

Marblehead Conservation Commission

Minutes March 10, 2016

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

Present were: Commission Members Fred Sullivan, Chairman Brian LeClair, Michael Smith, David VanHoven and Barbara Collins Rosenberg. Also present was Willy Lanphear, Conservation Administrator.

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

Note: The commission currently has six 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.

Approve Minutes: A motion was made and seconded "to approve the minutes of 11 February 2016." All members voted in the affirmative.

Discussion Item:

325 Ocean Ave, property owner would like to add a column to their front porch and extend the existing metal roof. They also wish enclose an existing patio on the ocean side of the house located below an existing deck. All members voted to allow the Conservation Administrator to issue a Minor Activity Permit for this work.

Brian LeClair stated he would reach out to Town Council to discuss amending the by-laws as it relates to minor activity permits.

Requests for a Certificate of Compliance: Prior to the hearings these two properties were approved by the Commission.

- 40-1206, 10 Foster St, M. Denise Rockett
- 40-1207, 4 Foster St, Donald R. & Noel M. Henrich

HEARINGS:

RDA 263-269 Pleasant Street

(Applicant has requested a Continuance)

Applicant: Lisa Mancuso

Appeared: Lisa Mancuso and husband; Cory D. Rhoades, Attorney; Paul Lynch, Attorney

Proposed: Proposed Assisted Living Facility

Continued from 1/14 & 2/11/16 (LeClair, Depew, Sullivan, VanHoven, Rosenberg)

Lynch stated there is no purpose for a continuance. Brian LeClair explains that the commission requested a better presentation as to why the technical information substantiated a wetland and it was not provided and therefore suggested denying the continuance. Lisa is concerned that she does not have her scientist or lawyer to defend herself if the continuance is denied.

The commission took a vote and voted 4-1 to deny the continuance.

Brian explains there have been no alterations to the property since the regulation was adopted in 2001, and there is no plant life present that classifies it as a wetland. Therefore the burden is on the applicant to prove there has been an alteration and that has not been proven.

Lisa further argued that denying a continuance is against the commissions' normal practice and there has only been 1 previous continuance. Brian LeClair explains that there have in fact been 2 continuances and granting an additional continuance will only increase the risk of not having four commission members to hold a quorum and properly address the issue.

Audience member Sheila McCreedy of Frost Lane explains that she doesn't understand why the applicant is requesting another continuance.

George MacDonald, 4 Higgins Rd. explains he didn't know about the RDA when the applicant first entered his property. Lisa claims she told George everything that she had planned.

Fred Sullivan explains how he inspected the property and couldn't find any sign of a wetland.

All members voted to close the hearing. All members voted to issue negative determination.

NOI 40-1226, 37 Bradlee Road

(DEP: No Comments)

Applicant: Jack & Deborah Tatelman

Appeared: Dave Smith, Engineer for GZA Geoenvironmental, Inc.

Proposed: New Pier, gangway & float

Continued from 12/10/15 & 2/11/16 (LeClair, Smith, Depew, Sullivan, Vanhoven, Rosenberg)

Dave Smith discussed the commissions comments with the owner and the owner would like to keep the current design as is. The owner is not interested in extending the pier further out due to exposure.

All members voted to close the hearing. All members voted to issue an Order of Conditions denying this project as currently proposed for the following reasons.

- No lifting mechanism is proposed to reduce potential damage to adjacent properties
- The float as proposed is located above an existing eel grass bed, the boat disturbance and lack of sunlight would negatively impact the existing eel grass bed.

RDA 35 Clifton Heights Lane

Applicant: Jami Corbett

Appeared: Jami Corbett; Eileen Graf, of Graf Architects; Thomas Hughes, Engineer with Hughes Environmental Consulting

Proposed: Additions & renovations to the existing house.

Control Drawings: Site Plan EX2, Williams Corbett Residence 35 Clifton Heights Lane, Graf Architects, 4 February 2016; Proposed Floor Plans A01, Williams Corbett Residence 35 Clifton Heights Lane, Graf Architects, 4 February 2016; Proposed Floor Plans A02, Williams Corbett Residence 35 Clifton Heights Lane, Graf Architects, 4 February 2016; Existing Floor Plan EX1, Williams Corbett Residence 35 Clifton Heights Lane, Graf Architects, 4 February 2016; Existing Exterior Elevations EX2, Williams Corbett Residence 35 Clifton Heights Lane, Graf Architects, 4 February 2016;

Hughes explains the renovations and pointed out on the plan that the 2 air conditioner compressor units are not currently shown but it can be added if the commission requests.

Fred Sullivan asks to add a condition to delineate a not to exceed limit for storage of materials.

All members voted to close the hearing. All members voted a negative determination with the following Special conditions.

- No storage of materials between the house and the seawall.
- Before excavating for the A/C pad provide the commission with a more detailed plan for review.

NOI 40-1233, 261 Ocean Avenue

(DEP: No Comments)

Applicant: Alan W. Bell

Appeared: Alan W. Bell; Scott Patrowitz, Patrowitz Land Development Engineering

Proposed: Construction of a new concrete footing on an existing concrete seawall and repairs to the seawall.

Control Drawings: Site Plan, 261 Ocean Avenue, dated February 22, 2016 prepared by Patrowicz Land Development Engineering. Sheet 1 of 1.

Work was presented as described in the application. Patrowicz explains how the excavating machine will be brought down the side of house and will be a small machine, most likely a Bobcat.

All members voted to close the hearing. All members voted to issue an OOC 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.).

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.**

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.**

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"**.

NOI 40-1234, 6 Corn Point Road

(DEP: See comments)

Applicant: Mark W. & Sandra L. Pocharski

Appeared: Sandra L. Pocharski; Scott Patrowicz, Patrowicz Land Development Engineering; Shane Mahoney, Carpenter Costin Landscape Management

Proposed: Vegetation management including the removal of invasive plants and the planting of indigenous plants.

Control Drawing: Site Plan, Pocharski Residence – 6 Corn Point Road dated January 21, 2016 prepared by Carpenter Costin Landscape Management.

Work was presented as described in the application. The commission members expressed concerns about the limit of work relative to the referenced wetland. The commission scheduled a site visit for March 23, 2016 @ 5:30pm.

All members voted to continue this hearing to the April 14, 2016 meeting date.

NOI 40-1209, 212 Humphrey Street

(DEP: No comments)

Applicant: Oliver's Pond Condominium Trust

Appeared: Scott Patrowicz, Patrowicz Land Development Engineering; Bill Manuel, Wetlands & Land Management, Inc.; Nancy Dalton

Proposed: Removal and control of invasive vegetation

Control Drawing: Site Plan, 212 Humphrey Street, Sheet 1 of 1 prepared by Patrowicz Land Development Engineering.

Work was presented as described in the application. Fred Sullivan expressed concern about erosion at the site and would like to see something put in place to address it. Willy Lanphear suggested holding off the application of vista pruning for one year and requests annual reporting. Willy also asked if there are any plants being added to control erosion, Bill Manuel said there are plants being added.

David Kauder of 220 Humphrey stated he is in favor of the work but would like to see the tires removed from the site.

All members voted to close the hearing. All members voted to issue an OOC with the following special conditions as well as the following additional conditions.

1. Areas of bare earth on the embankment between the driveway and the pond shall be immediately seeded with grasses and/or planted with shrubs to prevent erosion. Jute matting may be used to retain the soil until plants or grasses are established.
2. In the event of future soil erosion the applicant or a representative shall immediately notify the Conservation Commission in writing. **This condition shall survive this order.**
3. Invasive and non-native trees and shrubs may be cut/managed annually. All plant cutting/management activities shall be supervised by a professional with demonstrated expertise in plant identification, plant management, and knowledge of wetlands laws & regulations. Prior to any such cutting or plant management activities, the applicant shall notify the Conservation Commission in writing at least 72 hours prior to the start of the work. When plant cutting/management activities occur, said professional shall submit a report of those activities and the health of the surviving plant community to the Conservation Commission before the end of the year in which the activities have occurred. **This condition shall survive this order.**
4. No vista pruning is allowed to occur during the first year. Future vista pruning shall require a meeting with Conservation Commission Agent to discuss any proposed pruning prior to the work. Any vista pruning of trees shall not exceed 25% of the tree canopy and shall not include a buzz cut off the top. **This condition shall survive this order.**

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.

35. All tree cut tree limbs/brush, and 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 tree limbs/brush & debris, the dumpster shall be covered after each work day. The tree limbs/brush & debris shall be properly disposed of in accordance with applicable federal, state and local regulations.

36. All tree/brush cutting equipment shall be stored outside the 100' Buffer Zone when not in use. No fueling or servicing of tree/brush cutting equipment is allowed within the 100' buffer

zone.

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.**

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".**

NOI 40-1235, 1 Aldrich Terrace

(DEP: Under Review)

Applicant: Joseph M. & Amanda H. Thibert

Appeared: Joseph M. & Amanda H. Thibert; Scott Patrowicz, Patrowicz Land Development Engineering; Doug Jones, Leblanc Jones Landscape Architects, Inc.

Proposed: Site re-grading & construction of new boulder walls, stone steps, & pathways. Landscaping after construction including removal of invasive plants and planting of indigenous plants.

Control Drawing: Landscaping Plan, #1 Aldrich Terrace, Sheet 1 of 1 dated February 22, 2016 prepared by Leblanc Jones Landscape Architects, Inc.

Work was presented as described in the application. Brian LeClair asked if there are any non-invasives that are planned to be removed. Doug explains that any non-invasives within the 100 foot buffer will be preserved.

The commission would like to visit the site to review the work. Site visit is scheduled for March 16 @ 5:30pm.

All members voted to continue this hearing to the April 14, 2016 meeting date.

OLD AND NEW BUSINESS:

Emergency Certificates issued:

- 452 Atlantic Av, Alexander Falk, Trustee of Atlantic Avenue Nominee Trust
 - An existing stone wall needed immediate repair. Willy Lanphear issued an Emergency Certificate. All members voted to ratify the Emergency Certificate.

Request for changes in project scope:

- 40-1184, 50A Cloutman's Lane, Charles Loutrel
 - David Smith, Engineer with GZA explains the changes made to the float. Also explains that there were changes made to repoint the wall which was already completed by the contractor as well as an added concrete pad at the start of the pier which was also already completed by the Contractor.
 - All members voted to approve the minor design change. All members voted to issue a \$300 fine for doing work prior to approval by the commission.
- 40-1189, 158 Front St, Ira & Judith Rosenberg, Trustees of the Ira J. Rosenberg 1998 Trust. All members voted to approve the minor design change.

Request for Extension:

- 40-1129, 91 Naugus Av (beach parcel), Naugus Head Association, Inc. (OOC issued 7/3/13)
 - Jim Zisson and Peter Carlton explains how they would like future boat violators to be fined by the commission and to have the violation written in the OOC. Brian LeClair said he will look into having that violation implemented. All members voted to approve a 1 year extension.
- 40-977, Redd's Pond, Marblehead Model Yacht Club (OOC issued 5/22/09)
 - Brian LeClair states that the commission would like to have a report provided annually. Ben Martin and John Skerry of Marblehead Model Yacht Club explains that the pond only gets treated every 3 years and the reports are provided when the treatment is done. Brian would like the report prepared by a professional. All members voted to approve a 1 year extension.

Requests for a Certificate of Compliance: All were approved by the Commission.

- 40-1057, 2 Coolidge Rd, Kleiman Macklen, Beaver Enterprises, Inc.
 - Fred Sullivan explains that he believes the wall was not properly engineered and is going to fall over again. Commission voted 4 to 1 (Fred Sullivan opposed) in favor of approving the COC.
- 40-1206 10 Foster St, M. Denise Rockett (See Page 1 of these minutes).
- 40-1207 4 Foster St, Donald R. & Noel M. Henrich (See Page 1 of these minutes).

Sign Documents: All documents per the agenda were signed including bills payable.

The meeting adjourned at 10:15 PM.