

March 15, 2021



City of Peabody
Zoning Board of Appeals

CITY OF PEABODY

2021 MAR -1 P 8: 38

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5900

CITY CLERK

MARCH 15, 2021 ZBA AGENDA
LEGAL NOTICE

NOTICE IS HEREBY GIVEN THAT THERE WILL BE A REMOTE PARTICIPATION MEETING
OF THE ZONING BOARD OF APPEALS ON
MONDAY, MARCH 15, 2021, AT 7:00 PM

Pursuant to Governor Baker's March 12, 2020 Order suspending certain provisions of the Open Meeting Law, G.L. c. 30A § 18, and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Peabody Zoning Board will be conducted via remote participation to the greatest extent possible. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public adequately access the proceedings in real time, via technological means. Individuals may participate remotely in the meeting via a participation platform called Zoom.

Members of the public and/or parties with a right and/or requirement to attend this meeting may access the remote participation through any one of the following ways:

- Enter this link into your web browser to join the meeting: <https://us02web.zoom.us/j/81135722823>
- Enter this link into your web browser to open the Zoom website: <https://zoom.us/join>. Enter the meeting/webinar ID# **811 3572 2823** as directed on the webpage and click "Join". Follow the on-screen instructions to join the meeting.
- Participants can dial a toll-free number +1 312 626 6799 to join the meeting. When prompted, enter meeting/webinar ID# **811 3572 2823** and follow the instructions to join the meeting.

THE AGENDA FOR THIS MEETING IS POSTED ON THE CITY PEABODY WEBSITE AND LISTED BELOW.

PEABODY ACCESS TELEVISION WILL BE AIRING THIS MEETING LIVE ON COMCAST 9 - RCN 15/614/1161

IF YOU WISH TO REVIEW ANY PLANS OR DOCUMENTS RELATED TO ITEMS ON THIS AGENDA PLEASE CONTACT CARLA MCGRATH

ZONING BOARD OF APPEALS
C/O CARLA MCGRATH, CLERK
24 LOWELL STREET
PEABODY, MA 01960
carla.mcgrath@peabody-ma.gov
978-538-5792

MARCH 15, 2021 AGENDA

REGULAR MEETING

1. Continued application of **Northeast Arms, LLC c/o Attorney John Keilty** for a **Variance from the Provision of the Zoning Ordinance 2019, as amended, Section 7.2**, as it applies to the premise known as **108H Newbury St., Peabody, MA, Map 068, Lots 12 and 13**. Petitioner seeks a variance for a mobile range facility and requires relief to **Left Side Yard** where 100' is required and 70' is proposed; **Rear Yard** where 50' is required and 28' is proposed. The property is located in an **BR Zoning District**.
2. Application of **Maria Grace Masucci**, for an **Administrative Appeal from the Provision of the Zoning Ordinance 2019, as amended, Section 15.6.2** as it applies to the premise known as **11 Michelle Rd., Peabody, MA, Map 115, Lot 341**. Petitioner was denied a building permit to turn an accessory structure into a Family Accessory Living Area. The property is located in an **R1 Zoning District**.
3. Application of **Duc Residential, LLC c/o Attorney John Keilty** for a **Variance from the Provision of the Zoning Ordinance 2019, as amended, Sections 10.5.1, 7.3.9 and 7.2**, as they apply to the premise known as **16 Pearl St., Peabody, MA, Map 105, Lot 084**. Petitioner seeks a variance for new construction and requires relief to **Primary Structure: Rear Yard Setback** where 35' is required and 22' is proposed; **Buildable Lot Width** where 60' is required and 58' is proposed; **Buildable Lot Depth** where 40' is required and 22' is proposed; **Open Deck: Rear Yard** where 24.5' is required and 14' is proposed; **Landscaping** where 2 street trees are required and none are proposed. The property is located in an **R1 Zoning District**.
4. Application of **FRH Realty, LLC, c/o Attorney John Keilty**, for a **Variance from the Provision of the Zoning Ordinance 2019, as amended, specifically Section 6.6.8** as it applies to the premise known as **7 Dearborn Rd., Peabody, MA, Map 078, Lot 019**. Petitioner seeks a variance and requires relief from provisions of the DDD Residential Overlay District, Section 6.6.8. as follows....**Density** of 33 units per acre where 20 units are allowed; **295 Parking** spaces where 315 are required; **Setback from residentially zoned land:** 68 feet where 100 feet are required; **Max F.A.R.** of .87 rather than .5 allowed. The property is located in a **DDD Zoning District**.

BUSINESS MEETING

Acceptance of Meeting Minutes

APPOINTMENTS/CORRESPONDENCE REPORTS

Carla D. McGrath, Clerk
Posted: March 1, 2021



CITY OF PEABODY

2021 APR 13 AM 8:57

CITY CLERK

MARCH 15, 2021 SPECIAL ZBA MEETING MINUTES

A meeting of the Peabody Zoning Board of Appeals was virtually held on Monday, March 15, 2021 at 7:00 p.m. remotely via Zoom platform.

MEMBERS PRESENT	MEMBERS ABSENT
Frances Bisazza-Gallugi, Chairperson	
Stephen Zolotas, Vice-Chairperson	
Julie Picardi	
Dan Sencabaugh	
Barry Osborne	
Keith Slattery	
Ed Colbert	

Also in attendance were the following...
Attorney John Keilty

(Ms. Gallugi read the opening statement made part of these minutes)

MEETING:

1. Continued application of Northeast Arms, LLC c/o Attorney John Keilty for a Variance from the Provision of the Zoning Ordinance 2019, as amended, Section 7.2, as it applies to the premise known as 108H Newbury St., Peabody, MA, Map 068, Lots 12 and 13. Petitioner seeks a variance for a mobile range facility and requires relief to Left Side Yard where 100' is required and 70' is proposed; Rear Yard where 50' is required and 28' is proposed. The property is located in an BR Zoning District.

Fran Gallugi: The attorney for Northeast Arms LLC, has requested a continuance.

Secretary read the request into the record

(Letter requesting continuance was made part of these minutes)

Dan Sencabaugh: Motion to accept the continuation request and reschedule to April 26, 2021

Barry Osborne: Second

Fran Gallugi: All in favor – Any opposed (5,0)

Motion to continue the Northeast Arms, LLC application to April 26, 2021 has been approved

2. Application of Maria Grace Masucci, for an Administrative Appeal from the Provision of the Zoning Ordinance 2019, as amended, Section 15.6.2 as it applies to the premise known as 11 Michelle Rd., Peabody, MA, Map 115, Lot 341. Petitioner was denied a building permit to turn an accessory structure into a Family Accessory Living Area. The property is located in an R1 Zoning District.

(Secretary Read Legal Notice)

Fran Gallugi: Explained this was an administrative appeal by a person aggrieved by his or her inability to obtain a building permit. Section 15.6.2 of the Peabody Zoning Ordinance states the Zoning Board hears and decides appeals by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action under MGL Chapter 40A or this ordinance. You were denied, by the Building Commissioner a permit to turn a pool house (accessory structure) into a FALA. You must describe reasoning for the decision to be overturned. Specifically, why is it you think Commissioner Talarico is wrong in his interpretation of this ordinance? The following are Zoning Ordinances pertaining to your denied request...

- City of Peabody Zoning Section 6.7.2 - A FALA is only allow “in a single-family home” This is a separate building that you want to turn into a new unit
- City of Peabody Zoning Section 6.7.2 (b) FALA is only allowed to be 700 sq. ft. This was permitted in 2004 when the ordinance did not include a maximum square footage for an accessory structure; This structure is 1,125 sf. Now Accessory Structures may not be any larger than 500 sf

- City of Peabody Zoning Section 6.7.2 (d) FALA must be accessed by the home's front door through the principle dwelling. Again, this would be a separate dwelling and violate zoning
- City of Peabody Zoning Section 7.1.5 (d) Habitable space is not allowed in an accessory structure "pool house"

Again, this would be a separate dwelling and violate zoning. These are very clear, decisive ordinances. In my eyes there is no room for interpretation. "Habitable space is not allowed in any accessory structure." If we were to allow this, it would set a precedent anyone would be allowed to turn their garage or shed into a FALA and habitable space.

Mr. Vincent Masucci: 344 Essex St. Lynn, MA. Brother of Maria Masucci, the applicant for this variance, which you said is not a variance. Maria lives and owns 11 Michelle. Rd. She has been there since the house was built back in 1993. Myself, my wife Karen, my granddaughter Adriana are the reason this variance has been put in. My sister graciously offered her pool house, to be used as an in-law living quarters. We would like to make it handicap accessible.

Ms. Gallugi: I just have to stop you for one second. We have to use the correct terminology this is not a variance okay, so this is an administrative appeal you're not her for dimensional because you were not even given a building permit. You are not here for reverence. I just want to make that clear.

Mr. Masucci: Okay. That's what I was told. That's the only reason why I'm saying it. That's what was related to me. That this was a variance, but okay. I have muscular dystrophy and will be wheelchair bound in the future and this is on level ground with the street making it a prime choice. I spoke with the Massachusetts Office on Disability. The assistant director's name is Jeffrey Dugan. He advised me to put in a disability hardship of the section 6.72 of being connected to the house. This would require me to go up seven steps through the main dwelling and down six steps into the so-called pool house in-law apartment. He also advised me to put in a financial hardship as the cost of connecting the pool house to the main house and making handicap accessible would be tough on us. The main reason we're trying to move in the pool house with our limited budget is for our granddaughter Adriana. She is four years old and lives with us. The reason she lives with us is because her mother, my daughter Vanessa was murdered by her husband three years ago. A monster of a father is now serving a life sentence for murder with no chance of parole. Adriana was one years old when she lost her mom and lost her so-called dad for life. She has lived with us since where we are living now. I have lived for 51 years in Lynn, next to a large elderly project. It had turned into a section 8 a while back which was still safe for our family for quite a while but now it's turned into a drug house with prostitution. We have people banging on our front door and our back door. We have people using our yard as a bathroom and tossing needles into our grass. We have contacted the police and city council and head of housing they said there is nothing they can do. There's no way we can raise our granddaughter in this environment hence we had to make a tough decision of leaving all our memories without three children here behind and our three children were all good people and i guess they were all three coaches and they're all public-school teachers well now two as my daughter is gone. My wife Karen has worked at Sacred Heart in Lynn for over 25 years. It's a rewarding job. She has touched the lives of many. Has had her life touched by many but it is not a well-paying job. As for me being handicapped, I'm on a limited income as a

formal postal carrier. This is why we are looking to move into the sister's pool house. I would also like to note that we will not be adding anything or changing anything outside as this structure already exists on the property. All we would do is to remodel the inside and make it handicap accessible. As parents and grandparents, we owe it to our daughter Vanessa to give her daughter Adriana the opportunity to live in a safe and comfortable environment.

Fran Gallugi: Any comments by the Board? Anyone to speak in favor? Opposition?

(Barry Osborne had some technical difficulties and had to log off – he was able to log back on however Ed Colbert was given voting rights for this agenda item)

The following abutters spoke in opposition citing they were in agreement with Ms. Gallugi and Commissioner Talarico also they feel there's too many rules the applicant is asking relief from, it would set precedent and change a neighborhood that has been developed for single family homes. People bought homes here for a particular reason. The hardship is not a hardship by the owner of the property. They have other options. Allowing the FALA in the Accessory Structure will have a negative impact to the surrounding properties, detrimental to property values and

Gary Palm – 2 Amanda Way

Howard Click stein – 0 Outlook Ave.

Donna Papadopoulos – 38 Greenwood Rd.

Mr. Masucci: Did not feel this opening up to the whole city. I'm coming here with a hardship. If someone else has a hardship that is equal to this...I mean it's a unique situation where I don't see where how the whole city is going to open up to this situation. Is it...would it have been a difference if we connected with the house to make it an in-law apartment?

Ms. Gallugi: I believe that you did talk to the Building Commissioner about this and I believe that he has explained everything to you and I just sort of reiterated a bit...we're going to take a vote on this if you would like to go another route then my suggestion to you is to come in tomorrow or sometime this week and sit down with the Building Commissioner and work something out but as this stands right now this is... we have to vote on what is in front of us at this time.

Mrs. Masucci: I am his wife. I think what the question is, I think what Vin's trying to say is are we able to connect the 2 properties up and figure out a way that it could still be able to get in and out because of the handicap or would that be a totally different situation? I mean if you think it's something that we shouldn't pursue I would appreciate you know just some guidance right here.

Fran Gallugi: A FALA can be no bigger than 700 square feet. That is what is allowed. It's different than what we're going to vote on tonight. Tonight, we are voting on an administrative appeal because you did not get a building permit. After the vote tonight if you would like to go a different route that would be up to you and the building inspector.

Dan Sencabaugh: I want to make a couple of comments and ask a question perhaps for

Carla. We have to decide whether or not the Building Commissioner misinterpreted the ordinances and I think it's pretty clear what the definition of a FALA is. It's something that's within a single-family home. It's not something that can be in an accessory structure. So, I think that's pretty clear. What's less clear to me is that this applicant filled out a variance application form and I don't know if that's because the City of Peabody doesn't have a separate form for an administrative appeal...there is a question on the form that asks the applicant if this is an administrative appeal and they did check the yes box for that which might clear it up a little bit but I just wonder if there is some separate form that should have been filled out and if there isn't maybe there should be in the future? If we can get an answer to that question but the last point is that I just think we need to be careful as a zoning board that we're not giving legal advice. I don't think that you did to the petitioner but I think we have to make sure that it's clear that we're not giving them advice as to whether or not if they do change it they're going to be successful or not successful and I just wanted to clear that up.

Carla McGrath: Clerk, Zoning Board of Appeals. The variance and administrative appeal applications are one in the same. The applicant was told which sections were applicable and which were not. I went through the application with Mr. Massuci. The commissioner made it clear in his email what he was applying for.

Fran Gallugi: Any other questions by the Board? Anyone to speak in favor? Opposition?

Dan Sencabaugh: Motion to Close the Public Hearing

Stephen Zolotas: Second

Dan Sencabaugh: Motion to approve

Stephen Zolotas: Second

Fran Gallugi: Roll Call Vote (0,5) **Motion to approve the administrative appeal is denied**

3. Application of Duc Residential, LLC c/o Attorney John Keilty for a Variance from the Provision of the Zoning Ordinance 2019, as amended, Sections 10.5.1, 7.3.9 and 7.2, as they apply to the premise known as 16 Pearl St., Peabody, MA, Map 105, Lot 084. Petitioner seeks a variance for new construction and requires relief to **Primary Structure: Rear Yard Setback where 35' is required and 22' is proposed; **Buildable Lot Width** where 60' is required and 58' is proposed; **Buildable Lot Depth** where 40' is required and 22' is proposed; **Open Deck: Rear Yard** where 24.5' is required and 14' is proposed; **Landscaping** where 2 street trees are required and none are proposed. The property is located in an **R1 Zoning District**.**

(Secretary Read Legal Notice)

Attorney Keilty: Attorney for Duc Residential, LLC. Attorney Keilty explained the project and that this was a previously granted variance that was approved with condition, however had lapsed.

Ed Colbert: Asked for some clarification as to the excavation for the lot.

Attorney Keilty: The excavation is on this lot not the subdivision in the back. The excavation for the foundation has been completed some time ago. It does not have any footings. The excavation that is complete has nothing to do with the utilities running through Pearl Street for the new development out back.

Ed Colbert: Voiced his concern that the applicant required too much relief (relief on all sides), and inquired if there was more excavation planned.

Attorney Keilty: Reiterated the relief proposed. Explained that given the topography there would probably be more excavation.

Brian Ursino: Resident 13 Ralph Rd. Has concerns with the depth of the lot, the excavation being noisy and “cracking up” the street causing sewers to cave in, his garage has cracks in it caused from the blasting. Pictures fell off his wall from the vibration. Construction work before 7am on Saturdays. There is a vein that runs across right under the garage causing the driveway to shift an inch and a half. Snow plowing on an already narrow street.

Attorney Keilty: If we are intending to blast, we must follow the rules and regulations as presented by the fire department and that would include pre-blast surveys of adjacent property. The fire department can put conditions on the blasting.

Brian Ursino: Emphasized his concern with blasting so close to his home and questioned the process/authority the Zoning Board has on the blasting.

Stephen Zolotas: This is outside the purview of the Zoning Board. This is a fire department issue. What this board is dealing with is the dimensional relief. Regrettably this is an issue between property owners and ultimately the fire department.

Brian Ursino: Still had concerns with the blasting and stated the DUE was not listed with the State of Massachusetts.

Dan Sencabaugh: Corrected Mr. Ursino that the name of the company is DUC not DUE

Fran Gallugi: Any other questions by the Board? Anyone to speak in favor? Opposition? Hearing none the matter is before the Board. Ed Colbert still has voting rights as Barry Osborne was not able to hear the full presentation.

Dan Sencabaugh: Motion to Close the Public Hearing

Julie Picardi: Second

Dan Sencabaugh: Motion to approve

Julie Picardi: Second

Fran Gallugi: Roll Call Vote (4,1) in favor Ed Colbert was against. Variance is granted.

(Barry Osborne rejoined the meeting and has full voting privileges)

4. Application of **FRH Realty, LLC, c/o Attorney John Keilty**, for a **Variance from the Provision of the Zoning Ordinance 2019, as amended, specifically Section 6.6.8** as it applies to the premise known as **7 Dearborn Rd., Peabody, MA, Map 078, Lot 019**. Petitioner seeks a variance and requires relief from provisions of the DDD Residential Overlay District, Section 6.6.8. as follows....**Density** of 33 units per acre where 20 units are allowed; **295 Parking** spaces where 315 are required; **Setback from residentially zoned land:** 68 feet where 100 feet are required; **Max F.A.R.** of .87 rather than .5 allowed. The property is located in a **DDD Zoning District**.

(Secretary Read Legal Notice)

Fran Gallugi: Dan please read in the memo from Conservation.

(Dan Sencabaugh read in the memo which is made part of these minutes)

Attorney Keilty: Attorney for FRH Realty, LLC. Attorney Keilty explained the project and that this was a previously granted variance that was approved, however had lapsed as they worked their way through the rest of the process. The applicant are potential buyers. The variance is active but due to expire. We are now seeking that you reissue the variance. I've asked for four of the exact same relief. We have the exact same architects, exact same building. We flipped where the pool is located. We've asked for the same variances with respect to FAR distance from our residential neighbor and a number of parking spaces in the fourth aspect of which was our density 33 units per acre rather than 20 units per acre. This matter will be before the conservation commission. We have agreed to and have already made a filing. We will be heard in April. There is nothing that has changed that would impact the wetlands area. The original discussion was as to whether we were properly asking for a minor modification. We've now agreed with the agent that we will ask for an amendment. That has been filed. Following the hopeful grant of this variance we will be back to you next month asking for our landscape plan to be substituted for one of the requirements that is set forth in the zoning ordinance for landscaping. This is the same variance we had asked for before and you did grant however the landscape page sheet was not completed when I had asked for these variances. So, as such where we asked for five in the past, we're asking for four this evening. The fifth will be asked for next month and we will also be before the conservation commission next month and the community development authority will perform site plan review and will hopefully have all of our permits complete with appeal periods having run in early may and at that time Fairfield will buy the property.

Fran Gallugi: You are aware of the conservation issues?

Attorney Keilty: Yes.

Ed Colbert: Questioned whether the applicant was the owner of the property and if they were able to apply for a variance if they were not the owner.

Attorney Keilty: The applicant does not need to be the owner.

Fran Gallugi: Any other questions by the Board? Anyone to speak in favor? Opposition? Hearing none the matter is before the Board.

Stephen Zolotas: Motion to Close the Public Hearing

Dan Sencabaugh: Second

Stephen Zolotas: Motion to approve

Dan Sencabaugh: Second

Fran Gallugi: Roll Call Vote

Variance Approved (5,0) in favor Variance is granted

Robert Zeuli: Homeowner 1 Celia Rd. Proposing a garage to the left of the lot. Lot is oddly shaped.

Stephen Zolotas: Through the Chair. Is the garage going to be the same height and have the same roof line with the existing house?

Robert Zeuli: No. It's going to be 1 level.

Fran Gallugi: Any other questions by the Board? Anyone to speak in favor? Opposition? Hearing none the matter is before the Board.

Stephen Zolotas: Motion to Close the Public Hearing

Julie Picardi: Second

Stephen Zolotas: Motion to approve

Julie Picardi: Second

Fran Gallugi: Roll Call Vote

Variance Approved (5,0) in favor

Stephen Zolotas: Motion to Accept Meeting minutes from January 25, 2021 and February 8, 2021

Julie Picardi: Second

Barry Osborne: Motion to approve

Dan Sencabaugh: Second

Fran Gallugi: All in favor any opposed. Meeting Minutes are accepted (5,0)

Stephen Zolotas: Motion to close

Julie Picard: Second

Fran Gallugi: All in favor any opposed. **Next meeting is March 22, 2021**

Meeting Adjourned

Carla McGrath

From: Jack Keilty <Office@keiltylaw.com>
Sent: Wednesday, March 10, 2021 10:44 AM
To: Carla McGrath
Subject: [External] RE: o'meara email response

CITY OF PEABODY
2021 MAR 10 AM 10:48
CITY CLERK

WARNING

This email originated from outside the City of Peabody. Do not click on links or open attachments unless you trust the sender.

Please accept this email as my request that the Northeast Arms matter be continued to the next meeting of the ZBA scheduled for April 26, 2021. I have been given a video of a portable firing range which I cannot forward and share in its current format. We will try to work out those technical issues and forward to the ZBA and neighbors. Thank you in advance



CITY OF PEABODY

2021 MAR -8 AM 11:07

City of Peabody CITY CLERK

Conservation Commission

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5782

MEMORANDUM

To: Honorable Members of Zoning Board of Appeals

From: Lucia DelNegro, Conservation Commission

Subject: 7 Dearborn Street **DEP FILE No-55-861**

Date: March 8, 2021 Hearing date: March 15, 2021

- ▶ The property currently has an existing Order of Conditions (55-861). However, the proposed changes would fall under an Amendment request per DEP's Amendment Policy 85-4: <https://www.mass.gov/guides/wetlands-program-policy-85-4-amended-orders> (word document attached)
- ▶ To date plans have been submitted to the commission. Commission staff is presently waiting for a formal Amendment request to be filed. Please see DEP Amendment Policy language in the link above. Hayes Engineering has not responded if they plan to formally submit an Amendment Request. Staff has been waiting for confirmation.
- ▶ If the applicant believes this does not require an Amendment the applicant has been asked to submit said reasons in a written letter to be submitted to the commission BEFORE the April hearing deadline closes. The chairman will determine if the item can be placed on the agenda for discussion without the proper Amendment paperwork. The commission will then need to vote if the item requires an Amendment. It would behoove the applicant to file the appropriate Amendment paperwork in a timely manner to limit any delays in the approval process.

Amending an Order of Conditions

Amended Orders: Amending an Order of Conditions (DWW Policy 85-4)

Issued: September 17, 1985 Revised: March 1, 1995

Following the issuance of a Final Order of Conditions, unforeseen circumstances sometimes arise which may require minor deviations from the project approved in that Order. To allow for the smooth operation of the permitting procedure and to avoid unnecessary and unproductive duplication of regulatory effort after a Final Order of Conditions has been issued, the Department recognizes that it would not be reasonable to require a complete refiling of the Notice of Intent when the changes sought in the Final Order of Conditions are relatively minor and will have unchanged or less impact on the interests protected by the Act. Amended Orders provide assurances to applicants that modifications undertaken in the course of the project are within the scope of the deviations allowed for the receipt of a Certificate of Compliance at 310 CMR 10.05(9)(d). Thus, the process of amending a Final Order of Conditions is acceptable to the Department as long as certain procedural safeguards are employed. This policy does not apply to Final Orders of Conditions which have expired.

Amending a Final Order of Conditions is at the discretion of the body that issued the Final Order of Conditions ("the issuing authority"). There is no provision in the wetland regulations that requires the issuing authority to consider or act upon a request to amend a Final Order of Conditions. There is no right to request a Superseding Order of Conditions or an Adjudicatory Hearing if a request to amend is not granted. If the issuing authority refuses to amend a Final Order of Conditions, the only opportunity for further review is the filing of a new Notice of Intent.

The Department recommends that in processing an amendment to a Final Order of Conditions, the most simple changes, such as correcting obvious mistakes such as citing a wrong file number or typographical errors, be accomplished by correction of the Order, with a copy sent to the Department. In other cases, the Department recommends that the following procedures be used:

The applicant makes a request for an amendment to the issuing authority (the Conservation Commission in the case of an Order of Conditions or the Department of Environmental Protection in the case of a Superseding Order of Conditions). The request for an amendment of the Final Order of Conditions issued by a Conservation Commission is to be made either orally at a regularly scheduled meeting of the Commission or by submitting the request to the Commission in writing. In either case a written copy of the request, a narrative description of what changes have been proposed and any pertinent plans showing the changes are to be sent to the Department's Regional Office. The request for an amendment of a Superseding Order of Conditions issued by the Department's Regional Office is to be made in writing to the MassDEP Regional Office. A written copy of the request should also be forwarded to the Conservation Commission.

The issuing authority first makes a determination whether the requested change is great enough to warrant the filing of a new Notice of Intent or whether it is of a relatively minor nature and can be considered as an amendment to the original Final Order of Conditions. In making this determination, the issuing authority should consider such factors as whether the purpose of the project has changed, whether the scope of the project has increased, whether the project meets relevant performance

standards, and whether the potential for adverse impacts to the protected statutory interests will be increased. Relatively minor changes which result in the same or decreased impact on the interests protected by the Act are appropriate for amendments. If the determination is made that the project purpose or scope has changed substantially or that the interests specified in the Wetlands Protection Act are not protected, then the issuing authority should not issue the amendment, but should require the filing of a new Notice of Intent.

If the Conservation Commission determines that a new Notice of Intent is not necessary, the Conservation Commission should publish newspaper notice (at the applicant's expense) in the same general manner as outlined in the Act for new Notices of Intent and as required by the Open Meeting Law, M.G.L. c. 39, 23B, to inform the public that the request for amendment to the Order of Conditions will be considered by the commission at a public hearing. In addition, the applicant must follow the requirements of abutter notification as if filing a Notice of Intent as described in the Act. When the request for an amendment is before the Department the applicant must publish notice in a newspaper of general circulation in the municipality where the requested amendment to the proposed activity will take place. The notice must describe that an amendment to a Final Order is being requested, that the request is before the Department for review, and the date that the public comment period closes. Proof of notice must be provided to the Department.

If, after considering the information presented by the applicant and any comments received at the public hearing, or submitted to the Department within 21 days of the requested amendment, and the issuing authority decides to issue an amended Order of Conditions, a copy of such order should be forwarded to the Department's Regional Office or the Conservation Commission, as the case may be, at the time of issuance. By analogy to the usual appeal procedure of the Final Order of Conditions, a person aggrieved by the amendments to the Order, or the other parties given appeal rights in 310 CMR 10.07, may, within ten days of issuance, request that the Department review the changes made to the Final Order of Conditions. The issues under appeal will be limited to those issues subject to the amendment(s) or the change(s) made in the Final Order of Conditions. Until there is a final resolution of the appeal, no work may continue on those portions of the project not permitted under the Final Order of Conditions but only permitted by the amendment(s) which has been appealed.

Under no circumstances will the issuance of an Amended Order of Conditions extend the effective date of the original Final Order of Conditions. The Amended Order shall run with the term of the original Order of Conditions or the effective date of an extended Order of Conditions.

The Amended Order should be issued on the form provided for an Order of Conditions, with the insertion of the word "Amended" and the amendment date. Amended Orders must be recorded with the registry of Deeds in the same manner as Orders.