

Marblehead Conservation Commission Minutes
March 14, 2024

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), Carole McCauley, Kristopher Meola, Kate Melanson, 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 sometime after 7:00 PM.

DISCUSSION:

The Commission voted unanimously to approve the minutes of the prior hearing: February 8, 2024:

ORDER OF CONDITIONS EXTENSION REQUEST[S]:

The Commission voted unanimously to approve the following extension requests:

40-1472	Leslie Cove – Leslie Cove Association – [Patrowicz] – seawall repair
40-1432	115 Front St. – George A. Abatjoglou et ux – [Patrowicz] – seawall repair
40-1330	226 Ocean Ave – Steve Miller – Sitework
40-1478	16 Harbor Avenue – Jack Seaver – seawall, house and deck maintenance and landscaping
40-1474	Whittier Road – Whittier Ponds Association - invasive species management, trail improvements

MINOR ACTIVITY PERMIT REQUEST[S]:

Chandler Hovey Park – Town of Marblehead Rec and Parks Dept. – invasive species removal **There was no one present for this matter.**

15 Neptune Road – Christine Robertie - tree removal **Christine and Joe Robertie at 15 Neptune Road presented their request to remove three trees from this lot. They previously submitted a report from an arborist they consulted with, who is also present for this meeting. Two of the trees are hollow while the third is rotted at the base. They also report large limbs keep coming out and they are full of carpenter ants. They are requesting to remove the trees before their or their neighbor's houses are damaged. David briefly explained the town's current tree policy requires replacement of the trees if removed. The applicant agreed to plant new trees but raised concerns about the limited space. The commission deferred further discussion on this matter. They discussed potential tree removal on a lot due to poor tree health and safety concerns. The commission agreed on the importance of consulting with the tree warden to discuss potential next steps, such as in-kind planting or negotiations. There was emphasis on the need to balance safety with tree preservation, and implementation policies to ensure site suitability for tree planting was considered. It was**

suggested that the minor activity permit could be approved with a plan for replacement submitted for a future meeting if the trees pose a safety concern. The Commission voted unanimously to approve the request.

67 Beach St – Jack Attridge – roof over ex. deck Jack Attridge of 67 Beach St presented his plans to make a small expansion on an existing deck as well as add a roof over it. The Commission discussed the resource area boundaries and jurisdiction in relation to this request. Concerns were raised about potential erosion caused by increased impervious surface, but the project was deemed to have no significant impact on the resource area. The Commission voted unanimously to approve the request.

DEP file#	ADDRESS	APPLICANT	PROJECT DESCRIPTION
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PUBLIC HEARINGS:

40-1568	Commercial St, Cliff St, and Redstone Ln – Town of Marblehead – [Brahim Nasser, Woods Hole Grp.] - [DEP: no comments] – waterfront structural improvements for coastal resiliency, piles, floats, seawall work, fill etc.	Brahim Nasser, a senior climate resiliency specialist at Woods Hole Group, was present and represented the Town of Marblehead. He discussed the Municipal Shipyards Resiliency Improvements Project, a collaboration to address climate resiliency and coastal erosion. The project involves reconstructing and raising seawalls, filling and grading landward areas, installing wave attenuating floating docks, moving buildings, constructing public access infrastructure, and stormwater management improvements. The project is designed to withstand a 2% annual chance event in 2050, with an expected sea level rise of 2.5 feet. Nasser highlighted the benefits of using pile anchored floating docs, the temporary and permanent impacts of the project, and the corrections made for the stormwater flow paths. He also clarified that no new seawalls were being constructed, only modifications to the existing ones. Nasser reported that the project has gone through the MEPA process and received positive feedback from DEP and CZM. The project is now moving towards obtaining additional state and federal approvals before construction. Nasser clarified that the project does not foresee opportunities for infiltration due to the need for paved surfaces at the waterfront sites to store heavy loads. He also mentioned that while a lip for the seawall was proposed, its inclusion would need to be considered as the project moves towards the 100% design stage. The progress and funding of the design project was discussed, with Nasser confirming that the current grant funding will end by June 30th and the project will not advance to the 100% design phase within that timeframe. They also discussed the possibility of implementing the project in phases. David suggested requiring a final grading plan for approval. Carole raised questions about wave attenuating docks, with Nasser explaining that they are designed to be year-round structures, not removed during winter or storms. Nasser and Barbara Warren mentioned that similar structures have been successfully implemented in other parts of Massachusetts and provided examples. The Commission and Nasser discussed the construction of a resilient infrastructure capable of handling higher loads and taller walls to adapt to potential storms. There was also discussion about concerns raised about a contaminated site from 1987, which was discovered to have leaked and was subsequently backfilled with clean material. Testing results were not fully satisfactory, but the team was prepared to do more testing if necessary to find a permanent solution. Finally, they discussed the plans for a new structure, including its proximity to the seawall and potential impacts on surrounding areas. The team discussed a tree replacement policy at a 4-to-3 ratio, with Barbara indicating that they might start with smaller trees. They also discussed the need for salt-tolerant trees due to Hurricane Sandy. Kristopher praised the plan for its public benefits, including a boardwalk and pump out station replacement. They also discussed widening the entrance to Hammond Park and adding signage for	
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accessibility. Carole suggested incorporating educational signage about climate change. They aim to scope out the signage concept by June 30th.

The hearing was opened to public comment.

Bill Conly of 19 Hewitt St mentioned the Harbor Study Committee and its report were confusing to him. He suggested that the attendees read it to better understand the project, particularly its cost and the lack of history and consideration for the Historical Commission. The potential impact on the surrounding area was also a concern. David responded to these points by noting that the applicant had met all the required notifications and that the project was referenced in the Hazard mitigation plan.

Sam Webb sought clarity on the process and timeline for obtaining funding and necessary approvals for a project, including more opportunities for public comment. Nasser detailed the procedure, which included further public engagement opportunities, a Chapter 91 license application, and an application to the Army Corps. Barbara added that the project had already undergone a single environmental impact review and would need approvals from the Conservation Commission and other bodies. The overall projected cost and the timeline for permitting and funding were also discussed.

Jack Attridge spoke about the need for greater transparency and public engagement but acknowledged that this meeting was not the correct forum for that work.

Marcel Nyffenegger of 6 Manataug Trail, current Commodore of Marblehead Yacht Club, mentioned the transparency has been very good. He discussed that Barbara Warren had already been out to the club with a presentation similar to this one, and they had given input to her at that time. She had some back with revised plans. Marcel noted the Marblehead Yacht Club will be heavily affected during construction of this project and they are already discussing internally how to handle it.

Dave Weber of 11 Cliff St, current Vice Commodore of the Marblehead Yacht Club, noted he believes Nasser and Barbara has done a great job of getting out into the public regarding these plans and thanked them for their efforts. He acknowledged the concerns other speakers have raised and noted that the Notice to Abutters was helpful. He discussed that the more that can be done to get the word out to those who are affected, the better.

The Commission voted to close the hearing and approved an Order of Conditions with special conditions.

Transcript of Motion and Vote:

David: I would entertain a motion to close the hearing.

Kris: So moved.

David: Is there a second?

Carole: I'll second.

David: Alright, Carole seconds. All those in favor, Katie?

Kate: Yes.

Carole: Yes.

Kris: Yes.

David: Myself is a yes, hearing is closed. I would entertain a motion to issue an order of conditions (OOC) with the following special conditions. It's going to be a long one because it's just about everything: 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 48,

50, 51, 52, 54, 55, 102, 103, 103a – those are the ones that require having a maintenance agreement in place that gets submitted to us. This is particularly for the storm zephyrs. 105, 106, 107 is the landscaping plan being submitted, 110, 111, and a special condition that a final grading plan shall be submitted for approval by the Commission prior to construction. Is there a motion?

Kris: So moved.

David: A second?

Carole: Second.

David: Alright, second Carole. All those in favor, Katie?

Kate: Yes.

Carole: Yes.

Kris: Yes.

David: Myself is a yes. It is approved.

Special Conditions for 40-1568:

A final grading plan shall be submitted to the Conservation Commission for approval prior to construction.

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.

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.

39. All piers, docks and floats must follow the guidelines established in the document, “Small Docks and Piers – A Guide to Permitting Small Pile-Supported Docks and Piers” dated November 2003. Float stops are permitted provided they meet the aforementioned guidelines.

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.**

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.**

52. If the pilings supporting a pier have not been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. The scraped material may remain on

the beach/tidal flat. However, if the state declares a state of contamination (such as Red Tide) in an area wherein the pilings have been resident, tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for such contaminated materials.

If the pilings supporting a pier have been painted or treated with a chemical substance, the pilings may be hand scraped to remove barnacles and other marine growth. Tarps or a similar containment method must be located in the work area so as to cover the entire work area where scraping is performed. Tarps are to be cleaned of scraped material at the end of each day when scraping is performed and the scrapings disposed of in a proper manner for materials which include paint or treatment.

For all types of pilings (painted or unpainted/treated or untreated), a protocol must be submitted to the Conservation Commission for approval in advance of the scraping. The protocol must contain: whether the pilings are painted or unpainted/treated or untreated; whether the pilings have been contaminated; if painted or treated, the exact type of paint being scraped/if treated, the exact type of treatment; the dates and times of intended scraping (start and finish); the exact location of the intended scraping; a description of the containment method; a description of the scraping method; the final location for disposal of the paint scrapings or, if applicable, contaminated scrapings. If the pilings are to be repainted/re-treated, the exact type of paint/treatment must be identified and must be approved per the latest state and federal guidelines for such applications. The person ordering the scraping/painting/treatment must sign and date the protocol and submit it to the Marblehead Conservation Commission before any work is started. **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 ensure 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".**

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.

103. The final Maintenance Agreement approved by the Commission shall be recorded with the Essex South Registry of Deeds as a restrictive covenant running with the land to be binding upon the present owner and all subsequent purchasers of the land or any lot or part thereof, and a reference to such restrictive covenant shall be included in the first deed out of the property or in the deed for all lots or subdivided portions thereof.

103A. A maintenance plan/schedule shall be submitted to the Conservation Commission for approval covering the entire subsurface drainage system prior to construction of the system. The maintenance plan/schedule shall be recorded at the Registry of Deeds with the final Certificate of Compliance and shall be binding upon the present owner and all subsequent purchasers of the land serviced by the system.

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.

106 Coatings used shall be approved by the DEP.

The Manufactures Written Specification for curing time shall be furnished to the Conservation Agent prior to mobilization.

Coating shall be applied only as specified in the Manufacturers written specifications.

Coating shall not be applied if the surface is expected to undergo exposure to rain or seawater within the manufacturers specified curing time plus ½ hour.

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.

110. Coatings shall not be applied to any surface that may be subject to wetting from rain, or seawater, within the coating manufactures specified curing time plus ½ hour.

111. Concrete, mortar or grout shall not be placed that may be subject to wetting from rain, or seawater, within the curing time plus ½ hour the concrete being hard to the touch.

40-15__ 22 Foster St -Ralph Sevinor – [Phil Helms] [DEP: no comments available yet] – mitigation for work performed outside the scope of the approved plans. **Phil Helms reported they tried to get a file number from the DEP before this hearing but were unsuccessful. They requested a continuance to the next meeting or once they have a file number. The Commission voted to continue to the April meeting without opening.**

Transcript of Motion and Vote:

David: I would entertain a motion to continue this hearing to the April meeting without opening.

Carole: So moved.

Kris: Second.

David: Kris, second. All those in favor, Katie?

Kate: Yes.

Carole: Yes.

Kris: Yes.

David: And myself is a yes. The same goes for the next thing on the agenda, which is the enforcement order tied to this Notice of Intent (NOI), so that will be taking place next month as well.

ENFORCEMENT ORDER[S]:

40-1192 Ralph Sevinor – [Phil Helms] – work performed outside the scope of the approved plans.
This matter was continued to the next meeting. Please see the transcript of motion and vote above for the public hearing for 22 Foster St.

DISCUSSION:

Other matters as may appropriately be brought before the Commission.

Performance standards for new piers. **This matter was continued until the next meeting as Dave Oster was not present.**

The hearing was voted to be adjourned at 8:33 PM:

Transcript of Motion and Vote:

David: I would entertain a motion to close the meeting.

Kris: So moved.

David: A second?

Carole: I'll second.

David: Alright. All those in favor, Katie?

Kate: Yes.

Kris: Yes.

Carole: Yes.

David: And myself is a yes. Meeting is closed.

Minutes taken by: Amanda Viecegli