



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF

ROCKLAND HARBOR PARK, LLC
Rockland, Knox County
BOATHOUSE CONVERSION
AND EXPANSION
L-20386-26-E-M
L-20386-2F-N (approval)

) SITE LOCATION OF DEVELOPMENT ACT
) NATURAL RESOURCES PROTECTION
) ADJACENT ACTIVITY
) WATER QUALITY CERTIFICATION
) MINOR REVISION
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A *et seq.* and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of ROCKLAND HARBOR PARK, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History: In Department Order #L-20386-4E-B-N/#L-20386-26-A-N, dated December 27, 2000, the Department approved the development of an Operations Center in the City of Rockland. The development consists of a 78,000 square foot two-story office building, a 7,800 square foot daycare center, a 1,300 square foot boathouse, a 1,500 square foot one-story, open-air pavilion, and a 1,350 linear foot boardwalk. The combined building area is approximately 50,100 square feet and the combined paved area is approximately 186,900 square feet for a total of 237,000 square feet. The project is located adjacent to Ocean and Water Streets in the City of Rockland.

In Department Order #L-20386-4C-D-T, dated March 11, 2008, the Department approved the transfer of Department Order #L-20386-4E-B-N/#L-20386-26-A-N, from Bracebridge Corporation to Rockland Harbor Park, LLC.

B. Summary: The applicant proposes to convert the existing 1,314 square foot boathouse to a restaurant and expand it by 952 square feet for the purpose of bathrooms, a kitchen, a sprinkler closet, and a cooler. The expansion will be located over the existing deck along the southern and eastern side of the building. The applicant also proposes to build approximately 1,055 square feet of decking for the purpose of additional exterior seating and life safety and support vehicle access. Approximately 854 square feet of decking, located above the highest annual tide, will extend along the northern and western sides of the building and will provide additional exterior seating. A maximum of four pilings will be placed on the western side of the expansion to support the expanded deck area and will be located above the highest annual tide. Approximately 201 square feet of decking will be located on the southeast side of the building and will provide access for life safety and support vehicles. In order to provide additional structural support for the

expansion on the southeast side and to protect the sewer pump in this location from tidal energy, the applicant proposes to install concrete footers and a retaining wall that measures 20 square feet on the southeast corner of the building. The fill above the sewer pump will be replaced and the area will be paved to further facilitate access to the pier for the purpose of life safety and support vehicles. The proposed paved area will be 331 square feet for a total 1386 square feet of new decking and paved area. The plans for the project can be seen on the plan sheet submitted with the application entitled, "C-3: Sketch Parking Site Plan", prepared by Gartley & Dorsky - Engineering & Surveying, and dated April 24, 2008 by revisions. The project site is located off Water Street in the Town of Rockland.

C. Current Use of the Site: The current site is a multi-use Operation Center located on approximately 9.61 acres of the west shore of Rockland Harbor as indicated by the City of Rockland's tax maps (Map 5, Lot B13). The deed for the proposed project can be seen at the Knox County Registry of Deeds in Book 3774, Page 125.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including an aerial photograph. Department staff visited the project site on April 8, 2008.

The proposed project is located on Rockland Harbor, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The surrounding area is developed with industrial, commercial, and residential structures. Based on the information submitted in the application and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department did not identify any issues involving existing recreational and navigational uses.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

The new support piles will be driven so there will be no excavation or soil disturbance.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to marine resources, navigation or recreation.

The Maine Department of Inland Fisheries and Wildlife reviewed the proposed project and stated that there is no Essential or Significant Wildlife Habitats at the project site.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a Natural Resources Protection Act (NRPA) permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternative analysis for the proposed project completed by Doug Miller of Gartley & Dorsky Surveying and Engineering and dated February 27, 2008. The applicant considered the following alternatives to the proposed project:

- 1) The applicant investigated locating the restaurant in a different area of the site. However, the current building already exists and is vacant. In addition, the building requires minimal alterations to be used as a restaurant.
- 2) The applicant investigated not expanding the boathouse but determined the expansion was necessary to provide for a maximum of 150 seats to make the conversion economically viable.

B. Minimal Alteration. The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. All improvements for the decking will be done above the highest annual tide.

C. Compensation. In accordance with Chapter 310 5(C), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values.

The Department finds that the applicant has avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.

- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the above noted application of ROCKLAND HARBOR PARK, LLC to convert and expand an existing boathouse for the purposes of a restaurant SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that their activities or those of their agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.

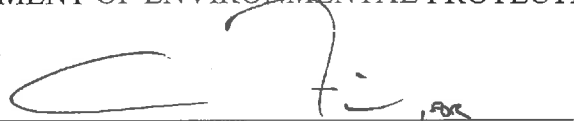
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-20386-4E-B-N/#L-20386-26-A-N, and subsequent orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED AT AUGUSTA, MAINE, THIS 2ND DAY OF May, 2008.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:



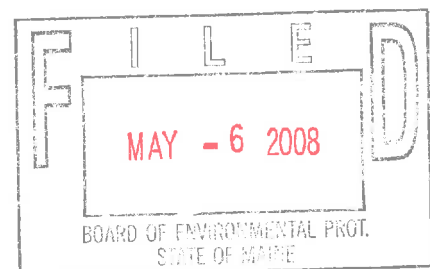
DAVID P. LITTELL, COMMISSIONER

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: February 27, 2008

Date of application acceptance: March 3, 2008

Date filed with Board of Environmental Protection
LV/ATS67563&67566/L-20386-4E-F-N& L-20386-26-E-M



SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.

- 1. This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited, without prior approval by the Board of Environmental Protection, and the applicant shall include deed restrictions to this effect.**
- 2. The applicant shall secure and comply with all applicable Federal, State and local licenses, permits, authorizations, conditions, agreements, and orders, prior to or during construction and operation as appropriate.**
- 3. The applicant shall submit all reports and information requested by the Board or Department demonstrating that the applicant has complied or will comply with all conditions of this approval. All preconstruction terms and conditions must be met before construction begins.**
- 4. Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.**
- 5. Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.**
- 6. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval, if granted. Reapplications for approval may include information submitted in the initial application by reference.**
- 7. If the approved development is not completed within five years from the date of the granting of approval, the Board may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred during the five-year period.**
- 8. A copy of this approval must be included in or attached to all contract bid specifications for the development.**
- 9. Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.**

(2/81)/Revised November 1, 1979

DEPLW 0429



NATURAL RESOURCE PROTECTION ACT (NRPA) STANDARD CONDITIONS

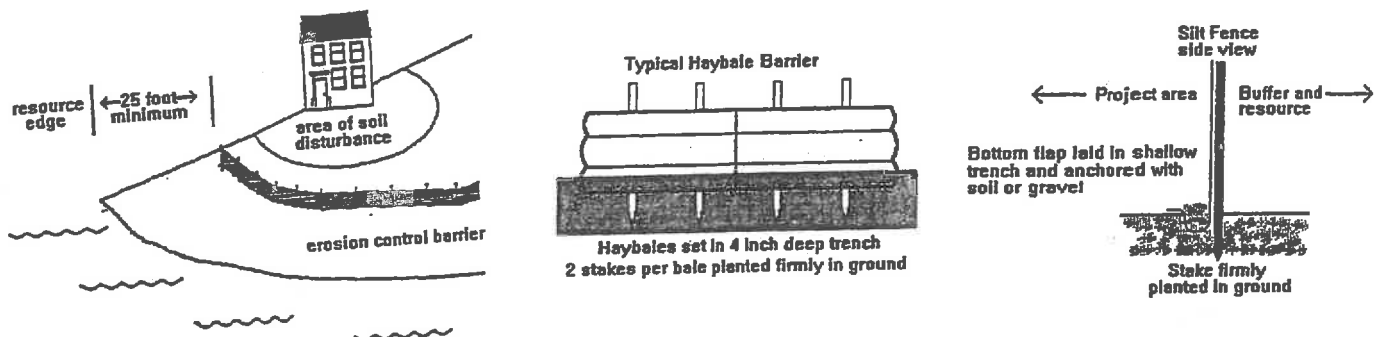
THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. **Approval of Variations From Plans.** The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. **Compliance With All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. **Erosion Control.** The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. **Compliance With Conditions.** Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. **Initiation of Activity Within Two Years.** If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. **Reexamination After Five Years.** If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. **No Construction Equipment Below High Water.** No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. **Permit Included In Contract Bids.** A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. **Permit Shown To Contractor.** Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

Erosion Control

Before Construction

1. If you have hired a contractor, make sure you have discussed your permit with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is and where it is located. Most people could identify the edge of a lake or a river. The edges of wetlands, however, are often not obvious. Your contractor may be the person actually pushing dirt around but you are both responsible for complying with the permit.
2. Call around and find sources for your erosion controls. You will probably need silt fence, hay bales and grass seed or conservation mix. Some good places to check are feed stores, hardware stores, landscapers and contractor supply houses. It is not always easy to find hay or straw during late winter and early spring. It may also be more expensive during those times of year. Plan ahead. Purchase a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the activity.
4. If a contractor is installing the barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level along the land slope, whenever possible. This keeps stormwater from flowing to the lowest point of the barrier where it builds up and overflows or destroys it.



During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops striking the soil that causes a lot of erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. In that situation, stop work and figure out what can be done to prevent more soil from getting past the barrier.

After Construction

1. After the project is complete, replant the area. All ground covers are not equal. For instance, a mix of creeping red fescue and Kentucky bluegrass is a good choice for lawns and other high maintenance areas. The same mix would not be a good choice for stabilizing a road shoulder or a cut bank that you don't intend to mow.
2. If you finish your project after September 15, then do not spread grass seed. There is a very good chance that the seed will germinate and be killed by a frost before it has a chance to become established. Instead, mulch the site with a thick layer of hay or straw. In the spring, rake off the mulch and seed the area. Don't forget to mulch again to hold in moisture and prevent the seed from washing away.
3. Keep your erosion control barrier up and maintained until the area is permanently stabilized.