

Middlesex Beach Association - Board of Directors
Covenants Comments received thru 7/9/10

(summary of submitted comments that are still "pending"; comments appearing in earlier versions of this document not appearing herein have been discussed and were incorporated where deemed advisable)

Comments re setback/lot coverage/permeable:

2. Section 3.1 - where was the 35% derived from???

(DAWnote: admittedly this was arrived at by determining what was needed was "something less than the current 45%, which is a phenomenal amount of lot coverage in the Pineside, which we are trying to protect as a supposedly non-densely-packed neighborhood")

-% lot coverage on pine side changing from 45% to 35%

DKB: Must define coverage to include only footprint of buildings and not driveways or walkways; there was a conflict between this and "impervious cover" section that was confusing.

(DAWnote: I understand what you're getting at, and can tweak)

DKB: Section 3.1 is unclear; the building area for a primary residence should be its "footprint" or the area of ground covered by the building. Change to "The primary dwelling footprint located in the ..."

(DAWnote: did we intend to make a distinction between areas covered by enclosed building, vs area covered by enclosed building plus decks, porches, etc?)

DKB: Section 4.1 (g); Detached accessory buildings should not be restricted to 100 sq. ft, especially when section 9.8 says that a car can be parked inside. Unclear if this is only within side or rear setbacks.

(DAWnote: subsections of 4.1 list items that are allowed within the setback. A full-sized garage would not be allowed in the setback. Any outbuilding within the 4' to 10' portion of the setback must be a small detached one, such as a shed. Outbuildings more than 100 sq ft, such as a garage, must be at least 10' from property line)

DKB: Section 9.10; remove last sentence. Section 4.1 states that detached accessory building can be build in a setback. Any hard surface over land is an impervious cover as I understand it (please define in definition section).

(DAWnote: good catch; intent was to not allow patios or similar too close to property line due to runoff; a 100 sq ft shed could be small enough that it wouldn't really contribute to the problem. Perhaps small patios also?)

Comments re lien/fine/penalties/appeal/self-help:

4. 4.3 - there are various references to having a lien on the property - isn't there a process to put a statutory lien on a property? What is it?

29. Section 14.8 usually a Board can't charge late fees and a fine and penalty; fines are for violations other than non-payment; unpaid assessments usually accrue late fees, interest, costs and attorney's fees; penalties and fine and late fees all on unpaid assessments would be duplicative.

(DAWnote: requires more brainpower than I have right now...again, because I seem to only read this paragraph at 1AM)

32. Section 15.4 (a) challenge is begun? Does the board mean request for a hearing? Also, fine shall be imposed - makes more sense to make it MAY be imposed as after hearing information ie the rest of the story, the board in some circumstances may fine a fine or other penalty is inappropriate.

(DAWnote: second half suggestion added in draft for discussion; first half requires thought.)

15.6 An easement to enter my personal property without my permission by anyone sanctioned by the board for any reason is not acceptable. Rules for enforcing specific covenants are subject to "due

process" rules and must be followed. An easement is not needed for people to enter a property to enforce a rule in a covenant that is published and recorded. (DAWnote: I can't find this language in 15.6, but similar is in 9.5, 9.9, 10.5, 10.6, 14.7) (DAWnote: provision was originally inserted to ensure that MBA has the right to go onto properties to measure height and setbacks. With owner's cooperation, MBA does a brief interior inspection of projects prior to returning building deposit-main purpose of this is to verify single family house-i.e. only one "kitchen". Also, most HOA-run communities DO include the right of the governing body to go onto your property as necessary to enforce any and all rules. (note to self-what does DUCIOA say on this issue, even if not specifically applicable to our established community?))

DKB: There should be adequate time to correct a deficiency after notification of the deficiency. The time will depend on the deficiency. A letter from the lot owner stating when and how the deficiency will be removed should constitute adequate response. Fines, etc. should only be implemented if this lot owner's plan for compliance is not timely or is not followed. Moving a building or completing new construction often takes more than 30 days.

General Comments:

15. Section 9.6 Fences - "shall contain openings" - is the Board trying to describe space between slats/boards of fence ie board on board fence construction or picket fence style - wording unclear.

(DAWnote: based on current covenants language-I see the need to tweak) (FurtherDAWnote: actually, now I don't see a need to tweak. Either picket fence, or lattice fence, would be OK. As long as the portion between 4' and 6' high is at least half-open.)

Submitted Comments re Grandfathering:

In the commercial area there exist multiple existing non-conforming structures. Simple acceptance of these variances would create some major problems. The DeMarie property has two existing buildings that are both non-permitted and in violation of the setback distances. The temporary storage vehicles and refrigerated trailer behind the Seaside Village are in violation. I believe that temporary permits were issued but somehow they are no longer removed after the summer season is over. All violations in the commercial area should be reviewed on a case by case basis and notification of the violations should be sent by registered mail, receipt requested.

(DAWnote: I'm just inserting the text of currently proposed 5 about Grandfathering. I'm not sure exactly what to do with it. I note that a commercial lot is currently allowed to have any number of buildings on it, as long as they're within the setback.)

(5) GRANDFATHERING OF EXISTING INFRINGEMENTS: Except as otherwise provided in these Restrictive Covenants, any structure in Middlesex Beach that exists as of the effective date of this amendment (unless otherwise provided elsewhere in these Restrictive Covenants) may be continued even though such structure does not conform to the requirements and provisions of this amendment. Such existing, but non-conforming, structures shall be deemed to be "grandfathered structures". In the event the grandfathered structure is a deck or balcony that is located in any setback, no portion of such deck or balcony may be enclosed if it is to remain in the setback. Any grandfathered structure may be repaired, but it may not be modified, altered, enlarged or extended. An MBA Building Permit as specified in Section 7 is required before any repairs to a grandfathered structure may be undertaken in order to determine if the work is a permissible repair or if the work is an impermissible modification, alteration, enlargement or extension of the grandfathered structure. This Section 5 does not apply to the garbage/trash receptacle requirements and/or enclosure/screening requirements set forth in Sections 9.5, 9.9, 10.5 and 10.6 hereof.

Mary S-F's comment on this topic: With regard to the more general concern about other violations of the existing covenants, I agree that we need to know what we are dealing with and that may mean someone needs to tour the community as Bob suggested.

Whether or not every violation noted is something that the Association can effectively pursue or "not grandfather" will depend on the circumstances surrounding each violation we find. If some conditions have existed for a long period of time, even if they are objectionable and not something the Association wishes to grandfather, the legal decision may be that we have no choice but to tolerate it until it is destroyed or abandoned (depending on what we are talking about).

5. Grandfathering structure - can a grandfathered structure be Replaced? Replacement is different than repair and maintenance. Generally, once grandfathered the structure can be replaced in the same/like construction.

General Discussion re Boats/trailers:

Possible language from Mary S-F re boats (MUCH more detailed than proposed 12.4):

SAMPLE #1:

No boats, personal water craft or trailers of any kind shall be parked or stored on any Lot unless in the side or back yard which is defined as an area behind a line representing the front of the dwelling and any hypothetical projection thereof. No more than one (1) boat on a trailer; or no more than two (2) personal water craft on a trailer; or no more than one (1) empty boat trailer may be parked or stored on any Lot at any given time. No travel trailer, motor home, or other vehicle designed for overnight occupancy shall be parked or stored on any Lot except for cleaning and packing purposes for a period not to exceed three (3) days prior and subsequent to each usage. No more than one (1) travel trailer, motor home, or other vehicle designed for overnight occupancy shall be temporarily parked or stored on any Lot at any given time. Additionally, no utility trailers shall be parked or stored on any Lot, except when such is being used in connection with ongoing yard or landscaping work, in which case one (1) utility trailer shall be permitted to be parked or stored on the Lot for a period not to exceed three (3) days while the yard or landscaping work is ongoing.

SAMPLE #2:

No trailer, mobile home, double-wide, mobile home, park model trailer, motor home, tent, barn, camper, bus, or other similar vehicle, out-building, structure, boat or trailer shall be placed, kept or parked on any Lot or on any portion of the Common Area, except (1) as may be stored within an enclosed garage, or (2) a boat and/or boat trailer, not to exceed twenty feet (20') in total length, parked in the rear yard of the Lot at any time either temporarily or permanently, provided, however, the Association may designate one or more areas in the development for regulated storage and long-term parking.

DKB: The "Association" is defined in the Covenants as the Corporation of Middlesex Beach property owners who are also members of the Association. The Corporation elects a Board of Directors. The Association and its Board of Directors are not the same. The document must be clear who is responsible for performing certain acts when it says "The Association." Please clarify in every case (Board, Board President, Committee, Delegated Authority, Security, or Board AND 60% of Members). Be specific who is responsible.

(DAWnote: we intentionally made all references to the same entity. The community (Association) has certain specific powers, including the power to elect the Board, to whom most of the power is delegated. The Board is ultimately responsible. Perhaps clarifying we mean "The Association, through its elected Board")

DKB: Section 12.3; Most covenants have effective restrictions on noise, eyesores, and obnoxious odors. Lets keep the noise and bad smells out, especially around the commercial area. The covenants must specifically prevent owners or renter's dogs kept inside or tied outside a residence from allowing barking at all hours, especially when no one is at home. Several owners have complained about barking dogs confined on a porch on Bridge road near Beach Plum.

DKB: Section 14.8 b; Please change "greater" to "lesser"; this obvious error makes the Association charge an illegal rate when the Legal Rate is less than 18%.

(DAWnote: My understanding: Under DE law, if governing docs state a specific rate agreed to by the membership, that's inherently legal even if higher than general provision of DE code. How to word this better, because it sure seems strange once this is pointed out.)