

Marblehead Conservation Commission
Minutes August 15, 2019

Meeting was held in the lower conference room at the Mary A. Alley Building, 7 Widger Road

Meeting was called to order at 7:05 PM

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 meeting is therefore four members.

Present were: Chairman Brian LeClair, Commission members Bill Colehower, Lindsey Serafin, David Vanhoven David Depew, Michael Smith and Jesse Harlan Alderman. Also present was Charles Quigley, Conservation Administrator

The hearings were conducted under the Massachusetts Wetlands Protection Act and the Marblehead Wetlands Protection Bylaw.

A motion was made and seconded to approve the amended minutes of July 11, 2019. All members voted in the affirmative.

Enforcement Orders

4 Nonantum Road

Appeared: Debra Wonson

Repair work on a deck support without a NOI. The enforcement order was ratified at previous meeting.

Owner has 60 days to get an Order of Notice. Fine will determined by the scope of work specified by NOI.

23 Pinecliff Road

Appeared: Alex and Nicole Bender (owners)

The owners were granted a Minor Activity Permit for a deck by the Town Engineer.

However the owners built retaining walls and removed trees and vegetation in a buffer zone without an NOI. Owners claimed the vegetation removal in the buffer zone was needed to build retaining walls for the deck footings. They also claim the only vegetation removed was poison ivy.

In addition, ZBA approved plans without consulting Conservation Commission. According to the Chair, this should not happen.

The Commission stated that the buffer zones needed to be restored to their original condition. The owners need to file a NOI detailing work that has been done or will be done in the buffer zones (the plan needs to be labeled "proposed"). The Commission requested that stumps be

added to the plans. In addition, information as to when the trees were cut was also requested (e.g., pre-Bender ownership).

Once the NOI has been approved, the owners may have to file a landscape plan.

If the NOI is not filed in time for the September meeting, it must be filed for the October meeting.

There will no more work until the NOI is approved.

The Commission voted to ratify the enforcement order.

The owners will immediately stake silt socks and place hay bales to protect the resource area (the owners claim this has been done).

22 Whittier Road

Appeared:

Owner put down mesh fabric and crushed stone in a buffer zone without permission.

The Commission voted to ratify the enforcement order.

Minor Modification Request

NOI 40-1389 30 Pequot Road

Appeared: John Dick, Wetland Scientist

Brian LeClair recused himself; David Vanhoven chaired the request.

The applicant will narrow the gangway from 4' to 3'.

The applicant will also describe how the gangway will be removed in the fall and attached in the spring.

The applicant will provide a comprehensive site plan covering all proposed work in the resource area and the buffer zones.

Order of Conditions Extension Request

40-1007 12 Liberty Rd

The Commission voted to grant the extension.

Certificate of Compliance Requests

40-883 21 Sunset Drive

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Patrowicz will file requesting a minor change to the Order of Conditions adding repointing surviving condition for a seawall. The Commission allowed this as repointing is now a special condition usually applied to seawalls. This was not the case when the original Order of Conditions was approved.

Certificate of Compliance was approved without the requested surviving condition. New owners will need to request the surviving condition

40-1015 25 Pinecliff Dr

40-1375 19 Neptune Rd

40-1319 46 Foster St.

40-1227 87 Beacon Street

Appeared: Kirk Young, Wetland Preservation

A COC was not voted on

The owners have an existing Order of Conditions allowing viewscape pruning and invasive removal.

The owners are requesting that the following perpetual conditions be added to the existing order of conditions:

- Vista pruning
- Ability to remove invasives

The Commission decided not to add surviving conditions to the COC.

The Commission instructed the owner to submit a request for minor changes that includes a description detailing intended work and how it relates to existing Order of Conditions.

The Commission voted to approve all the above COCs except for **40-1227 87 Beacon Street.**

Public Hearings

NOI 40-1403, Ocean and Harbor Ave, Peabody and Parker Lane

Appeared: John Dick, Wetland Scientist

Discussion: The Town wants surviving conditions to maintain existing structures; these conditions will not apply to alterations.

Town Engineer wanted to know what information Commission needs to make decisions regarding this NOI.

The Commission stated they will need to know 1) what will be rebuilt/repared and 2) how it will be done (equipment and processes).

John Dick has been filing the paperwork for this. Dick has had conversations with DEP to determine if the anticipated work requires Chapter 91 licensing. The DEP (Frank Toreina) has stated that the repairs considered in this instance do not require Chapter 91 licensing.

The Town Engineer gave notice that he will also be filing a NOI to perform beach nourishment.

All members voted to continue the hearing to the September 12, 2019 meeting.

NOI 40-4xx, 61 Naugus Ave

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Brian LeClair recused himself; David Depew chaired the hearing.

The hearing was rescheduled to the September 12, 2019 meeting without opening

NOI 40-1404 100 Evans Road

Appeared: Sheldon Frisch, owner and Jeff Tucker, Tucker Architecture and Landscape, LLC
Control Drawing: Plans by Tucker Architecture and Landscape dated July 31, 2019

All work is outside No-build buffer zone and separated from the resource area by a paved road.

Carl Siegel (98 Evans) spoke against the project; he is concerned about blasting. The Chair suggested Carl talk to the fire department about the blasting. He also suggested videoing the property as documentation of pre-blasting conditions.

Bruce Hamilton (24 Shepard) wanted to know how ledge will be handled and removed. He is also concerned about wildlife concentration.

All members voted to close the hearing. The Commission voted to issue an order of conditions with the following 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.

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".**

In addition, the applicant will place a mulch sock along the base of the property and in any other areas where there is construction. They are also required to submit a revised plan for any additional work.

New Business

- The Conservation Commission held a public hearing to discuss the adoption of an amendment to the Wetlands Bylaw Regulations establishing eelgrass performance standards.

Brenden Sheehan (9 Birch St.) asked why the standards were necessary. The Commission stated that the Dept Marine Fisheries wants to minimize eelgrass impacts as does the Commission. However, when the Commission imposes conditions or deny permits, some owners have appealed to DEP, and the DEP has approved projects with less protection to eelgrass.

As a result of getting countermanded by the DEP, the Commission felt that it needed eelgrass performance standards that reflected the Commission views on eelgrass preservation.

The hearing was closed. The Commission voted to adopt the regulation amendment as presented.

- In light of the adoption of the aforementioned amendment, Scott Patrowicz requested to open **NOI 40-4xx, 61 Naugus Ave** hearing after it had not been opened earlier in the meeting.

The Commission voted to deny the request to open the hearing.

Brian LeClair recused himself from the meeting; David Depew assumed the chair for the request.

- Brian LeClair asked for an update on encroachment on town land issues for the next meeting. Town Engineer informed the Commission that he will be hiring a land surveyor determine property lines.
- Town Engineer informed the Commission that there will be tilling in the Lead Mills Conservation land to allow drainage of depressions caused by site work.

Old Business

- **Proposed regulation banning moorings where boats bottom out**

The Conservation Commission asked Town Counsel to review the proposed regulation. Town Counsel affirmed the Conservation Commission's jurisdiction within the resource areas (e.g., Ocean and Land under Water, Land Subject to Tidal Action). Beyond that she had no comment.

The no comment was not satisfactory to the Harbors and Waters Committee so a meeting was called to further discuss the proposed regulation. Brian LeClair attended this meeting on August 12th with Town Counsel, Jason Silva, Town Administrator, and Mark Souza, Marblehead Harbormaster.

While Town Counsel said the Commission had jurisdiction over the resource area, she stated that there was a specific state statute that gave the Harbormaster "complete" control over moorings, and his decisions could not be countermanded by the Conservation Commission. The specific state statute was not cited.

The Harbormaster did offer to create a policy regarding these moorings sometime in the future. The policy will be communicated to the Commission.

At that time, the Commission will review the policy. If it is unacceptable, it was suggested that the proposed regulation become more generic referencing anything that effects the resource areas in question.

- The Chairman asked the Town Engineer if a surveyor has been engaged to measure the encroachments on town land. The Chairman stated there were more than twelve encroachments that needed to be analyzed.

The Town Engineer promised that he would contact surveyors and get possible dates. He will then email this information to Commission. Town Engineer promised to contact three surveyors by the middle of the next week.

- The Chairman also asked for an update on using Park & Rec tilling equipment to make areas in Lead Mills that are retaining water more pervious. The areas in question are depressions caused by Water and Light Department equipment used during work done in the area. The Conservancy is concerned as this is an area where they have spent of a lot of time planting grasses and flowers.

Andrew Petty (Park & Rec) suggested using an Aerator first. If that is not successful, then try tilling.

- Scott Patrowicz asked if vista pruning on a coastal bank required a permit. The Commission stated that as the coastal bank was a resource area, the activity required a permit.

Meeting was adjourned at 8:45 PM.