



**Town of Marblehead  
Zoning Board of Appeals**

Mary Alley Municipal Building  
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Marblehead, MA 01945  
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**MINUTES OF MEETING  
JULY 24, 2012**

**Meeting begins at 7:30 PM**

**Legal Ads Run: 7/5/2012 & 7/12/2012**

The regularly scheduled and noticed meeting of the Board of Appeals was called to order by Acting Chairman Moriarty at or after 7:30 p.m. on Tuesday July 24, 2012 at Abbott Hall, Marblehead, Massachusetts. Present were Board members Bill Moriarty, Bruce Krasker, Paige K. Hintlian, Leon Drachman, and Bob Schaeffner. Ms. Hintlian was Acting Secretary.

**HEARINGS:**

**7:30 PM 45 SMITH STREET  
MATTHEW NICHOLAS**

**Parcel ID 70-5  
File Date: 6/4/2012**

The applicant appeared before the Board on a request to vary the application of the present Zoning By-law by allowing a Special Permit for the construction of a new shed at **45 Smith Street, Map 70 Parcel 5**, 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 required lot area, lot width, frontage, front yard setback and side yard setback. Applicant appeared at hearing. Was a shed in same area of yard since 1962, but the shed was deteriorating and been down 1 year. Wants to put in that place because says is the only relatively level area of the yard. Only 2 ft off the set back. This shed is bigger than old, goes 4 feet out. To do 2 feet more, will have to regrade the land. Daniel Levine 47 Smith Street – in support, are the people on their lot line. He feels it is in relatively the same place. No opposition. Height is approximately 10 feet of new shed. Hintlian expressed hesitation with allowing less than 4 feet. Discussion regarding the vote. Will move the shed off the lot line 4 feet. With the usual conditions applicable, and 2 weeks to file a new survey showing new location. Approved 5-0. Krasker to write.

**7:30 PM     52 VILLAGE STREET**  
**SCOTT MAUDE, TRUSTEE**

**Parcel ID 107-10**  
**File Date: 6/8/2012**

The applicant appeared before the Board on a request to vary the application of the present Zoning By-law by allowing a Special Permit for the construction of an addition and a new porch at **52 Village Street, Map 107 Parcel 10**, in a Single Residence District. The new construction is within the side yard setback and exceeds the 10% expansion limits on a pre-existing non-conforming property that has less than required front yard setback and side yard setback. Architect Craig Bosworth appeared for applicant and applicant appeared too. House short, only 28 feet, and majority of 2nd story is dormer space. Want to add full basement for storage, 1<sup>st</sup> floor covered porch, new entry, 2<sup>nd</sup> floor hall, bedroom & bathroom. End with 3 bedrooms all in equal size. More dormers to 2<sup>nd</sup> floor to gain volume. Will match trim and siding. Met with all neighbors and 9 signed: 60, 59, 62 54 39, 55, 56, 37, & 49 Village Street all signed in assent. No one in favor or opposition present. Reasonable addition, fits character of neighborhood. Approved 5-0 with usual conditions. Drachman to write.

**7:45 PM     3 SARGENT ROAD**  
**DAVID ROBBINS &**  
**WENDY TAMIS**

**Parcel ID 903-19**  
**File Date: 6/13/2012**

The applicant appeared before the Board on a request to vary the application of the present Zoning By-law by allowing a Special Permit to allow the re-construction of, and additions to, **3 Sargent Road, Map 903 Parcel 19**, in a Shoreline Expanded Single Residence District. The new construction is within the side yard setback, exceeds the maximum height allowed and exceeds the 10% expansion limits on a pre-existing non-conforming property that has less than required lot area, side yard setback and exceeds the maximum height allowed. Attorney Bob McCann for applicant, architect Craig Bosworth, and Wendy Tramis (buying house). New plot plan entered with AC condensers shown on it. All abutters signed off and submitted (7, 1, 9 Sargent, 245 & 239 Ocean Ave). Property is 2 lots and a conservation lot across road, so don't use that for calculations. House built on a knoll. No living space in basement. It is all garage space. Bays are underground and that gives you the height as 37 feet. All setbacks met except the existing underground garage which is 12 ft. Want to build a trellis in side yard setback above the underground garage. Two special conditions – conservation commission said need rain garden to protect beach (order of conditions from conservation commission submitted) & planning board conditions about the mechanical condensers. Total square footage includes 2000 sq ft of the basement garages. They will eliminate the porch and pour new foundations for addition.



Tried to be sensitive to the sight lines. Asking for 680 sq ft on 2<sup>nd</sup> floor. 3<sup>rd</sup> floor will add a family room and 4<sup>th</sup> bedroom with deck. No one in favor or opposed. Schaeffner is concerned with the side volume of the structure and feels it is too much mass. Others in Board feel is in keeping with the neighborhood. With usual conditions 5-0 approved. Schaeffner to write.

**7:45 PM     6 FAYE CIRCLE**

**DONNA & WAYNE COLAHAN**

**Parcel ID 906-7**

**File Date: 6/25/2012**

Applicant appealing the Building Commissioner's inaction with regard to a request for zoning enforcement for property located at **6 Faye Circle, Map 906 Parcel 7**, in a Shoreline Expanded Single Residence District and Expanded Single Residence District. Thomas Murphy appearing on the appeal of the building commissioner's inaction regarding the zoning enforcement. Is really a request for enforcement of nuisance bylaw. May 31, 2012 letter from Building Commissioner Bob Ives said that 'if maintained' the replacement of the bulbs with lower wattage were sufficient. Ripman as expert cites 9 standards & concludes there is excess light coming in, that dimmed or not are a significant factor. For awhile, things were dimmer after the complaint, but is back to the way it was and intensity persists. Goes on well after 11 pm. Not looking for money damages, just a good night sleep. Board agrees most ZBA can do is to tell the Building commissioner that we think he is wrong, if applicable. Ms. Colahan has room darkening shades, but if crack it even an inch, light pours in. In favor, Linda Buchman & Louise Michaud. In opposition is Bob McCann for the Robies, the Robies & Walter Jacob as the architect that did the house. House approved in 2004 by planning Board and they review lighting. House built in conformance. April 2012 Ives went to property and met with Robies. This town has no bylaws regarding lighting levels. In May 2012, a meeting was suggested, but they wanted to do so by mail. McCann discussed possibilities to deal with the brightness with Ives. May 16<sup>th</sup> the Robies changed to 10 Watt incandescent bulbs on chandelier (20 bulbs), Also use recessed lighting instead of chandelier to try to help. Lamppost – timer to shut off at 10:30 at night and changed to 25 watt bulb and light reducing film. Garage lights sensor reduced from 5 min to 1 minute. Outside lights from 100 to 15 watt bulbs. Ives came back, lights turned as high as they can go, and said is now appropriate. All these changes since Ripman's report. After changes, Murphy wrote to Jacobs and said nothing done. Murphy claimed Jacobs said to Ives there is a problem with the lights at the house. Jacobs here to say that he never said such a thing. Robies' neighbors on both sides have no complaints. Ms. Colahan wants things turned off by 10 or put up a window treatment. Job of the ZBA is to determine whether the building commissioner has upheld his job or failed. Having



heard the evidence, we are denying application and sustaining the building inspector's determination. 5-0 application denied.

**8:00 PM     10 ADAMS & 9 SUMMIT ROADS**  
**DIANNE BARBOUR &**  
**ROBERT BUTLER**

**Parcel ID 64-20&29**  
**File Date: 6/27/2012**

Applicant appeared by the Board on an application to vary the present Zoning By-law by allowing a Special Permit to separate two back to back lots (10 Adams Road and 9 Summit Road) which have been merged for zoning purposes, into two separate lots into the same configuration and dimensions as originally created and as shown on plans recorded in the Registry of Deeds; and further request a Special Permit to divide the lot at 9 Summit Road into two separate lots both of which will have less than the required Lot Area and Lot Frontage. Upon the subsequent division of the 9 Summit Road lot, each portion will create a non-buildable lot which will then be combined with the adjacent properties at 7 Summit Road and 11 Summit Road, respectively. No new building lots will be created and no construction is proposed; the purpose of the Special Permit being to allow the transfer of land between adjoining properties. The property at 10 Adams Road has less than the required Lot Area, Frontage and Side Yard Set Back. The property at 9 Summit Road is vacant land with less than the required Lot Area and Lot Width. Both properties are numbered **10 ADAMS ROAD AND 9 SUMMIT ROAD**, respectively and are located in a **SINGLE RESIDENCE DISTRICT**. Bob McCann for the application. Color coded map put in evidence. Two lots merged and want to sell off the back parcel to the two abutters in the back of property. Will give up the back approach from Summit Road and just use the Adams road approach. 8133sq ft lot for Adams Road house and two back lots will be sold to adjacent properties and those will be around 7000 sq ft lots. Conditions for lots to be sold to neighbors. Monica Tucker, 7 Summit Road in favor but said that people in neighborhood use the road. No one else in favor or opposition. Approve with condition that lots need to be part of those two lots. Approved 5-0. Krasker to write.

**8:00 PM     123 PLEASANT STREET**  
**123 PLEASANT STREET LLC**

**Parcel ID 116-25**  
**File Date: 6/28/2012**

The applicant appeared before the Board on a request to vary the present Zoning By-law by allowing a Special Permit to allow changes to first floor elevations on the prior approved plans with respect to windows and doors and a Special Permit to allow for outdoor dining for forty seats pursuant to section 200-11A (4) with less than the required parking at **123 Pleasant Street, Map 116 Parcel 25** in a



Business One District on a pre-existing non-conforming property that has less than the required side yard setback, exceeds the maximum height allowed and has less than required parking. Attorney Paul Lynch appearing for the application with Mr. Van Otterloo and their architect. They now have a prospective tenant to put in a restaurant, movie theatre and small conference projection theatre for 40 people. They would like outdoor seating for 40 people. Mike Sinese, architect appeared. Change to 3 entrances instead of the multiple doors for store fronts. Requesting windows operable with biparting glass and two storefront retail entrances on the side closest to Anderson Street. Anderson Street also reduced the amount of glazing windows. The School Street side eliminates the glazed windows altogether. On the Roundhouse Road side, they will keep two storefronts , eliminate the pier and shift to allow better circulation in alley way between Spirit of '76. Brick windows will have spandrel glass to keep light, but can't see through because is the projection area for theatre. Spandrel glass to be light blue to create a single plane. Those are the changes to the façade. Issue of seating take up next. Courtyard 3300 sq feet total. 900 sq ft to be used as outdoor seating seasonally. Need relief for 3 more parking spaces if have outdoor seating. Submitted planning board minutes where Board supported the outdoor seating because adds "vibrancy to the streetscape." No one appeared in favor. Middle ground – Gary Eisenhower, business opposite the street on Pleasant Street, supports outdoor dining. But, thinks need a cross walk and must consider parking. Board pointed out the parking already been given relief. Karen Heffler, 19 Sewell Street, opposes eliminating even 1 parking spot. Co-owner of 3 Cod Tavern appeared to oppose the extra dining because there is already no parking on Friday and Saturday. Also a landlord to abutters and he is concerned about the noise level for outdoor dining. 19 Sewell Street, Kristine Sanford, opposed to dining because of the extra parking needed. 124 Pleasant Street, Ms. Briell already had tenants move out because of noise, taking a long time to build it and already overreaching for the area; is a residential area. Ralph Heffler, 19 Sewell Street, objects to the parking proposed and where are people going to park that work there. Bruce Simpson of 21 Sewell Street is bothered by the idea of the noise. Contained commerce would be fine, but thinks this will negatively impact the neighborhood. 137 Pleasant Street – house directly across the courtyard and 4 bedrooms facing courtyard. Want courtyard to look like a park and concerned about the noise, and keeping the environment clean. Mr. Lynch rebuttal regarding parking said relief was appropriate because abut Roundhouse Road which has 100 parking spaces. Believes outdoor dining will be beneficial to the area. Hours of operation would be when it is open, think the liquor license will put hours of use on the time at selectmen meeting. Letter in opposition from Hawleys, 22 Anderson Street regarding scale of the restaurant and the garbage, noise levels. Vote on changes to façade with conditions of original

special permit – approved 5-0. Issue of adding the 40 seats and relief from 3 parking spaces- denied by a vote of 3-2 (dissent for Moriarty and Schaeffner).

**ADMIN     4 ROOSEVELT AVENUE**  
**DEE JOHNSON**

**Parcel ID 135-12**  
**File Date: 6/21/2012**

Door, porch and roof change

Instead of porch which was approved, changed to keep the brackets on front door and create a roof. Put doors on the drawing backwards. Determined not a material or substantial change. Voted 5-0 to approve the changes.

**ADMIN     235 WASHINGTON STREET**  
**JESSICA LEE**

**Parcel ID 129-21**  
**File Date: 7/5/2012**

Window and roof change

The applicants changed architect in the interim. Would like to add skylight and reduced kitchen windows to 2 instead of three. Determined not a material or substantial change. Vote 5-0 approved.

The meeting was then adjourned.



Respectfully submitted,

Paige K. Hintlian, Acting Secretary