

Marblehead Conservation Commission
November 14, 2019

Meeting was held in the lower conference room at the Mary A. Alley Building, 7 Widger Road, Marblehead, MA

Meeting was called to order at 7:05 PM

Present were Commission Members Chair Brian LeClair; David DePew, David Van Hoven, Jesse Alderman, and William Colehower. Also present was Conservation Administrator and Town Engineer, Charlie Quigley.

MINUTES

The minutes of October 10, 2019 were voted upon and approved unanimously.

DISCUSSION

1. 11 Goldthwait Rd. 40-1374 – Susan Dumas – Invasive species management question. Ms. Dumas reports that in her effort to eradicate knotweed on the dune on her property, she would like to lay down tarp during the winter. She reports she will be diligent to ensure the tar will not pull away in a storm. Allowed.
2. Enforcement Order – 22 Whittier Road - issued to David C. Quade for violation of 310 CMR 10.00 alteration in resource area without filing NOI. Scott Patrowicz on behalf of the property owner reports that he is preparing an NOI, but that it will require 9 signatures. The Chair states the matter has been “dragging,” and if the Commission does not receive an NOI in January, it will vote on a monthly fine.
3. Enforcement Order – 23 Pinecliff Road – issued to Alex and Nicole Bender for violation of 310 CMR 10.00 alteration in resource area without filing NOI. Mr. and Mrs. Bender appeared and presented a topographical survey. Mr. Bender reports there is also additional work that they plan to perform. The Chair informed them that work was conducted in a resource area without an Order of Conditions, so to rectify that, they will have to prepare a NOI with a plan showing the existing conditions prior to work performed, and then another plan showing the work that was done. If new work is proposed, that may also be shown.
4. 25 Pinecliff Rd – David McKiernan – invasive species management, tree pruning and removal in resource area. Mr. McKiernan requests permission to (1) prune lower limbs on seven pines; (2) to remove one dead pine tree; and (3) to remove bittersweet. He is not proposing any earthwork or landscaping. The work is on Top of Coastal Bank. Mr. DePew notes that he did a site visit and reports that the tree proposed for removal is dead, as are the limbs the Applicant would like to prune. The Chair states that even though the work may be minor, alteration within a resource area requires the filing of a NOI. Mr. Patrowicz comments from the audience that Mr. McKiernan is using an old plan with his

stamp, and requests it stricken from the public record. The Chair notes that is a private issue. The Chair directs Mr. McKiernan to file an NOI.

5. Surf Street/Spray Ave – Lynn Nadeau – install bench near the corner of Surf and Spray Avenue – Ms. Nadeau prepared a packet showing an approximate location of where the neighborhood would like to place a bench. It is not clear whether the location is Town Property or “unclaimed” property. The Town Engineer reports that installation of the bench would require some minor earth work. Ms. Nadeau notes that the Clifton Improvement Association supports the effort. A neighbor, Kelly Upham, notes that she supports the project. The neighbors may also want to replace an unsightly chain link fence in the area. It is not clear who owns that fence either. Ms. Nadeau asks the Commission for advice on how to proceed. The Chair suggests (1) the neighbors determine the exact scope of work proposed, and the exact location for any work; (2) determine who owns the property; (3) if the Town is the owner, the neighbors should request permission from the Selectmen and file an NOI with the Commission; (4) if it is unknown who owns the land, the Commission could approve the work, but that would not constitute permission to enter or occupy someone else’s property. Also, with regard to the fence, since it presents safety issues atop the embankment, the Building Inspector should be consulted on design.

Minor Modification Request:

OOC 40-1366 – 9 Neptune Rd – Thomas Cares – masonry changes

The applicant reported that he was issued an Order of Conditions to tear down a home and rebuild at the site. He requests redesign of a concrete walkway to be narrower and further from resource area. He states impervious surface will be decreased by 16 ft and it will be 12 ft further from the water. The Chair states that the applicant needs to present a plan and a letter describing the changes keyed to a plan with annotations, so that a Certificate of Compliance can be monitored and issued. Motion made to approve the minor modification subject to receipt of an acceptable revised plan showing the modifications as presented at the hearing; seconded; all members voted to approve.

OOC 40-1407 – 22 Cliff Street – Daniel L. Sullivan et ux – turn float 90 degrees. Scott Patrowicz on behalf of the applicant reports that the reorientation of the float will move it further from eel grass. Motion to approve; seconded; all members voted to approve.

Requests for Certificate of Compliance

OOC 40-1311 – 4 Nonantum Road – Debra Wonson – pier repairs

No action taken because a fine has not been paid and the Order of Conditions has not been recorded.

OOC 40-493 – 115 Front Street – Janet Sheehan – house and deck additions

Motion to approve; motion seconded; all members voted to approve.

OOO 40-858 – 5 Nashua Avenue – Cara B. Niles – kitchen addition

Motion to approve; motion seconded; all members voted to approve.

OOO 40-1346 – 5 Nashua Avenue – Cara B. Niles, Brian Lucas et. ux., Donald Souter et. ux. – granite stairs installed

Motion to approve; motion seconded; all members voted to approve.

OOO 40-1309 – 5 Nashua Avenue – Cara B. Niles – rebuild wall, re-point rip rap, site work

Motion to approve; motion seconded; all members voted to approve.

OOO 40-1310 – 8 Nashua Avenue – Donald Souter et. ux. – rebuild wall, re-point rip rap, site work

Motion to approve; motion seconded; all members voted to approve.

OOO 40-1227 – 87 Beacon Street – Moira James et ux – Tree pruning, removal, invasive mngmt

Curt Young appearing on behalf of the applicant. There was invasive management and the work as approved has been completed. The applicant would like perpetual conditions added to the COC, which per what Mr. Young represents are DEP's requirements, are "tied to the original conditions." The two perpetual conditions that the applicant would like are (1) a condition to control invasives; and (2) a condition to maintain the viewscape by pruning an existing tree. The Commission does not believe the second condition is justified or within the scope of the original order. There are no concerns with the first requested condition provided that the management is limited to the same method and restrictions in the OOC (the 'cut and swab' method).

Motion to issue Certificate of Compliance with an additional perpetual condition for managing invasive plants subject to the same restrictions and conditions contained in the Original Order of Conditions; seconded; all members voted to improve.

PUBLIC HEARINGS

NOI – 40-1416 – Ferry Lane – Town of Marblehead [Charles Quigley P.E.] – parking lot and sea wall repairs.

DEP had no comments. Mr. Quigley on behalf of applicant reports that the project includes in-kind repairs to the sea wall and parking area. He states there will be no changes to the grade or impervious surface area in the lot.

The Chair asks in regard to the seawall repair if, when the voids behind the wall are filled from behind, will the contractor use methods to ensure concrete or debris does not go into the resource area?

Mr. Quigley states there are numerous methods available, and that concern can be addressed in a special condition.

Motion to close hearing; seconded. Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 35, 40, 41, 42, 44, 46, 47, 50, 55, 102 and a special condition that any voids in the wall that will be filled in a way that could allow concrete to go through the wall will be filled in a manner to ensure no concrete will go into the resource area.

NOI – 40-1418 - 35 Manataug Trail - Timothy R.E. Kenney et ux - [Patrowicz] - re-construction decks, seawall repairs.

DEP had no comments. Scott Patrowicz on behalf of the Applicant. Home renovations includes the removal of terraced gardens and decks, to be replaced with stone walls and timber walls. A deck will be replaced with crushed stone underneath and supported with sonotubes. Repairs will be made to the seawall. Total impervious is reported to be reduced from 384 square feet to 147 square feet. The plan calls for pouring a nine foot wall.

The Chair asks for a comparison of existing versus impervious surface within the 25-foot no disturb buffer zone of the resource area. This is the area of the new deck.

Mr. Patrowicz states that calculation was not made. He states there is an increase in structure within the no disturb zone - perhaps 40-50 feet of structure in what is now an existing lawn. He states there is no expansion of walls being built in the no disturb zone.

The Chair states that the Commission does not like to a bigger footprint in a no disturb zone, even where it is lawn. He would like to see the size of the deck decreased in the existing lawn area and the patio size decreased.

Motion to continue; seconded; all members vote to approve.

NOI – 1414 – 20 Crowninshield Road – David A. Rosenzweig, Trustee of the 14 Crowninshield Road Realty Trust – [Patrowicz] – Embankment restoration, resource improvements - [DEP Comment: *question resource area? And if dynamic berm is coastal engineering structure*]

Applicant requested to continue without opening.

Motion to continue without opening until December 12 Meeting; motion seconded; all members voted to approve.

NOI – 1419 – 20 Naugus Ave. – 20 Crowninshield Road – David A. Rosenzweig, Trustee of the 14 Crowninshield Road Realty Trust – [Patrowicz] – reconstruction of gravel road, landscaping, tree removal.

No DEP comments. The Applicant requests to perform work on relocating a driveway, landscaping and removal of 8 trees. The new driveway will be relocated outside of the 100-foot buffer zone.

The Commission would like to see appropriate replacement of the eight trees to be removed, and no removal may commence until a re-planting plan is submitted.

Motion to close hearing; seconded. Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

34, 35, 36, 40, 50, 55 and the additional condition that no trees can be removed without the submission of a Landscaping Plan for replacement of the eight trees to be removed shown on the plan accompanying the NOI.

NOI – 1417 – 173 Jersey Street – John Pfister et ux– [Hayes Engineering] - driveway improvements.

No DEP Comments. Peter Ogren, Hayes Engineering, on behalf of the Applicant. Mr. Ogren reports that the work has already started prior to issuance of an Order of Conditions on this project. Mr. Ogren states that the Town Engineer has been notified. The project will increase 4 ft of driveway to the pavement on Jersey Street. Walls would be constructed on both sides from about 3 feet to grade near the street line. There is a plan shown for construction of stairs, but only the driveway work will be within the 25 foot no disturb zone.

In response to a question from the Chair, Mr. Ogren states that the pavers will be laid down in sand. He states that the driveway was previously paved.

Mr. Van Hoven states that the outlet to the drain shown on the plan cannot be at the same elevation of the trench. Mr. Ogren agrees.

Motion to close hearing; second. Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions:

33, 34, 35, 36, 40, 41, 42, 44, 50, 55 and the additional condition that the outlet from the trench drain will be at a higher elevation than the insert.

ADDITIONAL DISCUSSION

Report on Discussion of Moorings that Bottom Out in Shellfish Habitat with Harbormaster - The Harbormaster has drafted a “Mooring/Aquatic Site Policy” dated September 10, 2019 to address concerns from the Commission that he has added new moorings in shellfish habitat and other sensitive areas that are shallow and cause boats to bottom out at low tide.

In response to comments from Town Counsel, the Commission affirms its interpretation that it has jurisdiction under the Wetlands Protection Act over moorings that alter or disturb a resource area; here, land under the ocean and shellfish habitat. No act of the Legislature has superseded WPA jurisdiction with regard to moorings.

That said, the Commission is striving for - as the Chair put it - a “sense of comity” with other Town departments. The Commission is grateful for the Harbormaster’s Policy, but after discussion, proposes certain clarifying edits. The Commission agrees with the proposed edits, which among other things, include additional language for clarity and reference to the regulatory performance standards for shellfish habitat in the WPA regulations. The Chair will make these edits and send to the Harbormaster.

Mr. Depew is also concerned about 4 particular moorings discussed with the Harbormaster that were installed in the vicinity of Wyman Cove. He states these should moved 100 yards. Discussions will continue with the Harbormaster about relocation of these particular moorings.

The Town Engineer requests approval to \$762.00 for dues to the MACC. Approved unanimously.

Meeting Adjourned