

Marblehead Conservation Commission Minutes
April 13, 2023

This hearing was held remotely in accordance with former 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, Brian LeClair, Dave VanHoven, Carole McCauley, David Oster, Kristopher Meola, Kate Melanson[arrived 7:20] 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.

The hearing was called to order at 7:04pm

DISCUSSION:

The Commission voted unanimously to approve the minutes of the prior hearing: **March 9, 2023.**

ORDER OF CONDITIONS EXTENSION REQUEST[S]:

The Commission voted unanimously to approve the following extension requests:

40-1330	226 Ocean Ave - Steve Miller – home renovation, sitework
40-1367	37 Bradlee Rd – Tatelman – [GZA] – shared pier
40-1192	22 Foster St. = Ralph Savinor et ux – new house

CERTIFICATE OF COMPLIANCE REQUEST

The commission did not act on the following Certificate of Compliance request. The Con Comm agent explained the outlet controls were not completed.

40-1481	151 Green St – John Muldoon – condo complex, sitework
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MINOR ACTIVITY PERMITS:

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

8 Rainbow Rd – Jaclyn Garber et ux – tree removal **The matter was continued until a report from an arborist regarding the condition of the trees was provided. The agent offered to visit the site to see if a safety condition to remove the trees required immediate removal of any tree.**

MINOR MODIFICATION[S]:

40-1500 102 Harbor Ave - Janet Himmel- [Leblanc Jones] – patio **Doug Jones, Landscape Architect presented the request and was told by the commission to provide a plan for approval with impervious area calculations next month.**

40-1540 92 Harbor Ave – Johannes Naerger – [Patrowicz]- Pier The Applicant's representative, Scott Patrowicz, requested that condition 112 of the special conditions that requires the installation of a davit at the end of the pier be not required for a Certificate of Compliance. The reason being that the project was for the repair of an existing the pier which was not designed to accommodate a davit. He further stated no discussion at the hearing in March to explain that fact was possible because the hearing was closed when the special conditions for the OOC was proposed and voted. The Commission voted unanimously to approve the request.

40-1508 26 Foster St – landscaping plan approval The Commission voted unanimously to approve the plan.

40-1367 37 Bradlee Rd – Tatelman – [GZA] – shared pier Continued until June.

DEP file#	ADDRESS	APPLICANT	PROJECT DESCRIPTION
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CONTINUED PUBLIC HEARINGS:

40-1533 6 Harbor View- Kevin Crosby et ux- [Kara Pascal] - [DEP: no comments] - after the fact patio install, masonry repair. Kara Pascal representing the applicant requested that the patio and wall extension be allowed to remain in the buffer zone. The commission suggested that work was performed without a permit. The Agent explained a minor activity permit was issued to perform maintenance to the existing wall and remove and reset existing stepping stones but the patio and wall extension were not included on the permit. The Commissioners voted to issue an enforcement order requiring a site restoration plan be provided at the next hearing. The hearing was opened to public comment. David Clark, 5 Harbor View, commented that the applicants raised the grade and removed ledge. H spoke about the need to protect the resource area from these types of encroachments. John Hassett, 4 Harbor View, claimed to be speaking for 3 or four other neighbors, commented similarly. He claimed no steps or wall existed prior to the current owners. He asked why a peer review was not performed to review the location of the top of coastal bank. The Agent explained the difficulty of trying to find a reviewer to attest to something that occurred in the past. The Agent further explained that the LiDAR data used to produce the topography on the 2007 Hayes Engineering plan can be influence by ground vegetated cover. The agent cited a recent report by Hayes Engineering reviewing the project on behalf of the opponents of the project. The report acknowledged that LiDAR data was not as accurate as an on the ground survey. An on the ground survey was used to produce the 2017 topo plan by Patrowicz for a 2017 filing and used in the current NOI for this project. This fact and the three Commissioners attending a site visit with the agent verified the 2017 topography. The Commission voted unanimously to continue the matter to the hearing on May 11th.

PUBLIC HEARINGS:

40-1543 45 Beacon St. – Jonathan D. Putnam et ux – [Patrowicz] – pool replacement Patrowicz explained a rectangular pool permitted easier use of a pool cover. The commissioner expressed concern that the pool could be damaged again. The owner, Jonathan Putnam, explained that the pool was built well but was damaged due to his being advised by his contractor that the pool could be emptied. Emptying the pool caused uplift which damaged the pool. The Commission voted unanimously to close the hearing and approve an order of conditions with the following special conditions: 32, 33, 34, 35, 40, 45, 50, 55.

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.

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".**

40-1545 10 Coolidge Road – Daniel J. Riccio, Tr – [Patrowicz] - [DEP: no comments] – house addition landscaping, site work. **Patrowicz presented the project. The commissioners expressed concern about adding a wall**

to the buffer zone, Patrowicz said he could lower the wall. The Commission voted unanimously to continue the hearing to May 11th to review a revised plan.

40-1547 102 Harbor Ave –Jannel A. Himmel, Tr. –[Patrowicz] - [DEP: no comments] – seawall repair, sitework, landscaping. **After a presentation of the project by Patrowicz, the Commission voted unanimously to close the hearing and approve an order of conditions with the following special conditions: 32, 33, 34, 40, 41, 42, 43, 50, 55, 102, 105.**

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:

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 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.**

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.

40-1544 22 Cliff St – Ralph Roberto et ux, Trs. – [Patrowicz]- [DEP: no comments] seawall repairs, sitework. **After a presentation of the project by Patrowicz and discussion about encroaching further into the resource area with another wall, the Commission unanimously to close the hearing and voted 4-2, to approve an order of conditions with the following special conditions: 33, 34, 35, 40, 41, 42, 44, 55, 55, 102, 105, 111.**
Carole and Kate voted no.

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.).

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.

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.**

44. The back-filling of small areas of erosion landward of a seawall is allowed as a surviving condition provided the erosion is not on a coastal bank. This back-filling applies to areas defined primarily as Land Subject to Coastal Storm Flowage. Any work on a coastal bank requires an NOI. The back-fill material must be clean and compatible with the eroded material. Prior to any back-filling, the scope of the proposed back-filling must be approved by the Conservation Commission. **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.**

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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.

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.

40-15 _____ 19 Goodwins Ct- Erik Walker et ux – [Patrowicz]- [DEP: no comments] – porch, seawall repairs. **After a presentation of the project by Patrowicz and the Architect Jeff Tucker, the commission expressed concern regarding the arches proposed to be installed in the foundation that is subject to storm wave action. The Commission unanimously to close the hearing and voted 1 in favor verses 4 against issuing an order of conditions. Carole, David VanHoven, David Oster and Kate voted no. Brian noted the majority against the project and therefore didn't need to vote.**

ENFORCEMENT ORDER[S]:

40-1391 _____ 3-5 Gilbert Heights-Judith Schmid- alteration to resource area without a permit per 310 CMR 10.00.
To be discussed in June.

DISCUSSION:

Other matters as may appropriately be brought before the Commission:

Don Morgan from the Marblehead Conservancy requested to be permitted to use Lynnpac on a trail in the Forrest River section of the Town conservation land. That trail is subject to erosion due to topography. The commission agreed to permit the use of Lynnpac.

Don Morgan requested to relocate the trail that connects Blueberry Road to the conservation land because of the topography. Don also request to install wildflower beds in an area owned by the Con Comm but maintained and mowed by the Board or Health. Both matters were agreed to be coordinated with the Board of Health.

The proposed tree replacement policy was discussed. Base on discussion by the Commissioners about invasive tree replacement, David VanHoven was going to edit the draft policy for review by the Commissioners individually via email. Each would respond to the Agent individually prior to posting it on the website.

The hearing was voted to be adjourned at 10:50pm