

Marblehead Conservation Commission Minutes

January 11, 2024

This hearing was conducted remotely in accordance with Governor Baker's March 12, 2020 Order Superseding Certain Provisions of the Open Meeting Law, G.L. c.30A, section 18 and the Governor's March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place.

Present were Commission Members David VanHoven (Chair), Dave Oster, Jesse Alderman, Jessica Norton, and Conservation Agent Charles Quigley.

The hearing was 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 hearing is therefore four members.

The hearing was called to order at 7:36 PM.

DISCUSSION:

Chair David VanHoven noted there would be no new information present for the enforcement order for 22 Foster Street and advised anyone present for that topic could leave and join next month's hearing instead, by which time the Commission expects a Notice of Intent (NOI) to be submitted for review.

The Commission voted unanimously to approve the minutes of the prior hearing: December 14, 2023.

Recreation and Parks Department – Potential Disc Golf in vicinity of Steer Swamp. **Recreation & Park Commission member Rosanna Ferrante, the town Recreation Director Jaime Bloch, and disc golf consultant Nick Brozek presented a brief overview of disc golf and their idea to bring it into Marblehead. They discussed the environmental considerations involved as well as potential locations for a disc golf course, with Steer Swamp being deemed the most suitable due to its size. Dave Oster noted the potential difficulties of creating a course on wetland areas. Jesse Alderman stated he is unsure if disc golf can be considered passive recreation. He also noted the importance of preserving some of the mentioned locations in their natural state of preservation and conversation, and suggested they speak to the Marblehead Conservancy as well. A suggestion was made to consider Robinson Farm as a potential location. Rosanna noted they will continue to do more research and may be back at a future meeting to discuss this topic further.**

ORDER OF CONDITIONS EXTENSION REQUEST[S]:

The Commission voted unanimously to approve the following extension requests:

40-1422	22 Whittier Rd. – David Quade et ux – [Patrowicz] – resource area restoration
40-865	63 Beach Street – Doug Schluter – house construction

CERTIFICATE OF COMPLIANCE REQUEST[S]:

- 40-1389 30 Pequot R – John McIver – gangway ramp float **The Commission voted unanimously to approve.**
- 40-1248 20 Harbor Ave [partial] – new house, sitework, partial COC for landscaping only **The Commission voted unanimously to approve.**
- 40-1463 50C Cloutman’s Lane [partial] – new house, seawall repairs, sitework, partial COC for landscaping only **The Commission voted unanimously to approve.**

MINOR ACTIVITY PERMIT REQUEST[S]:

Chandler Hovey Park – Town of Marblehead Rec and Parks Dept. – invasive species removal **This request was continued to the next meeting without discussion.**

<u>DEP file#</u>	<u>ADDRESS</u>	<u>APPLICANT</u>	<u>PROJECT DESCRIPTION</u>
-------------------------	-----------------------	-------------------------	-----------------------------------

CONTINUED PUBLIC HEARINGS:

40-1562 29 Pinecliff Dr – Dwight Groom et ux – [Patrowicz]-[DEP: no comments]-single family home, landscaping

**Notice of Intent Application Documents
(29 Pinecliff Drive, MassDEP #40-1562):**

- Notice of Intent application documents (including photos), dated 10/24/23, prepared by Patrowicz Engineering,
- Existing Conditions Plan (with demolition notes) {sheet 1 of 3}, dated 10/24/23, revised 12/18/23, prepared by Patrowicz Engineering,
- Site Plan (with impervious calculations) {sheet 2 of 3}, dated 10/24/23, revised 12/18/23, prepared by Patrowicz Engineering,
- Representative Examples (showing tree replacements), {sheet 3 of 3}, dated 10/24/23, revised 12/18/23, prepared by Patrowicz Engineering,
- Landscape Plan, dated 12/18/23 prepared by James Emmanuel, RLA.
- Arborist Report, dated 10/3/23 prepared by Dennis Silvio (Iron Tree Service), and
- Report (Project and Regulatory Review), dated 10/24/23, prepared by Dr. Peter Rosen (Coastal Geologist).

Scott Patrowicz and James Emmanuel presented the updated tree count for the proposed tree canopy per the Commission’s request at the December hearing. They reported a new total of 51 trees made up of a variety of types. No members of the public were present to speak. The

Commission unanimously voted to close the hearing. The Commission unanimously voted to approved the Order of Conditions (OOC) with the following special conditions:

During construction:

32. 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, streets and Resource Areas.

33. 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.).

34. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces shall be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site.

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

38. 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.

Post-construction/in perpetuity:

40. 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.**

49. The 25' No Disturb Zone boundary shall be permanently marked on the site in an appropriate manner via a post & rail fence, a field stone wall, or an approved equal to insure against inadvertent encroachment into this zone. The current and future owners of this property are required to maintain this permanent marking. **This condition shall survive this order.**

50. 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. **This condition shall survive this order.**

54. The control drawing/s for this project were prepared by a licensed Professional. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies

with the control drawing/s. Progress reports shall be submitted by said professional at regular intervals while work is progressing on the project. The reporting interval shall be determined by the Conservation Administrator based on the scope and anticipated duration of the project. 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.

55. 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"**.

107 Before any landscape work begins, the applicant shall submit a landscape plan to the Commission for approval. No landscape work may commence until the Commission has approved the landscape plan.

PUBLIC HEARINGS:

40-1563 181 Green St – Town of Marblehead - [Rick Smyers NEMBA]-[DEP comments: *Project does not appear to meet Stream Crossing Standards at 10.54(4)(a)6, which requires the structure to be "above the elevation of the top of the bank, and the structure spans the channel width by a minimum of 1.2 times the bankfull width". Photo appears to show BVW associated with the intermittent stream for bridge 1. The Commission should confirm that there will be no impacts to BVW.] - 2 pedestrian / bicycle bridges **Taylor Miller spoke representing Rick Smyers, expressing their willingness to work with Conservation Agent Charles Quigley to ensure they understand the DEP requirements for the bridge. The commissioners discussed the DEP comments about the need for a larger bridge and its impact on the bank. The commissioners agreed to add a special condition requiring the applicant to mark out the bridge crossing and give the commission a two-week window to inspect it before starting work.***

Deb and Bill Temme of 189 Green Street raised concerns about the impact of the park usage on their backyard, particularly the amount of dog waste and off-leash dogs, as well as the use of motorized bikes. They also expressed concerns about the potential environmental impact of a proposed bridge on their local stream. Jesse clarified that the Commission's jurisdiction is limited to enforcing the Wetlands Protection Act, not addressing dog leash issues. He also noted the Commission did report the dog leash issue over the summer.

Kathy Leonardson of 17 Cloutman's Lane expressed concerns about the effect of the runoff entering the pond behind her house. She noted she and her husband have noticed an effect on the plant life and algae in the pond, and echoed the concerns about dog waste.

The Commission decided to add special conditions to the park's usage, including proper signage for dog usage and prohibition of motorized bikes. The Commission unanimously voted to close the hearing. They unanimously voted to approved the OOC with the following special conditions:
Prior to Construction:

The applicant shall stake the bridge location on the ground for inspection by the Conservation Commission Members for their approval.

The applicant shall install and maintain signage in place citing the leash law, the prohibition of motorized bicycles and other regulations required per their agreement with the Recreation and Parks Commission.

During Construction:

33. 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. All demolition debris shall 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.

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

38. 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.

39. 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.

Post-construction/in perpetuity:

49. The 25' No Disturb Zone boundary shall be permanently marked on the site in an appropriate manner via a post & rail fence, a field stone wall, or an approved equal to insure against inadvertent encroachment into this zone. The current and future owners of this property are required to maintain this permanent marking. **This condition shall survive this order.**

55. 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"**.

40-1564 0 Brackett Pl – Glover Landing Condo. Tr. – [Patrowicz] - [DEP: no comments available yet] – emergency exit installation.

**Notice of Intent Application Documents
(#0 Brackett Place, MassDEP #40-1564):**

- Notice of Intent application documents (booklet), dated 11/20/23, prepared by Scott Patrowicz, P.E., including structural engineering plans per CCA 8/31/23 (9 sheets),
- Existing Conditions Plan {sheet 1 of 2}, Site Plan {sheet 2 of 2} and Building Elevations (four sheets) dated 11/20/23, prepared by Scott Patrowicz, P.E.
- Letter from Ken Quigley, P.E (Structural Engineer) dated 11/20/23,
- Letter from Marblehead Building Inspector dated 10/18/23.

Scott Patrowicz represented the applicant, along with attorney Thomas Aylesworth and structural engineer Ken Quigley. The applicant submitted a plan to address structural issues and create secondary means of egress for four units in building 21. Scott emphasized that all work will be above the FEMA's Base Flood Elevation and will not significantly reduce the impervious surfaces. The project is currently in the planning stages under the supervision of structural engineer, Ken. A large vehicle will be used for some aspects of the work. Chair Dave VanHoven questioned the catch basin and its discharge.

Jamy Buchanan Madeja spoke representing the unit owners of 7B. She noted that none of the unit owners had signed the NOI. Jamy highlighted the structural concerns of unit owners' properties due to perforation and the need for a notice of intent. She also discussed the resource impacts that have not been addressed and the concerns surrounding the structural integrity of the building, which had experienced several failures and collapses. Despite Ken's clarification that there were no orders from the building department suggesting that the building is unsafe, Jamy insisted that the building is indeed dangerous as per a 2015 order from the State DECAP. Her client, tenant Nicholas Mango, shared his concern about the unsafe conditions of his apartment unit and described the building's history of structural failure. The state determined in 2019 that the building must meet current code and is not grandfathered. They had issued 25 orders on the building, and 26 sets of plans had been submitted to address the problems, none of which met the requirements. Jamy and Nicholas would like the Commission to require a stamped structural analysis of the existing conditions in relation to what is being added, both for the protection of the tenants and the resource areas.

The Commission unanimously voted to close the hearing. They unanimously voted to approve an OOC with the following special conditions:

The applicant shall provide the Commission with an updated letter from the current Building Commissioner acknowledging what the Applicants have stated verbally at the hearing and that the Building Commissioner also reviewed the plans and has no issues.

During construction:

33. 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. All demolition debris shall 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.

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

38. 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.

Post-construction/in perpetuity:

54. The control drawing/s for this project were prepared by a licensed Professional. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. Progress reports shall be submitted by said professional at regular intervals while work is progressing on the project. The reporting interval shall be determined by the Conservation Administrator based on the scope and anticipated duration of the project. 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.

55. 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"**.

102. A tarp will be laid down at the base of the seawall during all repair work to capture all construction debris. The tarp will be on the seaward side of the seawall. The tarp will be rolled up and dumped into a disposal trailer as required throughout the workday and will be removed at the end of each workday.

105. Tarps shall be spread and secured over the work area on top of the existing resource area for debris containment and collection during low to medium tides. The tarps and debris will be removed between tides and at the end of workday. At no time are the tarps to be inundated due to rain, tidal or wave action. The tarps are to be removed no less than ½ hour prior to expected inundation. At that time all work is to cease in the area near the resource area.

**Notice of Intent Application Documents
(#172 Front Street, MassDEP #40-1565):**

Herve Sedky – [Patrowicz] – [DEP: no comments] - house addition
Request for Determination of Applicability

- Notice of Intent application documents (booklet), dated 12/12/23, prepared by Scott Patrowicz, P.E.,
- Existing Conditions Plan (with demolition notes) {sheet 1 of 2}, dated 12/12/23, prepared by Scott Patrowicz, P.E.,
- Site Plan (with impervious calculations) {sheet 2 of 2}, dated 12/12/23, prepared by Scott Patrowicz, P.E.

Scott Patrowicz presented a for a small building addition and converting a covered deck into an uncovered deck. David raised concerns about the addition of square footage in a coastal storm flowage area, and Dave Oster recommended implementing erosion control on three sides. The team agreed to calculate the necessary compensation storage and to have erosion control materials on hand.

The Commission voted unanimously to close the hearing and unanimously voted unanimously to approved an OOC with the following special conditions:

Applicant to provide a revised plan showing erosion control installed on 3 sides of the project.

During construction:

32. 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, streets and Resource Areas.

33. 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.).

34. To the maximum extent possible, all driveways, terraces, patios or similar ground-level surfaces shall be constructed as permeable surfaces to allow water to infiltrate through their surfaces into the ground on site.

35. All demolition debris shall 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.

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

38. 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.

Post-construction/in perpetuity:

40. 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.**

50. 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. **This condition shall survive this order.**

54. The control drawing/s for this project were prepared by a licensed Professional. The construction of this project shall be regularly inspected by said licensed professional to insure that the project complies with the control drawing/s. Progress reports shall be submitted by said professional at regular intervals while work is progressing on the project. The reporting interval shall be determined by the Conservation Administrator based on the scope and anticipated duration of the project. 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.

55. 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".**

170 Jersey Street – Julie Fitzgerald [Savoi-Nolan Architects] – Demolition and reconstruction of an existing single-family home **This is a request for determination of applicability. William Nolan represented the client. The Chairman open the hearing to public comment.**

A few neighbors commented but their comments were dismissed as not concerning the environment but rather views and height increases. After determining that all of the work was beyond the buffer zone to the top of coastal bank and only a small portion of the work was within the buffer zone to the FEMA zone, which applies only to the towns wetland bylaw and not the Wetland Protection Act, the Commission voted unanimously to approve a negative determination of applicability.

ENFORCEMENT ORDER[S]:

40-1192 Ralph Sevinor – [Phil Helms] – work performed outside the scope of the approved plans. **The Commission voted to continue this matter to the next meeting without taking testimony.**

DISCUSSION:

Other matters as may appropriately be brought before the Commission.

Performance standards for new piers. **No updates given.**

The hearing was voted to be adjourned at 9:49 PM.