

Marblehead Conservation Commission
Minutes October 14, 2020

This hearing was held 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.

Meeting was called to order at 7:03 PM

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

MINUTES

The minutes of September 10, 2020 were voted upon and approved unanimously.

DISCUSSION

1. Enforcement Order – Doak's Lane Seawall – failed seawall causing asphalt and trash to enter the resource area – Mr. Quigley provided further background on the site history. There was an OOC to repair the seawall in question issued in 2018. The OOC is still open. The property owner Ted Moore stated that the seawall includes private property and Town property. In Mr. Moore's view, erosion is occurring because when the seawall was built in 1986, the Town was offered to extend the seawall onto Town property and the Town refused. Now, Mr. Moore contends, the seawall is inadequate to protect private property and the Town pump station.

The Chair asks if Mr. Moore has reached out to discuss a present solution with the Town. He said he has not. He again suggests that the Town consider a permanent fix. As it stands, the seawall is only 3-4 feet above the flood zone. He again blames the Town.

The Chair reiterates that the parties involved need to discuss next steps. He asks Mr. Moore, Mr. Quigley and Jason Silva to meet.

The Chair then asks if there is a temporary solution to protect against erosion into the resource area.

Mr. Moore states that the 2018 OOC that is still open was for work to reinforce concrete into the ledge to protect against erosion. But that too is temporary given sea level rise. That wall is not high enough in his view.

The Chair asks if something even more temporary can be done to protect against this winter. He instructs Mr. Moore and Mr. Quigley to specifically discuss this in the meeting with the Town Manager.

2. Enforcement Order – 11 Susan Road – Stevie G. Browning – making alterations without a permit in an area subject to protection under MGL 131 section and the Town of Marblehead Wetlands bylaw Chapter 194. Clear cutting on coastal bank. Cutting vegetation / trees, sitework. Stevie Browning, property owner, appeared and matter of fine is to be discussed in the public hearing on the NOI.

Minor Modification Request:

OOO 40-1435 – 17 Nonantum Road – Robert Slattery – tree removal – The applicant has removed 6 bushes and a crabapple tree that were not on the plan, and removal of another tree on site. The applicant proposes replace the two trees removed in-kind. Motion to approve the Minor Modification Request subject to submission of a landscaping plan showing in-kind replacement of the two trees discussed in the application and further subject to the condition that no trees in the rear of the residence may be removed.

OOO 40-1409 – 2 Mill Pond Road — Hadley McLean — Bit Concrete Driveway Addition – The client’s proposal does not work because the in-kind replacement of impervious surface they are proposing is outside Commission jurisdiction (beyond 100-ft buffer). Applicant will come back with another proposal.

Order of Conditions Extension Requests

OOO 40-1279 – 6 Broadmere Way – Elaine Spenceley et. ux. – pier, gangway, float – Motion to approve; motion seconded; all members voted to approve.

OOO 40-1273 – 5 Sunset Road – Julius Sokol – new house, sitework – Motion to approve; motion seconded; all members voted to approve.

OOO 40-1282 – 151 Front Street – Sholly Kagan et. ux. – foundation/seawall repairs – Motion to approve; motion seconded; all members voted to approve.

Requests for Certificate of Compliance

OOO 40-1291 – 4 Cliff Street – Town of Marblehead – pier repairs - Motion to approve; motion seconded; all members voted to approve.

OOO 40-1360 – 15 Spray Avenue – Brian Cahill – landscaping, sitework - Motion to approve; motion seconded; all members voted to approve.

OOO 40-760 – 30-32 Nonantum Rd – Bessom Assoc. – sewer repairs, masonry - Motion to approve; motion seconded; all members voted to approve.

OOO 40-1374 – 11 Goldthwait Rd. — Susan Anderson - Dumas et ux – invasive species management - Motion to approve; motion seconded; all members voted to approve.

OOO 40-1290 - 14 Casino Road – Laurie Tague – addition, landscaping, sitework - Motion to approve; motion seconded; all members voted to approve.

OOO 40-950 – 11 Neptune Road — James Kaloutas — landscaping – Mr. Quigley reports that at the Certificate of Compliance inspection, he observed masonry steps not on the Plan and a wood landing is much bigger than shown. There is also lawn instead of mulch in a new area on the coastal bank. The unapproved work will need a minor modification request, which will be on the agenda for next meeting. There is also an unpaid fine regarding the site. No Certificate of Compliance will issue until these matters are resolved.

Requests for Minor Activity Permit

17 Sunset Road – Kevin Buglar – hot tub – The applicant would like to place a hot tub in the 50' no build zone. The hot tub will be on above ground on a leveling wooden platform placed on grass. Motion to approve; motion seconded; all members voted to approve a minor activity permit subject to the following conditions:

1. The permit is only valid for the life of the hot tub
2. The wooden platform must have slats to allow water through
3. The wooden platform must be made from untreated wood

CONTINUED PUBLIC HEARING(S):

NOI 40-1445 – 11 Susan Road — Stevie Browning - [CCC Env. Servs. Rep.] – [DEP Comment: waiting for fee — Technical Comments: The project as described in the NOI cannot be approved. Plans are inadequate for review as they do not show where the work is being proposed in proximity to the wetland boundaries or where the erosion control will be installed. The proponent must delineate all wetland resource areas within 100 feet of the work area, including Bank associated with the intermittent stream and BVW, and they should be shown on the revised plan. The NOI narrative discusses invasive species, such as bittersweet, which will be removed from the BVW and along an intermittent stream. The proponent must species all of the invasive species that are proposed to be removed and describe how they will be eradicated. The NOI form and site plan must be revised to show where the alteration is occurring, and how much alteration and restoration is proposed. Annual and perennial wildflowers are not appropriate for BVW restoration; therefore, restoration efforts must be revised with seed mixes and species that will tolerate saturated and/or inundated soil conditions. A planting plan must be submitted. Further explanation of why the stream needs to be cleared of any material is needed.] – Restoration of buffer zone and resource area.

The applicant states it responded to the DEP comment on August 27. The applicant states it removed a fallen tree and stripped bittersweet. The Commission has a lengthy enforcement history at the site that has been compiled, but it is perhaps incomplete. Mr. Alderman wants to know more about the 2012 Restoration Plan and Enforcement Order, and what the unapproved alteration of the resource area was back in 2012.

Cheryl ____, an abutter, states that in 2012 the applicant removed trees and stripped peat. The applicant states that bittersweet vines were out of control, and all he was doing was removing the invasives.

Valerie Pearson, an abutter, states that the applicant did earth moving and grading in 2012-2013 that caused a great amount of damage.

Paula Robinson, 12 Waterside, questioned why the applicant was using heavy machinery to clear bittersweet, as he claims he was doing in the Spring of 2020 – the activity that led to the NOI and Enforcement Order.

Multiple neighbors claim the land is destabilized and sinking. One neighbor claims her deck is collapsing.

Mr. Browning states that the structures (such as decks) are built in peat and that is why they are sinking.

Motion to close hearing; second. Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions: 36, 40, 50, 55, 107 and the following additional conditions:

1. All plants shown on the Restoration Plan must survive for three years
2. Invasives must be disposed of without burning, or machinery
3. No heavy equipment is allowed
4. The stream bed may not be touched or interfered with
5. The work must be completed by 11/30/20, if an extension is requested and granted by the Commission, in no event later than 6/1/2021

Next, the Commission discussed the fine to be assessed against Mr. Browning resulting from the Enforcement Order. The Chair noted that this is a problematic property with a long enforcement history and that this violation was intentional. There are likely unresolved issues from prior Enforcement Orders and we will look at those and consider additional measures. Mr. Smith proposed a \$2,500 fine. Mr. Alderman agreed. Mr. Colehower said that given the Commission will be assessing the restoration, “we have a three year relationship” with Mr. Browning and want to also ensure the restoration work is done performed well and completed. The Commission settled on a \$1,500 fine. Motion to approve; motion seconded; all members voted to approve a \$1,500 fine.

PUBLIC HEARINGS

NOI 40-1448 – Salem Harbor at the end of Bennet Street – David Hostetter – Ocean Park Civic League of Marblehead [DEP: no comments] – pier and waterfront structure repairs – Motion to continue without opening the hearing; motion seconded; all members voted to approve.

NOI 40-1395 – Kazim Bayus – [Hayes Engineering] [DEP: no comments available] – Amendment to Existing Order of Conditions – Landscaping – The applicant proposes significant work including two new patios and significant hardscape features on top of the coastal bank and in the 25-foot no disturb zone. The Chair confirms that the surface is currently grass. Several commissioners questioned whether the applicant understands the WPA regulations and the Commission’s bylaw, which prohibits alteration in the resource area and no disturb zone, particularly with such hardscape. The Chair states a new NOI needs to be filed if this is to be considered. The applicant requests a continuance. Motion to continue; motion seconded; all members voted to approve.

NOI 40-1451 – 50-150 Hood’s Lane – Lime Street Realty Limited Partnership – [Hayes Engineering] [DEP: no comments] – prop. Addition – the proposal is a building addition on top of asphalt and drainage improvements including adding deep sump catch basins. Neighbor Laura Saco, 20 Lincoln Park, asks question that is a zoning matter for the Planning Board, not within the Commission’s jurisdiction. 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, 36, 40, 50, 55.

NOI 40-1455 – 1 Desmoulin Ln. – J. David Leslie et. ux. – [Patrowicz] – [DEP: no comments] – seawall and site improvements – Seawall improvements are proposed between two wave caps. A 2-ft high reflector cap is proposed for the entire distance of the wall except for 5 feet. This is a VE zone. Storm damage in 2018 was severe. The chair confirms that work will only occur below mean high water. The Chair also asked if there have been discussions with the owners of the neighboring seawall. The applicant states there are no issues. The applicant states it provided a Geo/Tech Memo from Dr. Peter Rosen that discusses the impacts at the cap.

Mr. Van Hoven and the Chair state concern that the wall is angled to deflect water onto Desmoulin Lane, which is a public way. Dr. Rosen states that water will return seaward. Mr. Patrowicz states that the Desmoulin Lane is ledge and there will not be erosion. He says it is “solid bedrock.”

Motion to close hearing; second. Motion to approve; motion seconded; The vote was 5-1 (Mr. Colehower opposed) to approve an Order of Conditions with the following Special Conditions: 33, 34, 36, 40, 41, 42, 43, 50, 55.

NOI 40-1456 – 6 Fuller Ln. – Neil Shore – [Patrowicz] – [DEP: no comments] – revetment, stairs seawall repair and site work – the proposal calls for repair of 147 linear feet of revetment and stairs. The Chair confirms that work will not occur below mean high water. Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions: 33, 36, 40, 41, 43, 50, 105 and 109.

NOI 30-1454 – 41 Orchard Street – Patrick Duffy et. ux. – [Patrowicz] – [DEP: no comments] – demo ex. pool, install new pool – There is an existing Order of Conditions issued in an earlier meeting, and it required mitigation. Mr. Alderman noted that the Commission had a lengthy discussion at the prior meeting, including the pool, and specifically conditioned the OOC on no new impervious in the resource area. Mr. Colehower reviews the Meeting Minutes and quotes the condition:

- “Mr. Alderman states he would like to see a condition that there can never be an expansion of the footprint of the existing pool and existing impervious surface surrounding the pool. The Commission comments the condition should be no increase in impervious surface at all in the resource area in any future proposal.”
- Additional Condition # 2: “There shall be no additional impervious surface added in the resource area in the future.”

All commissioners emphasize that the OOC and the Minutes make clear there can be no increase of the footprint of the pool and decking. The Commissioners all note that the proposal before the Commission show a proposed net increase of 200 +/- impervious surface. The intent of the prior OOC clearly was to require no new impervious surface near the marsh.

Mr. Alderman asks if the footprint of the new pool and decking is the same or different? Mr. Patrowicz does not know. Mr. Van Hoven confirms that the Plan does not show the dimensions of the proposed work, and what exists today. Mr. Van Hoven and the Chair emphasize that is required. The applicant requests a continuance. Motion to continue; motion seconded; all members voted to approve.

NOI 1453 – 5 Stone Terrace – Michael McLaughlin and Kathleen Vander Laan – [Patrowicz] – [DEP: no comments] – revetment repairs and site work – The applicant notes that vegetation has to be removed to repair the revetment. Roots will remain intact so it can grow back. However, the proposal from B. Manuell is to remove three (3) Norway Maples that could fall and rip out roots that hold the bank. Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions: 33, 34, 36, 40, 41, 44, 50, 55 and 106, 108 and 109 and the additional condition that a Note should be added to the Site Plan stating that vegetation pruning is in accordance with the Letter Report submitted with the NOI by Bill Manuell.

NOI -40-1452 – 10 Goldwait Rd. – Sheldon Frisch – [Patrowicz] – [DEP: no comments] – Partial house demo, addition, deck, sitework – The proposal is an addition to the house, with a net increase of impervious surface of 82 sf. A swale is to be added. The Chair asks if there will be in kind replacement of trees and suggests it be made a condition. Mr. VanHoven suggests broadly that the Commission will want to start considering requiring more than in-kind replacement of trees given how much canopy Marblehead is losing. Tammie Burke, a neighbor, comments that the trees proposed for removal are damaged. She asks if there will be excavation. The applicant states there will be no blasting. The concern is over stone walls on other properties. The Chair suggests they take a video of the existing condition of the walls, and if there is a later problem, to document it.

Motion to approve; motion seconded; all members voted to approve an Order of Conditions with the following Special Conditions: 33, 34, 36, 40, 50, 55 and 107 and the additional condition that there must be at least 4 replacement trees shown on a Landscape Plan submitted to the Conservation Agent.

Meeting Adjourned