

BOARD OF APPEALS
TOWN OF MARBLEHEAD

Minutes of Meeting

January 24, 2017

A regular schedule and noticed meeting of the Board of Appeals was called to order by Chairman Moriarty at or after 7:30 p.m. in the Selectmen's meeting room in Abbot Hall, 188 Washington Street, Marblehead, Massachusetts. Present were board members Moriarty, Lipkind, Drachmann, Barlow, and Krasker.

63 Beach Street - Douglas and Carolyn Schluter

The board held a Public hearing on a request for an extension of a previously issued Special Permit on the property located at 63 Beach Street. This public hearing was opened on October 25, 2016 where the special permit was extended until January 31, 2017 and also continued the proceedings with no further evidence taken until January 24, 2017. The board extended the special permit until January 31, 2017 because the applicant expressed concern over allowing the permit to expire before a continued hearing date of 1/24/2017. Attorney Paul Lynch and Attorney Bob McCann were presenting on behalf of the applicant and neighbors respectively. Attorney Lynch reported to the Board that progress has been made in terms of the carriage house in order to obtain a temporary occupancy permit, he also added that Mr. Schluter had reached an agreement with neighbors to address all concerns including a condition that Mr. Schluter have use and occupancy of the carriage house through February 28th in order to do work on his Clifton Ave property. Attorney Lynch said that all landscaping, hardscaping and the main building siding would be done by June 30th and requested the hearing be continued to February 28th to ensure the Schluter's had, by that time, vacated the premises, and if so, to continue the hearing until the June 30th hearing for further review.

Attorney Bob McCann, speaking on behalf of Mr. Schluter's neighbors, clarified that the only piece they were requesting to be continued through to June 30th would be the special permit. Mr. Barlow asked the applicants if they were requesting the building permit be continued to June 30th and Paul Lynch answered that the continuation request related to the exterior only. Mr. Moriarty asked for clarity on use and occupancy of the Carriage House and asked would the status of this be updated at the February 28th meeting. McCann and Lynch stated that the applicant would update Engineering Clerk Jennifer Titus confirming the stated work had been done and the premises had been vacated prior to February 28th meeting. Mr. Barlow questioned the need for the applicant to vacate the carriage house by this date. Attorney Lynch stated that in discussing it with Attorney McCann, the client was presently not in a position to post bond to show capability of finishing the project and that this move would show some incentive to the neighbors, for the applicant to accomplish these goals. Attorney Lynch added that pending the extension of the Special Permit to June 30th, the applicants would come back at that time to report on what progress had been made and what would be done to accommodate the completion of the project.

There were no public comments. A Motion made and seconded to approved to extend the special permit until February 28th and, if the carriage house is vacated and proof presented, special permit would be extended to June 30th. All in favor 5-0. A motion was made and seconded to extend the special permit. All in favor 5-0. Mr. Krasker to write the decision.

14 Foster Street David Weldon Ring, Trustee

The board held a public hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to modify a previously granted special permit which was granted on August 22, The on the property located at 14 Foster Street in a Shoreline Expanded Single Residence new construction exceeds the 10% expansion limit for non-conforming buildings on a pre-existing non-conforming structure which exceeds the maximum allowed height.

Attorney Bob McCann spoke on behalf of the applicant first, explaining to the Board the while they had initially intend to preserve the existing granite portion of the foundation, once construction was started, it was not possible and had to be rebuilt. Mr. McCann said the location of the basement would not change nor would it be visible on the exterior. The 2nd change was to add a small addition to the deck that was not in the original plans. Mr. McCann stated the neighbors have reviewed this change and had no objection to it. Architect Tom Saltsman addressed the second set of changes which included moving a window on the back of the garage to the side of the garage and changing the garage entry and two windows in the garage from the side of the house to the front of the house (this was due to both lack of space and close proximity to a neighbor). There were no public comments. Mr. Moriarty commented that the changes were modest. A motion was made and approved to modify the Special Permit as described in the application and continue with the usual conditions 5-0.

1 Cutter Court - Robert and Cynthia Liptrot

The board held a public hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to demolish a pre-existing non-conforming single family dwelling on the property located at 1 Cutter Court in the Expanded Single Residence District. The new construction has no new dimensional non-conformities and is on a pre-existing non-conforming property with less than the required lot area and front yard setback. The relief is required solely under the Bransford Case due to the increase in gross floor area.

Architect Bob McCann presented on behalf of the Liptrots who were also present. Mr. McCann stated that the Liptrots purchased the property in June of 2016 and they proposed to demolish the existing facility which is in poor condition and construct a new larger house on the property. The lot is conforming except for lot area. He handed out a total of six documents including a GIS map with numbered lots of other properties in the area, four letters or support from immediate abutters, a package of eleven photos of existing houses in the area including the existing house the Liptrots intended to take down and a sheet documenting houses in the immediate area with specs on # of rooms, bedrooms, baths

and averages to make the point that the Liptrots were not trying to build outside the norm of what was in the area.

Discussion ensued on a previous application submitted after discussion the board decided the previous application was not relevant and this applicant can stand on its own without that comparison.

Attorney Chris Drucas representing Lockwood's questioned how the board is to determine what appropriate amount beyond a 10% increase. Also has issue with the height and overbuilding of the lot. He stated existing houses adjacent, said almost all are same height as well as the existing Cutter court. Roof lines no more than 25'. He presented photographs and google earth photos. This new house is much larger. Discussion ensued

Elizabeth Gurr 0 Cutter Court, a direct abutter to the property spoke in support of the application.

Mark White of 10 Ballast Lane, although not a direct abutter has a clear view of the property from his home. He spoke in favor of the application.

A motion was made and seconded to close the public hearing All in favor 5-0

A motion was made to approve the application with conditions. All in favor 5-0

Moriarty to write decision

105 Green Street - Green 105 Real Estate, LLC

A public hearing was held on the request to grant an extension on a previously approved Special Permit for the property located at 105 Green Street.

Scott Laramie of Cornerlot Realty Group was presenting on behalf of the Applicant, Stephen McHugh. Mr. Laramie requested a 6 month extension on a special permit that had been approved through 12/30/2016. Mr. Moriarty stated that while there was good cause before to approve the first extension due to the inability to finalize quotes and commence work, he was looking for just cause for this second extension. Mr. Laramie explained that the reason is along the same lines as previously, the applicant had intended to develop the land himself but found it to be too much. At that point, he decided to put the property on the market and had not until recently, had any interest in the property. When asked by Mr. Krasker when Mr. McHugh had put the property on the market, Mr. Laramie estimated about August of 2016.

Mr. Moriarty asked if anyone wished to speak in favor or against the application. Alexander Polunin 106B Green St. asked Mr. Laramie if 4 houses would still be built on the property, to which Mr. Laramie confirmed that Mr. McHugh was not requesting any changes to the plans and intended to sell both the plans and the permits (as is) with the property, which including building four houses in 6 months. Mr. Drachman voiced concerns over a new owner who may want to change the plans to which Mr. Laramie responded the new owner would have to follow the plans. A motion was made to close the hearing, all in favor. Mr. Moriarty asked for discovery. Mr. Barlow indicated he felt uncomfortable granting an extension for an approved design and having a new owner come in with a whole new design. Mr. Laramie responded saying that there was a buyer with a P&S and that the

intention was to build according to the existing plan. Mr. Lipkin added that if the new owner changed the design, they would have to come back to the Board. Both Mr. Moriarty and Mr. Lipkind noted that the previous extension had not yielded any results and questioned was there good cause for a second extension. Mr. Barlow indicated that after 18 months of inactivity, he felt the intent now is to sell the property and then have the new buyer come in, and if the same plans, the board would approve. Vote taken to grant the extension for 6 months from last day of previous extension date – all in favor 5-0.

7 Willow Road - Norine Arundell, Trustee

The board held a public hearing on a request to vary the application of the present Zoning By-law by allowing a Special Permit to demolish an existing 880 sq. ft. single family house and build a 1400 sq. ft. single family dwelling on the property located at 7 Willow Road in a Single Residence District. The new construction is in the rear yard setback and exceeds the 10% expansion limit on a pre-existing non-conforming property with less than the parking.

The Board determined that there was not enough information at this time to make an informed decision. A motion was made and seconded to continue the hearing to February 28th. All in favor. 5-0

95 Beacon Street - Michael and Carolyn Velji & Peter Schwarzenbach

A Public hearing on an appeal of the Building Commissioner's Action/Inaction regarding Zoning Enforcement at 95 Beacon Street (Map 190 Lot 7).

Attorney David Mack presented on behalf of Mr. Schwarzenbach and Mr. and Mrs. Velji. Attorney Mack raised the question of determining where frontage should be measured from-he pointed to the bylaw If measured from Beacon Street, then the Burkes are well in excess of double the frontage and if measured from Corn Point Road, they comply.

Attorney Mack brought up how the terms lot frontage and Street are defined in the town bylaws- Lot frontage being defined as That part of a lot which has an uninterrupted parcel boundary line abutting on a constructed street and stated that if going by the definition of street in the bylaws which states that a street is Public way or a way which the Clerk of the Town certifies is maintained and used as a public way-Mack argues that since there is no vehicular access to the property from Crown Point way, it cannot serve as frontage.

Attorney Mack stated that Corn Point is a private way and that there is a permanent injunction from Judge Piper prohibiting vehicular access from the lot to Corn Point and additionally stated that the Veljis own all the way to that property line, the Burkes do not. Questions from Mr. Drachman and Mr. Moriarty regarding the court appeal, clarified that Judge Pipers decision was for the purposes of ANR and subdivision and that frontage, in terms of zoning purposes was never challenged and that Judge Piper left open the issue as to if the applicants have the super right that allows them to use Corn Point Road for Frontage purposes. Attorney Mack also clarified that if there were vehicular access to the 97 Beacon Street property from Corn Point Road, the frontage would not be in question.

Scott Burke represented on behalf of his brothers Joseph and James Burke. Mr. Burke pointed out previous denied appeals to create 4 lots from 2 and the approved site plan special permit for 97 Beacon Street with frontage on Corn Point Rd with no requirements

that there be access over the frontage. Mr. Burke argued Mr. Macks point that Corn Point Road is a private way stating that Corn Point Road is a private way that was dedicated or open to public use when they installed a pump station that is accessed every day, the town also maintain the road plowing and sanding as necessary. Mr. Burke explained that there is no decision that stops fire or police from going down Corn Point Rd to get to the Beacon Street property if necessary and his brothers would even go so far as to build a driveway to Corn Point strictly for emergency purposes if requested. Mr. Burke also stated that the Fire Department was consulted in regards to the site plan special permit and had no objection and that, for practical reasons, a fire truck could access the 97 Beacon Street property from both Beacon and Corn Point Road. He said that in the bylaws shows nothing in the definition of street that requires that the that line on that street be the access to the property. Mr. Moriarty referred to the definition of constructed street to clarify Mr. Burkes point that even though they were not accessing the 97 Beacon Street property from Corn Point Road, by definition, they meet the requirements of suitable grade, width and adequate construction. Mr. Burke also clarified that while the judge determined the Burkes cannot access the road from Corn Point Road, they would certainly add a driveway strictly for access by emergency vehicles. Mr. Moriarty asked Building Commissioner Rich Baldacci to speak on the request, he stated that his determination was that frontage was explained in the Planning Board decision that said they had frontage on both Beacon Street and Corn Point Way and he issued the building permit based on that. No one else spoke for against the application. The board discussed the application as to what determined frontage. Mr. Drachman stated that if the intent of the bylaw comes from access to emergency vehicles then the house exceeded the maximum setback on Beacon St. Mr. Moriarty explained the to the board that granting the application would overturn the building commissioner's decision. The board voted 3-2 to deny the application and keep the building permit in effect. Yes to overturn Mr. Baldacci's decision-Mr. Krasker and Mr. Barlow. No to keep the building permit in effect-Mr. Lipkind, Mr. Drachman and Mr. Moriarty

15 Sunset Road - Andrew Bendheim

A public hearing was held on a request to vary the application of the present Zoning By-law by allowing a Special Permit to remove an existing shed, construct a detached garage and install a cobblestone driveway on the property located at 15 Sunset Road in the Shoreline Single Residence District. The new construction has less than the required front yard setback, side yard setback and open area on a pre-existing non-conforming property with less than the required lot area, lot width, front yard setback, rear yard setback, side yard setback and open area.

Architect Walter Jacobs presented on behalf of Mr. Bendheim. Mr. Jacobs showed plans that took into consideration the site, neighbors, low roof lines and keeping with neighborhood. He stated the garage would have larger setback than existing shed, going from 3.4 to 3.5 feet. Mr. Moriarty asked if there was anyone who would like to speak in support or against the project. Rick Williams of 80 Overlook Rd. stated he was in favor as it would take the kayaks off the street. Gail Shlansky of 61 Bennet Rd. questioned whether the new garage would block her view from her 2nd flood deck and main living room. She was amenable to make some sort of agreement with Mr. Bendheim but there was no

agreement presently in place. Mr. Moriarty asked Mr. Jacobs to speak to this – Mr. Jacobs stated they had purposely kept the building back and low so that if there was a view, there would not (or should not be) an issue but said they could go back and revisit the height of the garage if necessary which was only about a foot and a half higher than the existing shed. It was determined that Mr. Bendheims plans were both reasonable and would have little impact. A motion was made to approve the application All in favor 5-0. Mr. Moriarty is to write the decision.

151 Atlantic Ave - John Fischer

Public hearing g on a request to vary the application of the present Zoning By-law by allowing a Special Permit to remove an existing shed and replace with a new shed in a different location on the property located at 151 Atlantic Avenue in the Shoreline Single Residence District. The new construction has less than the required rear yard setback and side yard setback on a pre-existing non-conforming property with less than the required lot area, frontage and side yard setback.

Mr. Fischer presented an existing survey with the existing shed and his plans to move the shed into a corner with 2 feet on each side. Mr. Moriarty questioned whether 2 feet was enough to maneuver and suggested that it be extended out. Mr. Lipkind stated that with the neighboring shed on the other lot, it was a good spot. Nobody else appeared with regard to this application. A motion was made and seconded to approve the application with the condition that it be built with 3 feet from each side. All in favor. 5-0

The meeting was adjourned at 10:03 PM

Respectfully submitted,

Jennifer Smith

