

Marblehead Conservation Commission Minutes October 13, 2022

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.

The hearing was called to order at 7:00 PM

Present were Commission Members Chairman Brian LeClair; David Van Hoven, Jesse Alderman, Carole McCauley, Kristopher Meola, 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.

Discussion

40-1444 92 Harbor Ave- Johannes Naerger et ux- [Kara Pascal]- approval of landscaping plan.
The Commission indicated the plan presented was adequate. No vote was required.

3 Mooring Rd. – Suzanne Iovanna – [Patrowicz] – landscape plan showing 3 trees (per M.A.P. requirement). The Commission indicated the plan presented was adequate. No vote was required.

Order of Conditions Extension request

40-1369 15 Goodwin's Ct – Lowell Blitt et ux - pier, stairs, gangway and float
40-1282 151 Front St. – Sholly Kagan et ux – [Patrowicz] – house repairs
40-1366 9 Neptune Rd. – Thomas P. Cares – [Patrowicz] – new house
40-1412 7-7R Sunset Rd. – Mary Smith – [Patrowicz] – pier repairs

All Unanimously approved.

Certificate of Compliance Requests –

40-1007 12 Liberty Road – Jo-Ann Andoloro et ux – site work and invasive species management
Unanimously approved

40-1476 6 Arrowhead Rd-Edward Todd Piver- addition The Con Com agent stated no final inspection was scheduled by the applicant as required. The matter would be continued until the project passes final inspection.

Minor modification request -

40-1515 28 Pequot Road – Private residence – remove deck expansion and clarify relocation of shed. [This testimony was heard at the end of the public hearing]

The applicants representative, Bill Emmanuel, requested that the on site mitigation for the above project be reduced from that previously approved for the Order of Conditions citing that the approved scope was reduced from the original proposed scope. The commission denied the request because the mitigation approved was for the approved scope citing the applicant had the opportunity to ask for a continuance to show a reduced mitigation scope but did not.

Minor Activity Permit

5 Beacon St – Mistress Corp. – [Hooper Goodwin] – water service at shanties: no action was taken due to no applicant or representative present at the hearing.

8 Rainbow Rd – John Cavanaugh et ux – tree removal: no action was taken due to no applicant or representative present at the hearing.

81 Beacon Street- Cheri Saltzman et ux – tree removal on Con Com land in buffer zone: no action was taken due to no applicant or representative present at the hearing.

35 Marion Rd – Peter O’Connor- tree pruning on Con Com land in a buffer zone: no action was taken due to no applicant or representative present at the hearing.

450 Atlantic Ave – Gary Canner – replace existing stairs on coastal bank: no action was taken due to no applicant or representative present at the hearing.

4 Bass Rock Lane [9 R Spray Ave]– Thomas and Linda Garnitz – renovations: The applicants are remodeling the inside of the house and installing additional 2nd floor area changing the roof line. No increase in footprint and no sitework was proposed. The commission indicated the intent to issue the minor activity permit. The neighbor next door at 5 Spray Ave, William Walsh-Rogalski et ux, spoke against the issuance of the permit suggesting that the proposed project rose to the level of requiring a notice of Intent to be filed and a public hearing with proper notification be required. The Commission did not agree reasoning that no alterations in the resource area or buffer zone were proposed. The commission unanimously approved the minor activity permit with the following special conditions:

No work is permitted outside the existing building footprint

The dumpster shall be removed if the wind forecast is above 20 mph.

No construction materials are to be stored outside.

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.

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.**

3 Mooring Rd. – Suzanne Iovanna – [Patrowicz] – landscape plan showing 3 trees (per M.A.P. requirement). This matter on the agenda was discussed previously during the earlier discussion. The commission agreed to move onto the public hearing.

Continued Public Hearings

40-1525 257 Ocean Ave- Steven Kapsalis-[Griffin Eng. representing]-[DEP: no comments]-seawall repairs

Bob Griffin spoke representing the project.

Jessie Alderman not able to vote due to absents from the previous hearing.

The application was unanimously approved with the following special conditions

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.

Post-construction/in perpetuity:

The reinforced earth landscaped features shall be repaired/maintained immediately following damage.

This condition shall survive this order.

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.**

41. Maintenance pointing and repairs of existing stone masonry walls and concrete walls including the

replacement of an occasional missing stone or patching cracks and minor defects in a concrete wall are allowed as a surviving condition to this Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repointing or repair work on existing walls.** All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Any future razing, rebuilding or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

42. The repair/replacement of small sections of damaged caps on seawalls is allowed as a surviving condition. All dislodged and removed caps will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Prior to any work, the scope of the proposed repair/replacement must be approved by the Conservation Commission. If the cap on a major length or on an entire wall needs to be repaired/replaced, this requires an NOI. **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.**

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 work day and will be removed at the end of each work day.

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.

40-1523 325 Ocean Ave-Hugh Scandrett et ux-[Patrowicz representing]- [DEP: no comments]-
seawall replacement/repair

Scott Patrowicz spoke describing the NOI in detail.

The application was unanimously approved with the following special conditions

Special Conditions:

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.

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.**

41. Maintenance pointing and repairs of existing stone masonry walls and concrete walls including the replacement of an occasional missing stone or patching cracks and minor defects in a concrete wall are allowed as a surviving condition to this Order of Conditions. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repointing or repair work on existing walls.** All dislodged and removed mortar/cement will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Any future razing, rebuilding or enlarging of the subject wall(s) will require the filing of a new Notice of Intent. **This condition shall survive this order.**

42. The repair/replacement of small sections of damaged caps on seawalls is allowed as a surviving condition. All dislodged and removed caps will be immediately contained and removed from the work site to prevent any such material from entering the resource waters. Prior to any work, the scope of the proposed repair/replacement must be approved by the Conservation Commission. If the cap on a major length or on an entire wall needs to be repaired/replaced, this requires an NOI. **This condition shall survive this order.**

43. When the repair of a seawall entails the use of existing rip-rap which was previously located at the toe of the seawall but has been distributed onto the beach seaward of the seawall by wave action, the

following applies. The rip-rap lying above the mean high tide line can be re-located to the toe of the seawall. The rip-rap lying at or below the mean high tide line cannot be disturbed. This special condition is not a surviving condition and is valid only for that work specified for this particular application. **The property owner shall inform the Conservation Commission in writing at least seven days prior to any proposed repair work on an existing existing riprap revetment.**

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.**

51. Minor maintenance repairs to the superstructure only of the pier are allowed as a surviving condition of this order. Minor maintenance repairs are, typically, replacement of occasional deck boards, sections of hand rails, etc. Complete new decking, complete new hand rails or other such large repairs require an NOI. Minor maintenance repairs do not apply to the main support structure (stringers, bents, etc.) and do require an NOI. **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".**

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 work day and will be removed at the end of each work day.

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.

109. Tarps shall be placed to capture all debris generated during the site preparation and concrete placement process.

The tarps shall be cleaned continuously as work proceeds and removed between tides.

If at any time the tarps are threatened with inundation through tidal or wave action, the tarps shall be removed immediately and work shall cease in the intertidal zone.

111. Concrete shall not be poured that may be subject to wetting from rain, or seawater, within the curing time plus ½ hour the concrete being hard to the touch.

40-1526 20 West Orchard St-Sandra Forziati-[John Dick representing]- [DEP: no comments]-
masonry wall repair and landscaping.

One of the plans presented was faded and not clearly legible. The Commission voted to continue the hearing to the next month so a more legible plan can be forwarded and reviewed.

40-1527 367 Ocean Ave-Heather Cairns, Tr.-[Patrowicz representing]-[DEP: no comments]-
sitework, landscaping

Scott Patrowicz spoke describing the NOI in detail.

The application was unanimously approved with the following special conditions

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.

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.

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.**

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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.

40-1528 16 Liberty Rd-16 Liberty LLC-[Patrowicz]-[DEP: no comments]-demo ex. house, construct new house, deck sitework, drainage

Kristopher Meola recused himself as the property owner.

Scott Patrowicz spoke describing the NOI in detail.

The commissioners had concerns regarding drainage. The applicant suggested revising the plan to address the concerns. The commission asked to review a plan revised to show changes to the drainage that were presented.

The Chairman opened the hearing to the audience.

The next door Neighbors, Jo-Ann and James Andolaro, 12 Liberty Road, expressed concerns regarding drainage.

Scott Patrowicz addressed the concern.

Andrew Smith, 6 Liberty Lane asked if alternatives were considered and why the changes were considered. Bill Emmanuel addressed the reasoning for the proposed changes to the drainage and he approved of the drainage changes as proposed.

An unidentified women abutter expressed concern over the driveway location. The applicant agreed to install a cobblestone apron to the apron to address the concern.

Amy McHugh, DPW director, wanted the applicant to clarify the cobblestones were not in the public way. They will not be per Scott. Patrowicz

The Commission voted unanimously to continue the hearing to the next month.

ENFORCEMENT ORDERS

40-1391 3-5 Gilbert Heights-Judith Schmid- alteration to resource area without a permit per 310 CMR 10.00.

James Gallagher spoke representing the owners explaining the owners have spoken to at least 4 landscape designers and plan to speak with 2 more and plan to have someone engaged in 2 weeks to file a Notice of intent for the December hearing.

The Commission explained there will be fines due to the apparent lack of response to the enforcement order ratified in August.

34 Gregory St – Brian Rice – disposal of contaminates in an area subject to protection per MGL Ch131 § 40. The enforcement order was issued to address the cleaning of painting equipment in the harbor in front of the property. The Commission voted to ratify the enforcement order.

4 Fort Sewall Tr. – Kenneth Walker – Making alterations in an area subject to protection per MGL Ch131 § 40 without a permit.

The enforcement order was issued to address the construction of a patio and wall in the buffer zone to a resource area without a permit. The Commission voted to ratify the enforcement order.

DISCUSSION:

The chairman requested that the Commission discuss recreation with regard to the bylaw and the establishment of a tree replacement policy.

Carole and Jesse expressed care should be taken regarding establishing a standard regarding recreation as it is outside the Commission's jurisdiction to preserve the environment. Further discussion suggested since it is included in the bylaw, further definition may be merited.

The Chairman was to review the material sent by Carole regarding tree policies in other towns.

The hearing adjourned at 9:50 pm