

Marblehead Conservation Commission
Minutes January 12, 2023

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, Jesse Alderman, Carole McCauley, David Oster, Kate Melanson 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

Motion to approve 10/13/2022 Minutes – **unanimously approved**

Motion to approve 12/8/2022 Minutes – **unanimously approved**

Order of Conditions Extension Requests

40-1379 45 Beacon St. – Jonathan D. Putnam et ux – pool repair, landscaping – **unanimously approved**

40-865 63 Beach Street – Doug Schluter – demo house, rebuild house, garage, sitework, landscaping. – **Unanimously approved**

Jack Attridge asked if the Conservation Commission inspects the projects and asked how long [40-865] has been active?

The agent explained that he inspects the project for Certificate of Compliance approval and if it's reported by a resident that work is not being performed in compliance with the permit or work is being performed beyond the scope of the permit.

Certificate of Compliance request

40-1304 7 Redstone Lane – Laurence R. Clark et ux – building additions, sitework– **Unanimously approved**

40-1408 7 Redstone Lane – Laurence R. Clark et ux – patio, invasives management– **Unanimously approved**

40-1447 142-148 Lafayette St –Forest River Est. Condo. III Tr. - tree mitigation- **Not approved because no inspection was scheduled.**

Minor Activity Permits

8 Davis Rd - Henry Braur et ux – tree removal. – **Unanimously approved with the condition that the tree be replaced in the same location with a native species.**

5 Ft Beach Way – James Vipperman – deck repair, replacement– **Unanimously approved with the condition that tarps must be used under the deck during construction.**

3 Mooring Rd. – Suzanne Iovanna – [Patrowicz] – connection of existing gas line to house, removal and replacement of two trees– **Unanimously approved with the condition that 2 replacement native species trees be planted and that prudence be used for erosion control. Also shrubs shall be planted in the location of the removed maple tree.**

325 Ocean Ave. – Hugh Scandrett – [Patrowicz] – removal and replacement of 14 trees– **Unanimously approved with the condition that the 14 trees removed be replaced with 14 trees plus 3 white spruce trees.**

12 Intervale Rd. - Doris Sims – tree removal– **Not approved. The application needs to contain better definitive information**

PUBLIC HEARING[S]

40-1533 6 Harbor View- Kevin Crosby et ux- [Kara Pascal]-[DEP: no comments] patio install, masonry repair.-**Continued to February 9, 2023 without opening.**

Discussion-The Chairman commented that the the abutter notifications mailed had incorrect information regarding which publication the ad was placed. Although this had no impact on the abutters it was thought prudent to re-notify all abutters via certified mail.

The recommendation here is to not proceed tonight and continue till February to re-publish the notice.

The Chairman noted more detail input for the next hearing on comparison for the plans submitted for the NOI in 2007 to the most recent submittals as they show a discrepancy in the location of the coastal bank. Also verification that that the stone walkway and wall existed in prior to the recent NOI would be helpful.

It was unanimously voted to continue the hearing to February 9 without opening the hearing.

40-1534 1 Parker Ln-William Nutt- [Hayes Eng]-[DEP: no comments] – reconstruct pier

Discussion-Peter Ogren represented the applicant. The plan is to reconstruct an existing pier to be replaced with a steel structure using the same foot print. There will be no additional footprint. All work will take place on the concrete footings that exist on the ocean bottom.

Unanimously approved to close the hearing and issue an Order of Conditions with the following Special condition.

Wet rags will be used around the drilling to catch any debris or cement dust. 33, 35, 36, 37, 38, 39, 40, 46, 47, 50, 51, 54, 55, 105, 109, and 112

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.

37. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks shall conform to the requirements of Chapter 91.

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:

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.**

Resource waters. No direct discharge to resource waters is allowed. **This condition shall survive this order.**

46. All gangways, docks or other items not permanently secured to the earth shall be stored during the "off season" (late fall, winter, early spring) so as to prevent them from causing any damage to other structures or resource area. **This condition shall survive this order.**

47. All gangways, docks or other items not permanently secured to the earth shall be properly secured and/or removed in the event of a major storm so as to prevent them from causing any damage to other structures or to the resource area. **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.**

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".**

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.

112. A davit shall be placed at the end of the pier for use in raising and lowering the ramp.

40-1535 84 Harbor Ave. – Stephen L Krebs, Trustee – [Patrowicz] – [DEP: project requires a chapt. 91 Lic.] Fixed pier, seasonal gangway & floating dock-

Commission Comments /Discussion:

A Survey and Divers report is required to document eel grass status, an ecological analysis of impact on shellfish and other marine life habitat from a qualified professional and an alternative analysis for using non-treated pilings or steel.

After the discussion the commission voted unanimously to continue the matter to the March 9th, 2023 hearing.

40-1536 4 Fort Sewall Terrace – Kenneth W. Walker, Trustee– [Patrowicz] – [DEP: no comments]

Retro-active wall, patio replacement-**Unanimously approved to close the hearing and issue an Order of Conditions with the following Special condition.**

32, 33, 34, 35, 36, 37, 39, 40, 45, 50, 55

Prior to Construction:

A planting plan is required showing the location of the replacement tree and revised planting bed improved for drainage. The plan is to be approved by the Commission.

A \$1,000 fine shall be paid prior to the issuance of the Order of 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.

37. The construction of the pier/dock and any structure over the water permanently secured to the earth shall withstand a 100-year storm without damage to the integrity of the structure. All piers/docks

shall conform to the requirements of Chapter 91.

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:

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.**

45. When a pool/spa/hot tub is to be drained, no chlorine or other chemicals are to be added to the pool water for a period of at least four (4) days prior to draining to allow for the chlorine and other chemicals to dissipate; and there shall be an appropriate sign placed permanently at or immediately adjacent to the pool/spa/hot tub drainage valve or mechanism indicating this requirement. The method of pool drainage shall be such as to prevent any soil erosion by the draining water and to allow the draining water to seep into the ground prior to entering any resource waters. No direct discharge to resource waters is allowed. **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”.**

Enforcement orders

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

The applicant commented that she hired a consultant to file an NOI for the February hearing. Slope stabilization measures have been installed as directed by the Con Comm.

Unanimously approved Continuance to the February 9th, 2023 hearing.

4 Ft Sewall Terrace – Kenneth Walker – making alterations in an area subject to protection per MGL ch131 40 without a permit. **\$1,000 fine issued. See Public hearing notes above.**

6 Harbor View – complaints of work being done without a permit. Charlie confirmed they had a permit for repairing an existing wall and replace some existing stepping stones in a buffer zone. The construction crew put down a patio with blue stone, which went beyond the scope of the minor activity permit.

See the public hearing comments above.

DISCUSSION

The Con Comm voted to approve Con Comm fines fund to pay the Conservancy certified mail costs for NOI/DOA filing up to \$6,000.

Unanimously approved to adjourn 9:11PM.