

Marblehead Conservation Commission Minutes May 11, 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 [arrived 7:20] 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.

The hearing was called to order at 7:20pm

DISCUSSION:

The Commission voted unanimously to approve the minutes of the prior hearing: April 13, 2023.

297 Ocean Ave Mike Kaczynski – discussion regarding 286 Ocean Avenue drainage.

Mike Kaczynski owner of 297 Ocean Avenue introduced his attorney Jamy Buchanan-Madeja to speak on his behalf. Jamy presented photos and video showing water flowing out of an existing drain pipe onto a rocky coastal bank behind 297 Ocean Ave on land owned by her client and a low area subject to flooding on 286 Ocean Ave. The water was being pumped from the low flooded area at 286 Ocean Ave. Jamy claimed the work was jurisdictional based on a report by Hancock Engineering and that no determination about jurisdiction occurred. The Agent clarified that he was alerted to work occurring at 286 and stopped the work until the owner provided proof that the work was non-jurisdictional. Hayes Engineering provided a study indicating that although the area was subject to flooding the size and depth of the flooding did not meet the threshold that would make the area jurisdictional. Jamy claimed that the work area was within the 100' buffer zone to in inland wetland resource area shown on the towns GIS site.

The Commission voted unanimously to issue an enforcement order to require the owner of 286 Ocean Ave to attend the June hearing, to stop lowering the ground water level until a study is performed, and to stop work until a permit from Con Comm is obtained or a negative determination of applicability is obtained.

ORDER OF CONDITIONS EXTENSION REQUEST[S]:

The Commission voted unanimously to approve the following extension requests:

40-1437 20 Sunset Rd – Charles F. Smith et ux [Patrowicz] seawall repair, sitework

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.

MINOR ACTIVITY PERMITS:

8 Rainbow Rd – Jaclyn Garber et ux – tree removal, **The minor activity permit was issued to permit the removal of the 25” damaged cherry and the 30” maple tree. The owner will provide replacements with a total of 10 [2”]trees to be planted on site, unless an arborist certifies that number cannot be accommodated on the lot in which case the trees could be place on town land designated .**

9 Corn Point Rd – Michael Campbell et ux-[Thomas Hutchings] - patio, pavers **Continued till June, need additional information where the proposed work is that will show exactly where the buffer zones are located and approval by the Water and Sewer Department is obtained.**

102 Harbor Ave - Janet A. Himmel –[Doug Jones]- driveway, landscaping

After a presentation by Doug Jones **the Commission voted to approve the Minor Activity Permit.**

102 Harbor Ave - Janet A. Himmel –[Doug Jones]- tree removal

After a presentation by Doug Jones **the Commission voted to approve the Minor Activity Permit with the condition 16 trees be planted on the property unless an arborist certifies that number cannot be accommodated on the lot in which case the trees could be place on town land designated .**

MINOR MODIFICATION[S]:

40-1500 102 Harbor Ave - Janet Himmel- [Leblanc Jones] – patio [impervious calcs. req’d.]

After a presentation by Doug Jones **The Commission voted to approve the minor modification**

40-1547 102 Harbor Ave – Janet Himmel – [Patrowicz] wooden patio, walkway **No Action taken**

14-1505 325 Ocean Avenue- Hugh Scandrett- [Patrowicz] - driveway re-alignment

After a presentation by Scott Patrowicz, **The Commission voted to approve the minor modification**

40-1367 37 Bradlee Rd – Tatelman – [GZA] – shared pier

After a presentation by Cheryl Coviello of GZA, **The Commission voted to approve minor modification**

<u>DEP file#</u>	<u>ADDRESS</u>	<u>APPLICANT</u>	<u>PROJECT DESCRIPTION</u>
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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

After a presentation by Kara Pascal and considering opinions by abutters, John Hasset and David Clark, upset about the project, **The Commission voted to approve the issuance of an Order of Conditions with the following special conditions:**

Special Conditions:

The patio, Lynnpac fill, and extension of the stone wall constructed in the 25’ no touch buffer zone shall be removed.

The stones shall be reset on a pervious material in a pattern similar to the original pattern and shall not extend beyond the remaining stone wall.

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.**

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.**

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 available yet] – house addition landscaping, site work [revised plan] **The Commission voted unanimously to continue till June.**

PUBLIC HEARINGS:

40-1549 18 Churchill Rd – Sean Kelly – [John Dick] -[DEP: no comments available yet] sitework, grading **The Commission asked to see more site specific details voted unanimously to continue till June.**

The Commission voted to approve the project with the following special conditions:

Special Conditions:

Prior to removing the tree near the driveway, the applicant shall receive permission from the Town of Marblehead by coordinating with the Town's tree warden to conduct public shade tree hearings that might be necessary.

The tree shall be replaced by one or more trees according to the following schedule:

Trees Replacement Schedule:

2" diameter or less Same number & size

3" to 4" diameter Same number at least 2"

5" to 8" diameter 2X trees, at least 2"

9" to 12" diameter 3x trees, at least 2"

13" to 20" diameter 4x trees, at least 2"

21" to 30" diameter 5x trees, at least 2"

31" and more diameter 6x trees. At least 2"

*If the tree species to be removed are invasive species as identified by the MassDEP (other than Norway Maples), the replacement tree(s) may be 1x less than noted above.

Notwithstanding anything to the contrary in this Section, where a tree is removed from a coastal bank, slope, or hillside above a resource area, the report of a qualified arborist or engineer must identify mitigation measures to prevent any erosion of the coastal bank, slope or hillside.

If the required number of replacement trees cannot be accommodated on the property, as documented by a licensed arborist, the remaining trees shall be installed, at the expense of the property owner, at a location on Town property or right-of-way, as directed by the Conservation Commission and/or the Town Tree Warden.

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.

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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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ENFORCEMENT ORDER[S]:

40-1533 6 Harbor View- Kevin Crosby et ux- [Kara Pascal] - alteration in the buffer zone to a resource area without a permit per 310 CMR 10.00. **Unanimously voted to impose a fine of \$1050.00**

17 Prince St Ralph Khouris – possible alteration to the buffer zone to a resource area without a permit per 310 CMR 10.00. **Unanimously voted to ratify enforcement order.**

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

DISCUSSION:

Other matters as may appropriately be brought before the Commission:

Don Morgan – Marblehead Conservancy -Permitting the use of pesticides at Lead Mills. **The Commission voted to approve the use of herbicide at Lead Mills.**

Conservancy RDA requirements discussion- **A proposal had been submitted of things they would like to do on town property they would like to propose we approve it without requiring a Request for a Determination of Applicability.**

The Commission would consider approving it at the June meeting.

The hearing was voted to be adjourned at 10:15pm