormwater Management and Erosion Control Bylaw, Chapter 195 of the Marblehead Code must be followed and implemented.

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

31. 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.

32. 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:

33. This project shall not cause an increase in run-off onto adjacent properties or streets, either during construction or after completion. Appropriate measures shall be taken to prevent the movement of silt or debris onto adjacent properties or streets.

34. 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.).

35. 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.

36. All demolition debris will be removed from the site as soon as possible and not stored within a resource area or a buffer zone. If a dumpster is used to contain debris, the dumpster shall be covered after each work day. The debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

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

38. A landscape plan will be submitted to the commission for approval before any landscape work is started.

Post-construction/in perpetuity:

39. 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 Lawn care 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. 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. All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. 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.

41. 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.

42. The control drawing for this project was prepared and stamped by a licensed Professional Engineer. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing. Upon completion of the work authorized by this OOC, said licensed professional shall submit a written statement to the Conservation Commission certifying that the completed work is in substantial compliance with the control drawing and setting forth any deviations that may exist between the completed work and the plan approved by the Conservation Commission.

43. Upon completion of the work allowed under this Order of Conditions the applicant shall apply for a Certificate of Compliance (COC) (a) within 30 days after completion of the work or (b) thirty (30) days prior to the expiration date of the original or extended OOC, whichever time comes sooner. If no work was started under the OOC or if some of the work will not be performed, the applicant must still apply for a Certificate of Compliance at least 30 days prior to the expiration of the OOC. The Conservation Commission may require the submission of an "as built" drawing (signed and stamped by a licensed Professional Engineer or licensed Professional Land Surveyor) with the application for the COC. Failure to submit an application for a COC shall result in a fine issued against the applicant in accordance with Marblehead Bylaws Chapter 194, Section 11E. See Attachment "C" for "Schedule of Fines".

40-???? 396 & 400 OCEAN AVENUE TERMEER

This NOI was not advertised and no hearing was conducted. This hearing will be conducted in March 2011.

Old/New Business:

Proposed Amendments: 40-969 Termeer: This was not advertised and was not acted upon.

Requests for Extension:

40-945 Herring: The commission voted all in favor of granting a one year extension.

40-802 Whittier Ponds Association: The commission voted all in favor of granting a one year extension.

Request for COC:

40-895 and 40-912 were tabled due to severe snow cover to allow the Conservation Administrator to inspect these sites when the snow has receded.

The Commission voted all in favor of issuing a COC for 40-509 and 40-523 subject to the payment of a fine in the amount of \$900 for failure to request a COC after completion of the work. 40-509 was fined \$300; 40-523 was fined \$600.

40-449, 40-521, 40-542, 40-658, 40-680, 40-691, 40-746 and 40-775 were all tabled to allow the Conservation Administrator to inspect these sites for COC's. However, 40- 521, 40-746 and 40-775 were fined \$300, \$600 and \$600 respectively due to failure to record the OOC's.

40-973 was tabled to allow the Conservation Administrator to inspect this site.

The Commission voted all in favor of issuing a COC for 40-080. The OOC applied to a previous owner and no fine was levied against the current owner.

Sign Documents: All documents per the agenda were signed.

The meeting was adjourned at 10:25 PM.