

## Marblehead Conservation Commission Minutes

October 12, 2023

This hearing will be held remotely in accordance with 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.

**Present were Commission Members David VanHoven (Chair), Jesse Alderman, Kate Melanson, Carole McCauley, Jessica Norton, 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 7:00 PM.**

### **DISCUSSION:**

**Chairman David VanHoven began with a brief discussion announcing 175 Beacon St would be continued to November to the November hearing and asked for any questions. Buzz Schneider representing a local citizens group requested to outline timing for preparations for the next hearing. Conservation Agent Charles Quigley clarified that the November hearing will be held on November 9, 2023 and that all materials should be submitted to his office at 7 Widger Road by close of business on Wednesday, November 1, 2023. He also stated that the applicant requested the hearing be continued to November without opening the hearing and reminded people in the audience that since the hearing is not opened, no testimony or evidence can be introduced.**

**Jessica Norton was introduced by the agent as a new sworn in Commission member today, October 12, 2023.**

**The Commission voted unanimously to approve the minutes of the prior hearing: September 14, 2023**

### **ORDER OF CONDITIONS EXTENSION REQUESTS**

**The Commission moved to hold one vote for the following three Order of Conditions Extension Requests. The Commission voted unanimously to approve.**

40-1282      151 Front St. – Sholly Kagen et ux – [Patrowicz] – house repairs

40-1419      20 Crowninshield Rd. – David A. Rosenzweig, Trustee – [Patrowicz] – driveway, invasives

40-1462          6 Broadmere Way – Richard C. Spencely, Trustee – [Patrowicz] – seawall repairs

<b>DEP file#</b>	<b>ADDRESS</b>	<b>APPLICANT</b>	<b>PROJECT DESCRIPTION</b>
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**PUBLIC HEARINGS:**

40-1560          24 Cloutman's Lane – Patrick Connolly et ux –[Hayes] - [DEP: no comments] –  
addition          **Jesse Alderman recused himself from this matter due to his professional relationship with the applicant. There were still four other commission members present and therefore enough for a quorum. Peter Ogren of Hayes Engineering spoke representing Patrick Connolly et ux regarding his Notice of Intent (NOI) to construct a small addition and porch on his existing home. The Commission voted unanimously to close the hearing and approve an Order of Conditions with the following 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.

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.

**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.**

49. The 25' No Disturb Zone boundary shall be permanently marked on the site in an appropriate manner via a post & rail fence, a field stone wall, or an approved equal to insure against inadvertent encroachment into this zone. The current and future owners of this property are required to maintain this permanent marking. **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](http://www.mnla.com) or [www.newfs.org](http://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".**

**CONTINUED PUBLIC HEARINGS:**

40-1545        10 Coolidge Road – Daniel J. Riccio, Tr –[Patrowicz] - [DEP: no comments] – house addition landscaping, site work [revised plan] **New Commissioner Jessica Norton was ineligible to vote on this hearing. There were still four others members present constituting a quorum. Scott Patrowicz spoke representing the applicant. Coastal geologist Peter Rosen discussed his review of the site plan, which he had submitted to the Commission previously. He concluded the project should be approved and spoke to his confidence that it will not alter resource areas. There were no public comments or questions on this matter. The Commission voted to close the hearing.**

**The chairman motioned to approve an Order of Conditions with special conditions. Commissioners David VanHoven, Carole McCauley, Jesse Alderman voted to approve; Kate Melanson voted no. The Agent questioned whether the vote required a majority of the members currently serving[seven] or a majority of those present. Attorney Paul Feldman spoke representing the applicant to discuss options. The Commission voted to reopen the meeting. Kate explained her denial is due to the work encroaching on the No Build Zone. The Commission voted unanimously to continue this hearing to the November meeting.**

40-1556        2 Nonantum Rd – Paul Murphy. Pres. Bessom Associates Inc.-[Patrowicz] -[DEP: no comments] –demo and rebuild a new house, sitework, landscaping. **The chairman confirmed all five Commissioners present were eligible to vote on this matter. Scott Patrowicz, representing the applicant, presented a new plan and Notice of Intent (NOI) in accordance with discussions from prior meetings. He discussed the additions of two sugar maple trees, two dogwood trees, and rhododendrons as mitigation. The proposed rain garden was also increased by 60'. Coastal restoration was discussed as additional mitigation. The Commission discussed concerns that there will be disturbances in the No Disturb Zone. Attorney Paul Feldman, representing the applicant, argued that the plan is in accordance with Marblehead bylaws as the project does not alter the actual resource area. Coastal geologist Peter Rosen, representing the client, testified that the project will not alter resource areas and opined this project will bring a net improvement to the resource area.**

**The Commission voted to close the hearing and unanimously approved an OOC with the following special conditions:**

**Special Conditions:**

**Pre-construction:**

The applicant shall submit a coastal restoration plan to the Commission for their approval.

The applicant shall show on a plan the location and type of 6 trees to replace the tree being removed.

**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.

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.

**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.**

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.**

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"**.

100. Prior to any work on this project that might affect the stability of the existing seawalls, the applicant shall retain the services of a licensed Professional Engineer (Structural) to examine the condition of the existing seawalls and issue a report on the structural integrity of those seawalls and their ability to handle the increased loads and stresses anticipated in connection with the proposed work.

102. A tarp will be laid down at the base of the seawall during all repair work to capture all construction debris. The tarp will be on the seaward side of the seawall. The tarp will be rolled up and dumped into a disposal trailer as required throughout the work day and will be removed at the end of each work day.

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.

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.

**And the following special conditions:**

1. The applicant will submit and have approved the the Commission a coastal restoration plan for the area of coastal bank on the property.

2. The applicant will plant two more of the proposed trees in a location submitted and approved by the Commission on the Bessom property.

40-1558 84 Harbor Ave. –Holly A. O’Neill et ux – [Patrowicz] –[DEP: no comments available yet] - new **Commissioner Jessica Norton was ineligible to vote on this matter. There were four other members present, constituting a quorum. Scott Patrowicz and attorney Paul Feldman were present and representing Holly & Jerry O’Neill. After a brief discussion regarding holding the hearing with only 4 Commissioners eligible to vote Mr. Feldman requested to continue to next month. The Commission voted unanimously to continue to the November hearing.**

40-1557 175 Beacon St. – 4J Homes, LLC – [Patrowicz] – [DEP: no comments available yet] -new house **The Commission voted unanimously to continue to the November meeting without opening the hearing at present.**

#### **ENFORCEMENT ORDER[S]:**

40-1539 5 Gilbert Heights - Judith Schmidt- would like to appeal the \$3,000 fine issued at the July hearing. **Jesse reminded all that the enforcement order was ratified, that an NOI was issued, a fine was issued and the matter was closed. Mr. Schmidt indicated at this point he would like to speak regarding the fine for 40-1539. He discussed the unpermitted work that was done and how he believes it improved the property and its surrounding area. He expressed that he had trouble finding someone to prepare the required materials in the allotted time. Chairman David VanHoven clarified that the fine assigned in the July hearing was less due to the time violation and instead mostly due to the extent of the unapproved work done, including significant clear-cutting of vegetation on a coastal bank, causing erosion and other damage to a resource area. The chair recommended that in the future Mr. Schmidt discuss any improvements he would like to make before taking action.**

40-1192 Ralph Sevinor – [Hayes Eng’g.] – work performed outside the scope of the approved plans **Ralph Sevinor requested to continue to next month to give engineers enough time to finalize the amended NOI. He was reminded by the Chair that anything delaying the mitigation could impact the fine. Attorney Michele Hunton was present and represented abutter William Nutt. Payson Whitney from TRC, also representing William Nutt, discussed the work that was done that was not in the approved 2015 OOC. He presented additional discrepancies TRC found, which were submitted to the Commission in a report prior to this meeting; these include the as-built condition of the pool, the 39’ upper wall built within the coastal bank, a constructed manhole, and unapproved hardscape areas built within the 25’ No Disturb Zone. Michele Hunton also discussed the work done that was not permitted. She spoke to the Sevinors’ prior claim that their contractor accidentally used an August 2020 minor modification plan approved by the planning board, and that TRC found the as-built condition of the elevation work done does not meet that plan either.**

**The Commission voted to continue to November meeting.**

**DISCUSSION:**

Other matters as may appropriately be brought before the Commission.

Performance standards for new piers. **The Commission moved to discuss at next meeting.**

Tree replacement regulation continued discussion. **The Commission moved to delay vote to the November meeting.**

**The hearing was voted to be adjourned at 9:11 PM.**