

BOARD OF APPEALS  
TOWN OF MARBLEHEAD

Minutes of Meeting of February 26, 2013

The regularly scheduled and noticed meeting of the Board of Appeals was called to order by Chairman Moriarty at or after 7:30 p.m. in the Auditorium at Abbot Hall, Marblehead, Massachusetts. Present were Board members Tubridy, Drachman, Moriarty, Rudolph, and Lipkind.

**HEARINGS:**

<b>7:30 PM</b>	<b>18 BARNARD STREET</b>	<b>Parcel ID 114-40</b>
<b>(Cont.)</b>	<b>LAWRENCE BATES WILLARD,</b>	<b>File Date: 11/8/12</b>
	<b>TRUSTEE</b>	

**CONTINUED FROM 12/4/2012 – WITH EVIDENCE TAKEN:**

**Tubridy, Drachman, Moriarty, Lipkind & Rudolph**

The Board continued hearing a request to vary the application of the present Zoning By-law by allowing a Special Permit to extend the B-1 Zoning District an additional 20 feet into the General Residence District pursuant to section 200-9C and to allow a special permit to change the use to Boat Services for that portion of the building and lot which remains in the General Residence District, and to allow a special permit to construct an addition to the existing non-conforming building at 18 Barnard Street, Map 114 Parcel 40, in a General Residence District and Business One District. The new construction is within the rear and side yard setbacks, further reduces open area, has less than required parking and exceeds the 10% expansion limit on a pre-existing non-conforming property that has less than required lot area, frontage, rear and side yard setbacks. The application was presented by Attorney Paul Lynch of Marblehead. Mr. Lynch advised the Board that the applicant was seeking not a change of zoning, but a special permit to change the use to Boat Services for the portion of the lot in the General Residence District, such permitted use to be limited to a mooring services operation, with one 13 foot long boat from the business to be stored at the site. Barbara Shefftz of Central Street spoke in favor of the application. Bill Barlow of Hawkes Street spoke regarding the application and wanted the special permit to be limited to the current owner of the site. The Board voted unanimously to approve the application, with conditions. Mr. Moriarty is to write the decision.

<b>7:30 PM</b>	<b>3 VALLEY STREET</b>	<b>Parcel ID 908-15</b>
<b>(Cont.)</b>	<b>GREGORY SPANOS</b>	<b>File Date: 11/8/12</b>

**CONTINUED FROM 12/4/2012 – WITH NO EVIDENCE TAKEN:**

Mr. Barlow replaced Mr. Rudolph for this and the remaining hearings other than 26 Barnard Street. The Board heard a request to allow the un-merger of lots 15 and 17 on assessors map 908 and allow the construction of a single family dwelling on lot 15 at 3 Valley Street, Map 908 Parcel 15, in an Expanded Single Residence District. The new lot will have less than the required area. The application was presented by Attorney Paul Lynch of Marblehead. Mr. Lynch presented a new plan, an assessors map of the area, and deeds to both lots, i.e., the lot

with the existing house, and the lot whereupon the applicant wants to build a new house, which lot fronts on Valley Street. Mr. Lynch presented a survey which shows a subdivision that the applicant could do as a matter of right, i.e., with lots that comply with the minimum lot size requirement. Several neighbors spoke in opposition to the application, due to concern about approving a lot that does not comply with the minimum lot size requirement, density, safety, and setting a bad precedent. These neighbors included Jim Polk of 5 Valley Road, a direct abutter, Heather Cressy Dalton of 1 Valley Road, Kristen and Don Goodkoop of 4 Valley Road, Traci and Peter Howe of 62 Harbor Avenue, and Francis Rafferty of 3 Sean's Way. Mr. Lynch advised the Board that the applicant wants to recoup his investment on the property, and that if the applicant went with the as of right subdivision, he could put a larger house on the lot. Mr. Lynch presented information pertaining to the square footage of lots on Marblehead Neck. The matter was continued to March 12, 2013, with evidence taken.

**7:45 PM      37 SHEPARD STREET  
NEIL MCCANN &  
KATHRYN HEITAUS**

**Parcel ID 137-49  
File Date: 12/7/2012**

The Board held a hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to expand an existing deck and add a trellis, and also allow an existing shed and an existing roof over a front deck to remain at 37 Shepard Street, Map 137 Parcel 49, in a Single Residence District. The application was presented by Attorney Robert McCann of Danvers. Before the hearing commenced, Mr. Lipkind stated that in the past Mr. McCann had referred work to Mr. Lipkind's law firm, but that Mr. Lipkind had not worked on any cases referred, and that Mr. Lipkind felt that he could be impartial. The new construction is on a pre-existing non-conforming property that has less than required lot area, front yard setback and side yard setback. The existing shed is in the rear yard setback and side yard setback and the existing roof is in the front yard setback. The applicant presented architectural plans dated November 26, 2012, prepared by Neil McCann, as well as a plan dated September 26, 2012 prepared by Gail L. Smith, Professional Land Surveyor. The applicant seeks to expand an existing deck with addition of a trellis above, the continued maintenance of a shed in the side yard set back, and the approval of a roof over an existing deck in the front yard set back. Residents from 33, 40, 41 and 43 Shepard Street, as well as 4 and 7 Taft Street, provided written support for the application. The application was unanimously approved, with conditions. Mr. Barlow is to write the decision.

**7:45 PM      26 BARNARD STREET  
REID GOOLSBY**

**Parcel ID 114-42  
File Date: 12/12/12**

Mr. Rudolph replaced Mr. Barlow for this hearing. The Board held a hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to change a pre-existing conforming accessory use of a garage to single family residence use, increase the height of the roof of this existing garage and also to build a new two story house at 26 Barnard Street, Map 114 Parcel 42, in a General Residence District. The new construction is within the front and side yard setbacks and reduces open area to less than required on a pre-existing non-conforming property that has less than the required lot area and side yard setback. The application was presented by Architect Heather Deschenes of Marblehead, who was



accompanied by Mr. Goolsby. The applicant presented architectural plans dated December 11, 2012, prepared by Ms. Deschenes, as well as plan dated October 17, 2012 prepared by Gail L. Smith, Professional Land Surveyor. Architect Deschenes provided amended Plans A3 and A4 which had changes in windows. Written support for the application was provided from residents at 20, 23, 24, 25 and 29 Barnard street, as well as 31, 41 and 43 Hawkes Street. Bill Barlow of Hawkes Street advised the Board that the applicant made a verbal commitment that there would be no blasting. Alan Dennis of 24 Barnard Road appeared in support of the application. The application was unanimously approved, with conditions.

**8:00 PM      1 ABERNATHY WAY  
FRANCOIS & LUCIE GADENNE**

**Parcel ID 33-12  
File Date: 12/18/12**

The Board was prepared to commence a hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to construct a new accessory building to be used as a garage and study at 1 Abernathy Way, Map 33 Parcel 12, in a Single Residence District. The new construction is within the front yard setback and side yard setback on a pre-existing non-conforming property that has less than the required lot width, front yard setback and has less than required parking. The existing shed is in the side yard setback and rear yard setback. Architect Veronica Hobson of Marblehead appeared for the applicant, and sought permission to withdraw the application without prejudice. That request to withdraw without prejudice was unanimously approved.

**8:00 PM      425 OCEAN AVENUE  
PETER & CAROLYN LYNCH,  
TRUSTEES**

**Parcel ID 924-22B  
File Date: 12/19/12**

The Board held a hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to construct additions on the existing dwelling and allow an existing play structure to remain at 425 Ocean Avenue, Map 924 Parcel 22B, in a Shoreline Expanded Single Residence District. The play structure is in the side yard setback on a pre-existing non-conforming property that has less than the required lot area and side yard setback, where the existing structure exceeds the maximum height allowed. The application was presented by Attorney Robert McCann of Danvers, and architect Monika Pauli of Pauli & Uribe in Boston. Before the hearing commenced, Mr. Lipkind stated that in the past Mr. McCann had referred work to Mr. Lipkind's law firm, but that Mr. Lipkind had not worked on any cases referred, and that Mr. Lipkind felt that he could be impartial. The applicant presented architectural plans dated December 5, 2012 prepared by Ms. Pauli, as well as a plan dated December 4, 2012 prepared by Gail L. Smith, Professional Land Surveyor. The applicant seeks a special permit for additions and to continue to maintain an existing play structure with small roofs in the side yard setback. Mr. McCann provided the Board a Modification of a Declaration of Easement pertaining to a view easement between the owners of the subject parcel and the Noyes property to the west. Paul Dougovito of 420 Ocean Avenue spoke in favor of the application. The application was unanimously approved, with conditions. Mr. Lipkind is to write the decision.

**8:15 PM      204 ATLANTIC AVENUE  
ERIN CULLEN**

**Parcel ID 67-17  
File Date: 12/20/12**

The Board held a hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to demolish an existing garage and construct a new accessory building at 204 Atlantic Avenue Map 67 Parcel 17, in a Single Residence District. The new construction is within the side yard setback, on a pre-existing non-conforming property that has less than the required side yard setback and where an existing structure exceeds the maximum height allowed. The application was presented by Architect Heather Deschenes of Marblehead, accompanied by Erin Cullen. The new garage proposed will be further from the side yard setback than the existing garage. It will be used for woodworking, as well as for garage purposes. The applicant presented architectural plans dated December 19, 2012 prepared by Ms. Deschenes, a plan dated October 11, 2012 prepared by Gail L. Smith, Professional Land Surveyor, as well as a Project Summary Pamphlet with photos of the existing house and garage, an assessors map of the area, and photos of nearby houses. The applicant presented signed approvals of this application from the occupants at 12 and 16 Gallison, 38 and 42 Locust, and 195 and 203 Atlantic Avenue. The application was unanimously approved, with conditions. Mr. Drachman is to write the decision.

**8:15 PM      17 & 21 DARLING STREET  
NANCY COFFIN, TRUSTEE**

**Parcel ID 132 – 32 & 33  
File Date: 1/14/2013**

The Board held a hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to: (1) unmerge two potentially merged parcels at 17 Darling Street Map 132 Parcel 33 or to confirm that a merger did not occur; (2) otherwise approve a subdividing removing 1,820 sq. ft. from 17 Darling Street; (3) confirm the prior Zoning Decision filed with the Town Clerk on November 6, 2012 removing 214 +/- sq. ft. from 17 Darling Street and; and (4) approve the unmerging of 17 Darling Street and 21 Darling Street Map 132 Parcel 32. 17 Darling Street is a pre-existing non-conforming property with less than the required Lot Area, Side Yard Set Back, Open Area and Parking. 21 Darling Street is a pre-existing non-conforming property with less than the required Lot Area and Side Yard Set Back and contains a pre-existing non-conforming shed. 17 Darling Street is in a Central Residence District and 21 Darling Street is partially in a Central Residence District and partially in a Harborfront District. The application was presented by Attorney Robert McCann of Danvers, who was accompanied by Ms. Coffin. The applicant presented a plan dated December 26, 2012 prepared by Gail L. Smith, Professional Land Surveyor, as well as a copy of the Marblehead GIS Map showing the assessed parcels, the Assessors cards for 17 and 21 Darling Street, and a Board Decision dated November 6, 2012 regarding a prior subdivision. Nobody else appeared in favor of or opposed to the application. The Board voted to: (a) confirm its November 6, 2012 decision, (b) confirm that Parcel B as noted on the plans submitted did merge into 17 Darling Street, but also to issue a Special Permit to unmerge those two lots, so that Parcel B would become part of 21 Darling Street, and (c) to unanimously approve the application, with conditions. Mr. Moriarty is to write the decision.



**8:30 PM        8 FOLLETT STREET  
SCOTT & CAMILLE GOODBY**

**Parcel ID 924-10  
File Date: 1/14/2013**

The Board was prepared to commence a hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to demolish an existing dwelling and garage and construct a new dwelling at 8 Follett Street Map 924 Parcel 10, in an Expanded Single Residence District and Shoreline Expanded Single Residence District. The new construction exceeds the 10% expansion limits on a pre-existing non-conforming property that has less than the required lot area, rear yard setback, side yard setback and exceeds the maximum height allowed. Prior to the commencement of the hearing, Mr. Lipkind recused himself because an abutter, Mr. Dougovito, is a client of his law firm. Mr. Lynch, attorney for the applicant, chose not to proceed with four members. The matter was continued to March 26, 2013 at 8:30 p.m., with no evidence taken.

**8:30 PM        99 PITMAN ROAD  
(Cont.)        CHRIS & MERYL THOMPSON**

**Parcel ID 156-26  
File Date: 11/13/2012**

**CONTINUED FROM 12/4/2012 – WITH EVIDENCE TAKEN:  
Tubridy, Drachman, Moriarty, Barlow & Lipkind**

The Board continued hearing a request to vary the application of the present Zoning By-law by allowing a Special Permit to construct an addition and deck expansion on the existing dwelling at 99 Pitman Road, Map 156 Parcel 26, in a Shoreline Single Residence District. The new construction is within the rear and side yard setbacks and further reduces open area on a pre-existing non-conforming property that has less than required lot area, lot width, frontage, rear and side yard setbacks, where the existing structure exceeds the maximum height allowed and where the lot has less than required open area. The application was presented by Attorney Paul Lynch of Marblehead, accompanied by Architect Graham Salzberg of Marblehead, as well as Chris Thompson. A new Plan was presented moving a retaining wall of the abutter Goodman's property. A letter in support of the application as revised was received from Mr. Goodman. A letter in opposition was received from abutter Hugh Mulligan. The matter was continued to March 12<sup>th</sup>, 2013, with evidence taken.

**ADMIN        30 PEARL STREET  
TERRANCE & ALINE LAVELLE**

**Parcel ID 150-84  
File Date: 1/23/2013**

Architect Bruce Greenwald of Marblehead appeared and made a request for chimney and window changes on administrative basis. He presented plans showing the requested changes. The request was unanimously approved.

**ADMIN        35 HALEY ROAD  
MICHAEL KARASS**

**Parcel ID 99-19  
File Date: 1/24/2013**

Builder Chris Casner of Marblehead appeared and made a request for a change to a previously approved chimney. The request was unanimously approved.

**OLD AND NEW BUSINESS:**

The Board approve the Minutes of Meeting from January 22, 2013.

The meeting was then adjourned.

Respectfully submitted,



Alan E. Lipkind

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