



TOWN SEAL

tel: 781-631-1529

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Revision Date: 12-02-20

Town of Marblehead ZONING BOARD OF APPEALS

Mary A. Alley Municipal Building
7 Widger Road, Marblehead, MA 01945

ZBA APPLICATION

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2022 JUN 15 AM 10:48

Town Clerk

Project Address 33 MARION ROAD

Assessor Map(s) 11 Parcel Number(s) 25

OWNER INFORMATION

Signature *Fried* date JUNE 15, 2022

Name (printed) RICHARD FRIED

Address 33 MARION ROAD, MARBLEHEAD

Phone Numbers: home 781-639-0815 work —

E-mail RICHARD-FRIED@COMCAST.NET fax —

APPLICANT or REPRESENTATIVE INFORMATION (if different from owner)

Signature _____ date _____

Name (printed) _____

Address _____

Phone Numbers: home _____ work _____

E-mail _____ fax _____

PROJECT DESCRIPTION & RELIEF REQUESTED (attach additional page if necessary)

SEE ATTACHED

- Please schedule a Zoning / Application review with the Building Department by calling 781-631-2220.
- Obtain the Town Clerk's stamp and submit 12 copies of each of the following to the Town Engineer's Office:
 - the signed and stamped application (3 pages);
 - current survey plan (not older than 90 days) as prepared by a Registered Professional Land Surveyor;
 - the project design plans as required;
 - check for the applicable fee payable to the Town of Marblehead.
- Any relevant permit(s) that were previously issued must be available for review by the Board of Appeals at the scheduled hearing. (Section 3(D), Board of Zoning Appeals Rules & Regulations).

REQUIRED SIGNATURES

1. Building Commissioner (pages 1, 2 and 3)

2. Town Clerk's stamp (upper right corner)

View Bylaws - (Chapter 200, Zoning) - online at: www.marblehead.org/

Reviewed by
Building Department
For Zoning Board
Of Appeals

Town of Marblehead
ZBA-APPLICATION

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Project Address 33 MARION RD. Map(s) / Parcel(s) 11/25

ZONING DISTRICT (circle all that apply)

B B1 BR CR SCR ECR GR SGR (SR) SSR ESR SESR HBR U SU

CURRENT USE (explain) SINGLE-FAMILY DWELLING

CURRENT USE CONFORMS TO ZONING (Article IV, Table 1)

Yes ☒ No ☐ (explain) _____

PROPOSED CHANGE OF USE

No ☒ Yes ☐ (explain) _____

PROPOSED CONSTRUCTION QUALIFIES AS "Building New" (§200-7) Yes ☐ No ☒

EXISTING DIMENSIONAL NON-CONFORMITIES (check all that apply)

- ☒ Lot Area - Less than required (§200-7 and Table 2)
- ☒ Lot Width - Less than required (§200-7)
- ☐ Frontage - Less than required (§200-7 and Table 2)
- ☐ Front Yard Setback - Less than required (Table 2)
- ☒ Rear Yard Setback - Less than required (Table 2)
- ☒ Side Yard Setback - Less than required (Table 2)
- ☐ Height - Exceeds maximum allowed (§200-7 and Table 2)
- ☒ Open Area - Less than required (§200-7, §200-15.B(2) and Table 2)
- ☒ Parking - Less than required; undersized; tandem (§200-17 to §200-21) (circle all that apply)
- ☐ Other Non-conformities (explain) _____
- ☐ No Existing Dimensional Non-conformities

NEW DIMENSIONAL NON-CONFORMITIES (check all that apply)

- ☐ Lot Area - Less than required (§200-7 and Table 2)
- ☐ Lot Width - Less than required (§200-7)
- ☐ Frontage - Less than required (§200-7 and Table 2)
- ☒ Front Yard Setback - Less than required (Table 2)
- ☐ Rear Yard Setback - Less than required (Table 2)
- ☐ Side Yard Setback - Less than required (Table 2)
- ☐ Height - Exceeds maximum allowed (§200-7 and Table 2)
- ☒ Open Area - Less than required (§200-7, §200-15.B(2) and Table 2)
- ☐ Parking - Less than required; undersized; tandem (§200-17 to §200-21) (circle all that apply)
- ☐ Exceeds 10% Expansion Limits for Non-conforming Building (§200-30.D)
- ☐ Other Non-conformities (explain) _____
- ☐ No New Dimensional Non-conformities

ADDITIONAL HEARINGS REQUIRED

Conservation Commission	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Historic District Commission	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Planning Board	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

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DESIGN & SURVEY PLANS MEET -ZBA- RULES & REGULATIONS (Sections 3(A) and 3(C))

Yes ☒ No ☐ (explain) _____

Building Official  Date 6-15-22

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Revision Date: 12-02-2020

Project Address 33 MARION RD.

Map(s) / Parcel(s) 11/25

NET OPEN AREA (NOA)

Lot area = A

EXISTING

PROPOSED

Area of features

footprint of accessory building(s)

footprint of building

footprint of deck(s), porch(es), step(s), bulkhead(s)

number of required parking spaces 2 x (9' x 18' per space)

area of pond(s), or tidal area(s) below MHW

other areas (explain) _____

Sum of features = B

Net Open Area (NOA) = (A - B)

GROSS FLOOR AREA (GFA)

accessory structure(s)

basement or cellar (area >5' in height)

1st floor (12' or less in height) NOTE: [for heights exceeding

2nd floor (12' or less in height) 12' see definition

3rd floor (12' or less in height) of STORY §200-7]

4th floor (12' or less in height)

attic (area >5' in height)

area under deck (if >5' in height)

roofed porch(es)

Gross Floor Area (GFA) = sum of the above areas

Proposed total change in GFA = (proposed GFA - existing GFA)

Percent change in GFA = (proposed total change in GFA ÷ existing GFA) x 100

Existing Open Area Ratio = (existing NOA ÷ existing GFA)

Proposed Open Area Ratio = (proposed NOA ÷ proposed GFA)

This worksheet applies 1. plan by/dated 6.14.22 TAPROOT DESIGN, INC.

to the following plan(s): 2. plan by/dated 3.3.22 NORTH SHORE SURVEY

3. plan by/dated _____

Building Official _____

Date 6-15-22

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For Zoning Board
Of Appeals

ZONING BOARD OF APPEALS

Applicant: Richard Fried

Address: 33 Marion Road (Map 11, Parcel 25)

District: Single Residence

Relief: A Special Permit to construct a small addition to an existing single family dwelling that currently exceeds the right side yard setback by 11.0' +/- and the rear setback by 14.3' +/- . The lot has less than the required lot area and width.

The addition includes a shed dormer that will exceed the front setback by 3' +/- at the entry step.

With a net increase of 56 sf, the proposed structure would increase the overall GFA by 1.07% and decrease the Open Area Ratio from .85 to .83.

Proposal: The proposal before the board is to construct a small entry vestibule at the front of the home and to extend the roof to create a covered landing. The vestibule will serve as a weather-break and provide a space for removing/storing shoes and coats before entering the home as well as an area to receive packages.

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6 E
PC

Return to:

McCann & McCann, P.C.
89 Newbury Street
Suite 302
Danvers, MA 01923

Reviewed by
Building Department
For Zoning Board
Of Appeals

This space reserved for the Registry of Deeds

**TOWN OF MARBLEHEAD
DECISION OF
THE BOARD OF APPEALS**

**on
Application of
Richard P. Fried
For a Special Permit
33 Marion Road
Marblehead, MA**

Report of Facts, Findings, and Decision of the Board of Appeals on the petition of:

**Richard P. Fried
(the "Petitioner")**

TITLE REFERENCE

Essex South District Registry of Deeds, Book 8621, Page 304

and

Book 12373, Page 544

The Applicant requested that the Board of Appeals issue a Special Permit under the Zoning By-Laws approving a second story addition to an existing single-family dwelling without any increase in the footprint on a Lot which has less than the required Lot Area with the dwelling having less than the required Rear Yard Set Back, Side Yard Set Back and non-conforming tandem parking. The new additions will be partially constructed within the Rear Yard Set Back, the Side Yard Set Back, will reduce the Open Space Ratio to less than 1.00:1.00 and will increase the Gross Square Footage by more than the ten (10%) percent expansion limits. The application also requested that the construction be considered a "NEW BUILDING" to address the possibility that the limitations on the percentage of demolition in the By-Laws may be exceeded due to the condition of the existing structure which may be found when construction begins. The property is located at 33 Marion Road in a SINGLE RESIDENCE DISTRICT.

All statutory requirements relating to publication and notice were duly complied with including timely publication in the Marblehead Reporter, a local newspaper. Notice to all persons deemed by the Board to be affected by the petition, as required by Section 17 of Chapter 40A of the General Laws of the Commonwealth and the provisions of the Marblehead Zoning By-Laws, was given. The Petitioner, who was present, was represented by counsel Robert C. McCann, McCann & McCann, P.C., 89 Newbury Street, Suite 302, Danvers, MA 01923 and Designer Veronica Hobson of Taproot Design, Inc., 37 Birch Street, Marblehead, MA 01945.

The Public Hearing was called to order at or after 8:00 PM in the Selectmen's Room, Town Hall, 188 Washington Street, Town of Marblehead on July 24, 2018. The Board Members present and sitting on the hearing were:

Chairman:	William R. Moriarty
Members:	Bruce Krasker
	William Lewis Barlow IV
	Benjamin LaBrecque
	Alan Lipkind

The following documents were filed with the Petition and constitute a part of the permanent record of the Board:

The Survey entitled "PLOT PLAN 33 MARION ROAD, MARBLEHEAD, MA", Land of Richard Fried, having a Scale 1" = 20', dated April 11, 2017, revised June 23, 2018, drawn by Kane Land Surveyors, 72 Hamilton Avenue, South Hamilton, MA (the "Plan")

Design Plans and Renderings prepared by Designer Veronica Hobson of Taproot Design, Inc. dated June 15, 2018 consisting of the following:

- EX-1 EXISTING FIRST FLOOR PLAN
- A-1 PROPOSED FIRST FLOOR PLAN
- EX-2 EXISTING SECOND FLOOR PLAN
- A-2 PROPOSED SECOND FLOOR PLAN
- EX-3 EXISTING FRONT ELEVATION
- A-3 FRONT ELEVATION
- EX-4 EXISTING LEFT SIDE ELEVATION
- A-4 LEFT SIDE ELEVATION
- EX-5 EXISTING REAR ELEVATION
- A-5 REAR ELEVATION
- EX-6 EXISTING RIGHT SIDE ELEVATION
- A-6 RIGHT SIDE ELEVATION

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A copy of a prior Decision of the Board approving a Special Permit that was not recorded and was not exercised by the Petitioner.

A copy of the Marblehead GIS Map marked to show those neighbors in favor of the Application with four letters of support attached, three from neighboring owners and one from the tenant in the adjacent property.

Letters in opposition to the Application from two neighbors.

The Petitioner explained the petition as follows:

The property, in a Single Residence District (SR), is located at 33 Marion Road, Marblehead, MA 01945. The lot and existing structure are non-conforming with the following non-conformities:

Lot Area:	There are 6,952 square feet of land where 10,000 are required
Right Side Yard Set Back:	The existing dwelling is set back on the right side 3.9 feet where 15 feet are required
Rear Yard Set Back:	The existing dwelling is set back on the rear lot line .7 feet where 15 feet are required
Tandem Parking:	The property has tandem parking

The lot and existing dwelling otherwise conform to the Dimensional Regulations of the By-Laws.

The proposed new non-conformities will be:

Side Yard Set Back:	While the addition is going "up not out", the construction of the second floor addition above the existing first floor will be partially within the Side Yard Set Back.
Rear Yard Set Back:	Likewise, while the addition is going "up not out", the construction of the second floor addition above the existing first floor will be partially within the Rear Yard Set Back.
Open Space Ratio:	The Open Space Ratio, presently 1.04 : 1.00 will be reduced to .85 : 1.00, below the minimum required Open Space Ratio of 1.00 : 1.00.
Ten (10%) Percent Limit:	The addition will add Twenty-Two (22%) Percent of the existing Gross Square Footage, an expansion exceeding the limits for a non-conforming building.
New Building:	While not anticipated, depending on the condition of the existing structure when construction begins, it is possible that the condition may result in replacement of more than Fifty (50%) Percent of the structural members or exterior sheathing

The existing single-family dwelling has 4,303 square feet of Gross Square Footage. The proposed dwelling addition will result in the dwelling having 5,241 square feet of Gross Square Footage, or an increase of 938 square feet of Gross Square Footage. The Open Space Ratio will be reduced to

.85 : 1.00. The height of the addition will be at the same height as the existing ridge line on the other portions of the dwelling, presently 32.5 feet, below the maximum height of 35 feet.

The Petitioner has lived in the property for 39 years and owns the land immediately adjacent to it at 5 Wilson Road which has a separate single-family dwelling and which has been tenanted by the same tenant for over ten years. The Petitioner also owns vacant land across Wilson Road fronting on Oliver Pond which is planned, if accepted, to be donated to the Marblehead Conservation Commission.

The proposal is to expand the dwelling with a second floor addition over the existing family room and garage in order to provide space for the Petitioner's home office and a third bedroom, so that the Petitioner's grandchildren can have their own, separate bedrooms. The construction will be over and will utilize the existing first floor walls with the exception of the left side, over the family room, which is slightly set back. The new space will create a home office, new master bedroom, master bath and a walk-in-closet. There will also be alterations to the existing first and second floors, all internal.

The plans and application had been previously presented to the Board in 2017. With opposition of the immediate abutter at 31 Marion Road, it appeared that approval would not have been given and the prior application was withdrawn without prejudice. A subsequent application was presented in 2017 and a Special Permit was issued for additions that included use of the basement and less construction in the set back areas. However, after investigation of the condition of the dwelling by several contractors, it was determined that the approved plans would not be practical and that Special Permit was not exercised. The basement would have provided limited and compromised space, non-compliant ceiling height due to an uneven floor slab and high cost due to water intrusion resulting from the high water table in the area adjacent to existing ponds close to the Property.

Since the initial hearing, the owners of 31 Marion Road sold their property and the new owner is now in support of the original plans. With that support, the Petitioner re-submitted the original plans for consideration by the Board. Reference was made to the letters in support, all of which stated that the addition is well designed and that it would have no negative impact on the neighborhood.

After the Petitioner's presentation, the Board opened the hearing to the general public for comment. Jane Twombly, Trustee of the Twombly Family Trust, which is the present owner of the adjacent property at 31 Marion Road, spoke in support of the Application. Two of the neighbors, Lorraine Scholz 27 Marion Road(not present) and Hamilton Perkins 30 Marion Road, who was present, submitted letters in opposition to the application. Mr. Perkins, also spoke in opposition. The primary objection of each was the size of the structure in the neighborhood.

Thereafter, upon motion duly made and seconded, the Board voted to close the public comment portion of the hearing. There was discussion amongst the Board members regarding the Open Space Ratio and the fact that it was being reduced to less than 1.00 : 1.00. However, one of the Members, Bruce Krasker, noted that while the calculations did in fact cause this result, none of the land was being removed from open space as all construction was above the existing structure.

After further discussion amongst the Board Members, the Board made the following findings and decision:

Findings of the Board

By voting positively on the Application and granting the requested Special Permit, the Board made the following determinations and findings:

1. That all statutory requirements relating to publication and notice were duly complied with.
2. That all submitted plans and specifications meet the requirements of the Rules and Regulations of the Board.
3. That based upon the plans and specifications, and the information presented to the Board, the criteria set forth in ARTICLE IX, § 200-36B of the Marblehead Zoning By-Laws, consisting of the following, have been satisfied:
 - a. The general purposes and intent of the By-Law are met; and
 - b. The specific site is an appropriate location for such use or building; and
 - c. The use as developed will not adversely affect the neighborhood; and,
 - d. There will be no nuisance or serious hazard to vehicles or pedestrians; and
 - e. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
4. The open area ratio is being reduced to less than 1 :1 however none of the land is being removed from open space as all construction was above the existing structure.

Decision

Whereupon the Board, after discussion and comments that the project met the Special Permit criteria, voted: To grant a Special Permit with the following conditions:

- This Special Permit is issued on the condition that there shall be no construction at any time following the vote of the Board of Appeals which either differs from the construction set forth on the drawings approved and stamped by the Board of Appeals by that vote, or which is inconsistent with this Decision and these conditions, without the Petitioner obtaining prior written approval from the Board of Appeals for such construction.
- This Special Permit is issued on the condition that no demolition, building or occupancy permit, whether temporary, conditional or permanent, shall issue for the proposed work approved by this Decision unless and until a copy of this six (6) page Decision, in its entirety, and not merely the conditions, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the Decision has been filed in the office of the Town Clerk and either that no appeal

has been filed, or that an appeal has been filed within such time, has been recorded in the Essex South District Registry of Deeds and indexed in the Grantor Index under the name of the owner of record or is filed for registration, if the land is registered, and noted on the Owner's Certificate of Title, all as required by Massachusetts General Laws Chapter 40A. The application for and/or issuance of any such permit prior to the recording of the endorsed copy of this Decision shall render the Special Permit granted herein null and void.


- This Special Permit is issued on the condition that no Certificate of Occupancy shall be issued by the office of the Building Inspector if any of the construction either differs from the construction set forth on the drawings approved and stamped by the Board of Appeals by that vote, or which is inconsistent with this Decision and these conditions, without the Petitioner obtaining prior written approval from the Board of Appeals for such construction.
- If the Petitioner shall exercise any rights of construction under a duly appealed Special Permit such rights shall be at the Petitioner's sole risk that a court will reverse the Special Permit and that any construction performed under the Special Permit may be ordered undone.
- There shall be no future alterations, changes or additions whatsoever, including additions of less than 10%, to any structure, or any new structure constructed or placed on the property, except pursuant to a Special Permit granted by the Board of Appeals.

The votes by the Board Members granting the Special Permit were:

Chairman:	William R. Moriarty	-	YES
Members:	Bruce Krasker	-	YES
	William Lewis Barlow IV	-	YES
	Benjamin LaBrecque	-	YES
	Alan Lipkind	-	YES

The hearing adjourned at approximately 8:40 PM


BOARD OF APPEALS
TOWN OF MARBLEHEAD

By: 
William R. Moriarty, Chairman

Reviewed by
Building Department
For Zoning Board
Of Appeals

Decision filed with Town Clerk _____, on _____

I hereby certify that twenty days have elapsed since this decision has been filed in the office of the Town Clerk and no appeal has been filed.


Robin A. Michaud
Town Clerk-Marblehead

AUG 24 2018

2018 AUG - 2 AM 11:26

TOWN CLERK
MARBLEHEAD