

Marblehead Conservation Commission
Minutes January 9, 2020

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

Meeting was called to order at 7:10 PM

Present were: Commission Members Jesse Alderman, David Depew, Michael Smith, Lindsey Serafin, William Colehower, and David VanHoven. Also present was Conservation Administrator and Town Engineer, Charles Quigley.

The hearings were 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 meeting is therefore four members.

Approval of Minutes:

Motion to approve minutes of meeting held on December 12, 2019, was made and minutes were approved.

DISCUSSIONS:

- **40-1367 Bradlee Rd** – Vote on proposed restrictive covenant regarding joint pier. The Commission voted to approve by unanimous vote.
- **23 Pinecliff Rd** – Enforcement order issued to Alex and Nicole Bender for violation of 310 CMR 10.00 alteration in the buffer zone to resource area without filing a notice of intent. It was noted that a meeting with the Conservation Administrator would occur on January 10, 2020 to discuss and will be presented at the February meeting.
- **22 Whittier Rd** – Enforcement order issued to David Quade for violation of 310 CMR 10.00 alteration in the buffer zone to resource area without filing a notice of intent. It was noted that NOI 40-1422 was filed.
- **Moorings that bottom out** – Discussion continued to the February meeting.
- **14 Coolidge Rd** – Richard Rocket appeared with a revised site plan requesting a minor modification. The Commission voted to approve by unanimous vote with a requirement that an in-kind replacement of the tree being removed will be included in the landscaping plan to be submitted as required by the order of conditions.
- **5 Thomas Circle** – Mark Luckes appeared to request a minor activity permit for home improvements within 200' of a perennial stream. It was noted that all proposed work is within the existing building footprint. The Commission voted to approve by unanimous vote.

Minor Modification Request

- **226 Ocean Ave** – Steven Miller appeared with James Emmanuel to request approval to relocate the driveway. The Proposed Site Plan – Minor Modifications dated 12/27/19 was presented. The Commission voted to approve by unanimous vote.

Certificate of Compliance Request

- **40-1252 – 9 Bartlett St** – Continued to February meeting
- **40-1253 – 15 Sunset Rd** – Andrew Bendheim – new garage. The Commission voted to approve by unanimous vote.
- **40-1280 – 1 Beacon St** – Stephen McHugh – roof. The Commission voted to approve by unanimous vote.

HEARINGS:

NOI 40-1420, Lead Mills – Town of Marblehead.

Appeared: John Dick

Proposed: Railroad embankment repair.

This hearing was continued from the December meeting. See meeting minutes.

All members voted to close the hearing. All members voted to issue an OOC with the following special conditions:

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.).

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.

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.**

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 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".**

NOI 40-1414, 20 Crowninshield Road – David A Rosenzweig, Trustee of the 14 Crowninshield Road Realty Trust.

Appeared: Scott Patrowicz, Land Development Engineering

Proposed: Embankment restoration, resource improvements.

Control Drawing: Site Plan Proposed Scope of Work, #20 Crowninshield Road, dated December 11, 2019 by Patrowicz Land Development Engineering.

Applicant presented plans as provided in application.

All members voted to close the hearing. All members voted to issue an OOC with the following special conditions:

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.

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".**

XX. A multi-year monitoring period, covering at least two growing seasons, shall be performed with a report submitted to the Commission.

NOI 40-1418, 35 Manataug Trail – Timothy R.E. Keeney et ux.

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Proposed: Deck reconstruction and seawall repairs.

Control Drawing: Site Plan Proposed Scope of Work, #35 Manataug Trail, dated November 25, 2019 by Patrowicz Land Development Engineering.

Hearing was continued from December meeting. Applicant presented plans as provided in application.

All members voted to close the hearing. All members (Serafin and Smith abstained as they were not present at December meeting) voted to issue an OOC with the following special conditions:

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.

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.**

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".**

NOI 40-1423, Gallison Ave – Town of Marblehead

Appeared: Town Engineer, Charles Quigley.

Proposed: Install rip-rap to protect existing infrastructure from storm damage.

Control Drawing: Site Plan and S-02 Section and Details – Erosion Protection Measures
Gallison Avenue.

Applicant presented plans as provided in application.

Gary and Silvia Rieser of 2 Stevens road had questions about findings of the Town and permitting.

All members voted to close the hearing. All members voted to issue an OOC with the following special conditions:

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.**

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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"**.

108. Stones and rock may be relocated to the beach following review and authorization by the Marblehead Conservation Commission administrator or an authorized member of the Marblehead Conservation Commission, as a surviving condition. **This condition shall survive this order.**

NOI 40-XX, 11 Fort Sewall – Town of Marblehead

Appeared: Rebecca Curran Cutting and Naomi Cottrell, RLA

Proposed: Sitework, landscaping.

Control Drawing: See conditions for 3 required drawings to be resubmitted.

Applicant presented plans as provided in application and additional plans in a powerpoint presentation.

Mike Curney of 1 West Orchard raised concerns with the completeness of the Town's application.

All members voted to close the hearing. All members voted to issue an OOC with the following special conditions contingent upon a DEP file number being issued and Chapter 194 compliance for a land disturbance permit:

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.**

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XX. Revised plans shall be submitted:

1. A revised "Proposed Site Plan showing coastal bank and 25', 50' and 100' setbacks" dated 12/23/19 that includes stormwater calculations and professional license stamp.
2. The grading plan shown shall be submitted with a professional license stamp.
3. Detail 1 and 2 in the stormwater report shall be submitted with a professional license stamp.

NOI 40-1421 20 Adams Road – Ethan Berg et al.

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering

Proposed: Invasive species management, landscaping.

Control Drawing: Site Plan Proposed Scope of Work, #20 Adams Road, dated December 20, 2019 by Patrowicz Land Development Engineering.

Applicant presented plans as provided in application.

All members voted to close the hearing. All members (Serafin and Smith abstained as they were not present at December meeting) voted to issue an OOC with the following special conditions:

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.).

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.

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.

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.**

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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.

XX. Three months prior to planting, the applicant shall submit a request for minor modification. A revised plan shall remove the 6% terraced area, with no grading.

XX. A multi-year monitoring period, covering at least two growing seasons, shall be performed with a report submitted to the Commission.

NOI 40-1422, 22 Whittier Road – David Quade et al
Proposed: Restoration work in a resource area.

All members voted to continue the hearing without opening.