

Marblehead Conservation Commission
Minutes March 9, 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, Dave VanHoven served as Chairman, Jesse Alderman, Carole McCauley, David Oster, Kristopher Meola, 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 02/09/2023 Minutes – **Dave VanHoven was added as being present- Unanimously approved**

9 Neptune Rd – Thomas Cares – [James Emmanuel] landscape plan review per OOC 40-1366. - **Unanimously approved**

12 Davis Rd – Davis Point LLC – [James Emmanuel] landscape plan review per OOC 40-1470- **Unanimously approved**

Order of Conditions Extension Requests

40-1305 45 Beacon St. – Jonathan D. Putnam et ux – [Patrowicz] – pool repair-
Unanimously approved

40-1318 45 Beacon St. – Jonathan D. Putnam et ux – [Patrowicz] – seawall repair-
Unanimously approved

40-1428 36 Crestwood Dr. – Jennifer P. Panza, Trustee – [Patrowicz] – house addition-
Unanimously approved

40-1432 10 Harvard St. – James L. Tedford III et ux – [Patrowicz] – house re-construction-
Unanimously approved

40-977 Pond St/Redd's Pond – Marblehead Rec. & Park - [Biff Martin] – weed control-
Unanimously approved

Certificate of Compliance request

40-1481 151 Green St – John Muldoon – condo complex, sitework-**Outlet controls need to be installed. No action taken**

40-1498 27 Ballast Lane – Michael Tyrell et ux – [Patrowicz] – seawall repair-
Unanimously approved

Minor Activity Permits

20 Pequot Rd - Dorothy L. Kaulbach – Tree removal-**applicant not present. No action taken.**

10 Goldthwait Rd – Blake Liggio – [Fred Clark] – site work-**Swing set installed minor activity permit issued from engineering office.**

11 Bartlett St – Lillian Lieberman – [Stephen Paterson] – driveway pavers after the fact- **Unanimously approved**

4 Indianhead Cir – Cheryl Booth – tree removal replacement-**Approved with the condition that they come back with a plan that complies with our proposed tree replacement policy.**

CONTINUED PUBLIC HEARINGS:

40-1535 84 Harbor Ave. – Stephen L Krebs, Trustee – [Patrowicz] – [DEP: project requires a chapt. 91 Lic.]

fixed pier, seasonal gangway & floating dock-**Voted to continued till June.**

40-1533 6 Harbor View- Kevin Crosby et ux- [Kara Pascal] - [DEP: no comments] - after the fact patio install, masonry repair-**Have an Independent opinion, scheduled a site visit for the Commissioners for March 27th @ 5pm, move with both plans - Voted to continue till April.**

40-1537 325 Ocean Ave. – Hugh Scandrett – [Patrowicz] – [DEP: no comments] - uniting two existing drain lines together- **Voted unanimously to approve an Order of Conditions with the following special conditions.**

need a revised plan for easement approved by Amy Mchugh

Special Conditions:

The applicant will comply with the requirements of the Marblehead Department of Public Works [DPW] letter to the Conservation Commission dated March 7, 2023 signed by Amy Mchugh and attached hereto.

The applicant will supply the Conservation Commission with a properly revised site plan conforming to the DPW requirements.

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.

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.**

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".**

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 HEARING[S]

40-1542 11 Kenneth Rd. – Joshua and Jordan Chmara – [Patrowicz] – house re-construction – **Weny Ferman from 15 Kenneth Way asked how equipment would get down to the Southside of the house? It will be brought down the Northside. - Voted unanimously to approve an Order of Conditions 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.**

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".**

40-1541 12 Davis Rd. – Davis Point LLC – [Patrowicz] – house additions - **Voted unanimously to approve an Order of Conditions 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.**

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".**

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.

40-15___ 45 Beacon St. – Jonathan D. Putnam et ux – [Patrowicz] – pool replacement- **Voted unanimously to Continue to April without opening the hearing**

40-1540 92 Harbor Ave. – Johannes Naerger et ux – [Patrowicz] – pier repairs - **Voted unanimously to approve an Order of Conditions 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.

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.**

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.**

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.**

48. All floats/docks will be so constructed so as not to bottom out (rest) on the ocean floor at low tides. **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.**

52. If the pilings supporting a pier have not been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. The scraped material may remain on the beach/tidal flat. However, if the state declares a state of contamination (such as Red Tide) in an area wherein the pilings have been resident, tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for such contaminated materials. If the pilings supporting a pier have been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. Tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of

scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for materials which include paint or treatment. For all types of pilings (painted or unpainted/treated or untreated), a protocol must be submitted to the Conservation Commission for approval in advance of the scraping. The protocol must contain: whether the pilings are painted or unpainted/treated or untreated; whether the pilings have been contaminated; if painted or treated, the exact type of paint being scraped/if treated, the exact type of treatment; the dates and times of intended scraping (start and finish); the exact location of the intended scraping; a description of the containment method; a description of the scraping method; the final location for disposal of the paint scrapings or, if applicable, contaminated scrapings. If the pilings are to be repainted/re-treated, the exact type of paint/treatment must be identified and must be approved per the latest state and federal guidelines for such applications. The person ordering the scraping/painting/treatment must sign and date the protocol and submit it to the Marblehead Conservation Commission before any work is started.

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.

106 Coatings used shall be approved by the DEP.

The Manufacturers Written Specification for curing time shall be furnished to the Conservation Agent prior to mobilization. Coating shall be applied only as specified in the Manufacturers written specifications. Coating shall not be applied if the surface is expected to undergo exposure to rain or seawater within the manufacturers specified curing time plus ½ hour.

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.

110. Coatings shall not be applied to any surface that may be subject to wetting from rain, or seawater, within the coating manufactures specified curing time plus ½ hour.

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.

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

ENFORCEMENT ORDER[S]:

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

DISCUSSION

Whether it's ok for conservancy to use Lynpac for trails.

Minor activity permit issued for 34 Crestwood -to approve pruning and tree trimming. With condition that a certified arborist submit a letter that there will be no damage to trees during trimming.

Unanimously approved to adjourn 9:00pm