

Marblehead Conservation Commission Minutes June 08, 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, Jesse Alderman serving as acting Chairman, David Oster, Kate Melanson, 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.

The hearing was called to order at 7:12pm

DISCUSSION:

The Commission voted unanimously to approve the minutes of the prior hearing: May 11, 2023.

Marblehead Festival of Arts – [Jodi Tatiana-Charles] – placing art objects in Conservation Commission land or adjacent to resource areas. They would like to hide 23 orbs for individuals to find on the conservation trails June 16th-July 31st.

It was approved with the condition someone from conservancy will guide them on where to place them. They will be collected and removed by August 5th.

Green Street Bike trail – Marblehead bike group wants to discuss building bridges across and intermittent stream as part of their bike trail project. Sue Culitte spoke saying the park had been open on Memorial Day weekend and they would like to add a bridge at Beacon and Orne St replicating the one in Steer Swamp.

They were advised a Notice of Intent[NOI] was required because they were altering a resource area. They will need to provide a design with construction details. The agent offered to help with the NOI provided the applicant provided the clerical work.

Clarification of new tree replacement policy requested by Scott Patrowicz.

Discussion occurred to clarify the draft policy regarding the minimum dimension requirement for trees to be shown on plans and requirements for replacement. Amy Mchugh spoke on the public tree at 45 Beacon St needs to go to the tree warden for approval as well as the Conservation Commission. The policy matter will be placed on the agenda for next hearing.

ORDER OF CONDITIONS EXTENSION REQUEST[S]:

The Commission voted unanimously to approve the following extension requests:

40-1274	21 Harbor Ave. – Stephen D. Peabody et ux – [Patrowicz] – house addition
40-1329	21 Harbor Ave. – Stephen D. Peabody et ux – [Patrowicz] – garage additions
40-1337	45 Beacon St. – Jonathan Putnam et ux – [Patrowicz] – seawall repairs
40-1338	45 Beacon St. – Jonathan Putnam et ux – [Patrowicz] – seawall repairs
40-1399	33 Bradlee Rd. – John Halsted et ux – [Patrowicz] – lawn, soil stabilization
40-1341	29 Beacon St. – A. Alexander Arnold, III – [Patrowicz] – seawall repair

40-1444 92 Harbor Ave. – Johannes Naerger et ux – [Patrowicz] – sitework, landscaping

CERTIFICATE OF COMPLIANCE REQUEST

40-1481 151 Green St – John Muldoon – condo complex, sitework

The Commission voted unanimously to approve

40-1534 1 Parker Ln – William Nutt [Hayes Eng'g] – pier repairs

Needs to be inspected.

MINOR ACTIVITY PERMITS:

1 Nahant St - Corinthian Yacht Club – [Megan Buczynski] resurface tennis courts **The Commission voted unanimously to approve with the standard minor activity permit conditions.**

9 Corn Point Rd – Michael Campbell et ux-[Thomas Hutchings] - patio, pavers

Representative was not in audience. No action was taken.

Hammond Park-[John Dick]-repair storm damage. **The Commission voted unanimously to approve.**

MINOR MODIFICATION[S]:

40-1471 24 Lee St – Lee St Condo. Assoc. – [Jeff Tucker, AIA] – deck layout.

Amended to replace stairs with balcony The Commission voted unanimously to approve

<u>DEP file#</u>	<u>ADDRESS</u>	<u>APPLICANT</u>	<u>PROJECT DESCRIPTION</u>
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CONTINUED PUBLIC HEARINGS:

40-1545 10 Coolidge Road – Daniel J. Riccio, Tr –[Patrowicz] - [DEP: no comments available yet] – house addition landscaping, site work [revised plan] **There was not a quorum present due to the fact that there were not 4 members present that were at a previous hearing. The members present voted to continue the hearing to the next months.**

40-1549 18 Churchill Rd – Sean Kelly – [John Dick] -[DEP: no comments available yet] sitework, grading **There was not a quorum present due to the fact that there were not 4 members present that were at a previous hearing. The members present voted to continue the hearing to the next month.**

40-1535 84 Harbor Ave. – Stephen L Krebs, Trustee – [Patrowicz] –[DEP: project requires a chapt. 91 Lic.] fixed pier, seasonal gangway & floating dock. **Scott Patrowicz representing the O’Neil’s, Zachary Jenkins from Collins engineering presented. Motion to close public hearing to approve The issuance of an Order of Conditions with 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.**
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.

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.

ENFORCEMENT ORDER[S]:

17 Prince St Ralph Khouris – possible alteration to the buffer zone to a resource area without a permit per 310 CMR 10.00. **Not in attendance.**

40-1391 3-5 Gilbert Heights-Judith Schmid - alteration to resource area without a permit per 310 CMR 10.00. **Not in attendance.**

286 Ocean Ave – Branden Scimione – [Hayes Engineering] – ratify Enforcement Order requiring more information to be provided for pumping ground water and possible pollutant discharge issues. **The Commission voted to ratify the Enforcement Order. The owner of 286 Ocean Avenue, through his representative Anthony Capchietti from Hayes Engineering, responded to the 3 concerns in enforcement order. The Commission was satisfied with the response to the concerns and agreed to close the matter.**

DISCUSSION:

Other matters as may appropriately be brought before the Commission:

Don Morgan – Marblehead Conservancy requested to be allowed to continue work on the trails without the requirement to file a Request for Determination of Applicability[RDA], **A motion was voted and approved to permit the continued work of the conservancy without the need to file an RDA. The conservancy will send an annual report to the Commission. Any new trail location or relocation will require approval from the Conservation Commission.**

The hearing was voted to be adjourned at 10:02pm