

Marblehead Conservation Commission
Meeting Minutes
May 9, 2019

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

Meeting was called to order at 7:18 PM

Present were: Commission Members Brian LeClair, Jesse Harlan Alderman, David Depew, Bill 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 April 11, 2019, was made and minutes were approved.

REQUESTS FOR CERTIFICATE OF COMPLIANCE

The below were all approved by the Commission:

- **40-1181** **231 Ocean Ave** – Town of Marblehead – revetment repair
- **40-1075** **9 Goodwins Ct** – Rick Fishkin – deck repairs
- **40-1082** **203 West Shore Drive** – Michael Rose - landscaping
- **40-1243** **452 Atlantic Ave** – Alexander Falk – revetment repair

MINOR MODIFICATIONS

The below were all approved by the Commission:

- **40-1248; #20 Harbor Ave** - Lisa and George Katz - single family house
Appeared: Kara Pascal – For Seasons Landscape and Ecological Design, Marblehead.
Requested approval to modify plan approved on August 11, 2016. Enlargement of patio and rock garden with native planting. Changes will reduce the impervious surface by 32 SF.
Also requesting to add a fire pit structure. Also requesting to change spa from being an in ground structure to be above ground. The Commissioner asked if the spa is the same size. Ms. Pascal indicated the spa is smaller. The Commissioner asked if the fire pit on a concrete pad. Ms. Pascal said the concrete slab will replace a bluestone patio paver. *Ms. Pascal asked for a one year extension for the Order of Condition. The Commission approved the extension. The chairman reminded the secretary to be sure the extension request appeared in the minutes. The extension request was not on the agenda.*

- **40-1390, 67 Nanepashamet Street– Francis J. McNamara et ux.–**
Appeared: Francis J. McNamara, request to remove an invasive species vine.

ORDER OF CONDITIONS EXTENSION REQUEST:

The below was approved by the Commission:

- **40-1248 20 Harbor Ave -** Lisa and George Katz - single family house

Appeared: Kara Pascal – For Seasons Landscape and Ecological Design Approved for 1 year extension from 9-13-19 to 9-13-20.

PUBLIC HEARINGS:

NOI 40-1359; 75 Naugus Ave – Heidi Herlihy et al

Appeared: David Smith (GZA) and Heidi Herlihy

Proposed: Construct a 128-foot-long, 6-foot-wide timber pile-supported pier with a seasonal aluminum gangway and a 600-square foot bottom anchored seasonal float which will provide boating access for a private residence.

Comments from DEP: Issued a superseding order of conditions dated March 8, 2019.

All members voted to close the hearing. 3 members voted in favor, 1 member voted in opposition to issue an OOC with the following special conditions:

- i. Compliance with superseding order of conditions in the March 8, 2019 letter.
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.
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.

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.**

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 40-1393, #11 Kenneth Rd – David Hester et ux

Appeared: Scott Patrowicz; David and Christine Hester.

Proposed: House addition, site work and landscaping

Discussion from Commissioners: Mr. Depew argument that the property is further away from the water than the neighbor's properties is not a relevant in consideration by the Commission.

Public Comment: Mr. Haley, 9 Kenneth road, asked for clarification how much house structure will be projected toward the water. Mr. Patrowicz indicate it is 8 to 10 feet closer.

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

- i. Add note in the detail section specifying slope where the rock garden is located will include filter cloth beneath.
- ii. Update the impervious calculation as per the discussion.

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.

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.**

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.**

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NOI 40-1394; Marion Rd Ext at Ware Pond

Appeared: Don Morgan, Marblehead Conservancy, Inc.

Proposed: install a boardwalk to improve accessibility and minimize impact on the environment

Public Comment: Nate May, 4 Oak Circle - spoke in support of the proposed boardwalk to improve accessibility.

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

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.

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Continued Hearings:

NOI 40-1392; 46 Gallison Avenue – Fabrice Durand et ux
Request for a continuance to June 13, 2019.

Proposed: Garage, grading, realignment of driveway

All members voted unanimously to approve a continuance.

Meeting was adjourned 1:11min (8:28 pm.)