



MIDDLESEX BEACH ASSOCIATION (MBA) COMMON AREA USE, ENCROACHMENT & ALTERATION POLICY

This policy addresses the encroachment on, and use of, MBA Common Areas by MBA property owners.

PART 1. COMMON AREA ENCROACHMENTS:

1. Authority. The MBA Board of Directors has the sole discretion and authority to allow or approve encroachments on MBA Common Areas, subject to MBA governing documents and applicable law.
2. Right to Remove. The MBA Board reserves the right to remove, either now or in the future, any and all Common Area encroachments. The right to remove Common Area encroachments hereby reserved by the MBA Board shall be exercised in the Board's sole discretion and at the cost of the owner of the encroachment. Examples of possible encroachments on MBA common property include but are not limited to: landscaping features such as pavers, gravel, crushed shells, and walkways; ornamental sculptures or features; plantings or groundcover; trash or recycling enclosures; fences; driveways (see paragraph 4 below), mailboxes (see paragraph 5 below), and parking areas.
3. Continued Encroachments. Any Common Area encroachments that continue and that are not either voluntarily removed by the owner of the encroachment or by the MBA Board shall be deemed to exist on the affected MBA Common Area with the express permission of the MBA. Such permission of the MBA for the continuation of any encroachment, including encroachments placed by a prior property owner, may be revoked by the MBA Board at any time for any reason.
4. Driveways and Board Approval. With regard to driveways, all of which cross a portion of MBA Common Area right-of-way in order to provide access to individual lots, this policy confirms that, pursuant to the previously granted Deed of Easement, dated December 17, 1959, recorded at the Office of the Recorder of Deeds, in and for Sussex County, Delaware, at Book 512, pages 579, *et seq.*, all MBA property owners have been granted permission for said driveways to encroach upon the affected MBA Common Area right-of-way. The construction, design, materials, location, and number of driveway crossings over any MBA Common Area right-of-way must be approved by the MBA Board.



5. Mailboxes. According to USPS regulations, mailboxes are required to be located on MBA Common Areas to be accessible from a USPS vehicle. As with driveways that necessarily encroach upon MBA Common Areas, this policy hereby confirms that the MBA grants permission for mailboxes to encroach upon MBA Common Areas. The MBA Board must approve in advance the location and installation of all mailboxes located on Common Areas, and may require, if needed, mailboxes in a common structure, as well as the relocation of any mailbox located on Common Areas at any time for any reason.

PART 2. UTILIZATION OF MBA COMMON AREAS BY MBA PROPERTY OWNERS FOR LANDSCAPING, PLANTING, SCREENING, AND BEAUTIFICATION:

1. Request for Approval to Utilize MBA Common Areas. Subject to Part 1 of this Policy, MBA property owners wishing to install features, including plantings and landscaping, on MBA Common Areas must first obtain approval from the Board.
2. Evaluation Criteria. In evaluating a request by an MBA Property Owner to utilize MBA Common areas, the Board may consider the following factors:
 - a. Whether the proposed feature is consistent with or improves the visual aesthetics of the area that is the subject of the request;
 - b. The impact on drainage on Common Areas or adjoining or potentially affected homeowners;
 - c. The impact of the proposed feature on the environment, or natural resources, of Middlesex Beach and its Common Areas;
 - d. The impact of the proposed feature on pedestrian, bike, and vehicle traffic, parking, and any related safety concerns, including access by emergency vehicles;
 - e. Maintenance requirements of the proposed feature;
 - f. Consistency of the proposal with any landscaping plans by the Landscaping or Community Facilities Committees;
 - g. Whether the proposed feature(s) replace or are in lieu of previously existing features that were removed or damaged due to weather, blight, construction, traffic, or actions by the grantees of easements on MBA Common Areas, such as area utilities (e.g. Delmarva Power, Artesian Water, Comcast, Mediacom, etc.)
 - h. Any general benefit to the Community.

The Board may condition the approval of a request made under this policy in order to satisfy any of the criteria enumerated above.