A 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 Selectmen’s Room at Abbot Hall, Marblehead, Massachusetts. Present were Board members Moriarty, Drachman, LaBrecque, Lipkind, Krasker, as well as Becky Curran, Town Planner and Rich Baldacci, Building Commissioner. April 28, 2019 ZBA Minutes were approved with editorial comments to language for 16 Walnut Street.

7:30 PM – 165 Green Street – Stephen Chaisson
The Board of Appeals held a public hearing on the request of Stephen Chaisson to vary the application of the present Zoning By-law by allowing the division an existing lot into two lots, both with less than the required lot frontage and lot width, one to contain the existing single family and one to contain new single family. The preexisting nonconforming property has less than the required frontage and rear yard setback and is located at 165 Green Street in a Single Residence District. The applicant submitted a written request to continue the hearing to July 23, 2019. The Board voted to continue the hearing. No evidence taken. All in favor. Drachman, LaBrecque, Lipkind, Krasker, Moriarty.

7:30 PM – 4 Commercial Street – David Manning
The Board of Appeals held a public hearing on request of David Manning to vary the application of the present Zoning By-law by allowing a Special Permit to construct an addition to an existing single family house and garage on a preexisting nonconforming property with less than the required side yard setback and parking located at 4 Commercial Street in a Business Residential District. The new construction will be within the side yard setback and exceed 10% expansion limits for a non-conforming building.

Bob Zarelli (architect) represented the applicant and presented the ZBA application to the board. He reviewed photos of the property and explained that the property is mostly surrounded by parking lots. The project proposes to construct a safe entrance that includes a weather-protected front entrance with steps and stairs. Renovations to the building would also take place. He asked for relief relative to the tight sideyard setbacks. The Chairman asked if there was anyone in the assembly to speak in opposition or in favor. Lawrence Haben of 3 Cottage Street owns the property at 45 Atlantic Avenue, the CVS building. He said that there’s a back room in the building that has a clay ground and takes in water. He has a concern that anything built above ground will affect water flow to the building and was wondering how water will be managed. Mr. Zarelli said that they will install a French drain or pipe into a catch basin. No one else spoke in favor or opposition of the application. A motion was made and seconded to close the public hearing. All in favor 5-0. A motion was made and seconded to approve the special permit on a tight site with an additional condition for water management with usual conditions. All in favor 5-0. Drachman, Labrecque, Lipkind, Krasker, Moriarty.
7:45 PM – 54 Longview Avenue – Brian Serafin
The Board of Appeals held a public hearing on the request of Brian Serafin to appeal a decision/enforcement action of the Building Commissioner related to the construction of treehouse at 54 Longview Avenue within a Single residence district. Brian Serafin presented his appeal application in response to a neighbor’s complaint about the presence of a treehouse on the property. The building department says the treehouse is in a nonconforming location. Mr. Serafin stated that it’s the only tree in the yard and that he does not disagree with the violation but is asking to keep the treehouse. The treehouse was built about a year and half ago. The Chairman asked if there was anyone in the assembly to speak in opposition or in favor. Mr. Vitaly Vatnikov of 9 Field Brook Road spoke in opposition. He filed a complaint in 2017 when construction began; he’d asked if the treehouse was approved, further commenting that it seemed to be close to the fence above his back yard. Owner said that everything was fine. The Building Commissioner sent a letter to dismantle structure. A motion was made and seconded to close the public hearing. All in favor 5-0. A brief discussion took place and Board made the determination to uphold the Building Commissioner’s finding and denied the Appeal. All in favor, 5-0. Drachman, Labrecque, Lipkind, Krasker, Moriarty. Mr. Serafin’s option is to submit an application to the ZBA for a special permit for the structure.

7:45 PM – 23 Pinecliff – Alex and Nicole Bender
The Board of Appeals held a public hearing on the request of Alex and Nicole Bender to vary the application of the present Zoning By-law by allowing a Special Permit for an addition to an existing single family house on a preexisting nonconforming property with less than the required side yard setback and exceeds the maximum height located at 23 Pinecliff Drive in a Shoreline Single Residence District. The new construction will be within the side yard setback and exceed the maximum height and 10% expansion limits for a non-conforming building. Craig Bosworth presented the application for/with Alex and Nicole Bender (owners). The home has been in front of ZBA before and the additions are complete. They are seeking new changes that include a deck with hot tub and landscaping to finish off the property. There are no new nonconformities, no increase in gross floor area. They will be extending retaining walls on the property. The Chairman asked if there was anyone to speak in favor or opposition of the project. Dave McKiernan of 25 Pinecliff Road spoke in favor of the project and commented that he has lived in his home for nine years and when the Benders moved into 23 Pinecliff Road, the property was in a state of neglect. He supports the project to beautify the back of the house. A motion was made and seconded to close the public hearing. All in favor 5-0. A motion was made and seconded to approve the special permit with usual conditions. All in favor 5-0. Drachman, Labrecque, Lipkind, Krasker, Moriarty.

8:00 PM – Abbot Street – Frank Wetmore
The Board of Appeals held a public hearing on the request of Frank Wetmore to vary the application of the present Zoning By-law by allowing a Special Permit to construct additions to an existing single family house on a preexisting nonconforming property with less than the required lot area, lot width, front and side yard setbacks and less than the required parking located at 12 Abbot Street in a Single Residence District. The new construction will be within the front and side yard setbacks and exceed the 10% expansion limits for a non-conforming building. Frank Wetmore (owner) and Craig Bosworth (architect) presented the application for
an addition that includes a covered porch that wraps around the side of the house, and the addition of dormers to the second floor to create a master suite. The original plans had an addition and stairs and a catwalk railing/upper railing. No one spoke in favor or opposition of the project. A motion was made and seconded to close the public hearing. All in favor 5-0. A motion was made and seconded to approve the special permit with usual conditions. All in favor 5-0. Drachman, Labrecque, Lipkind, Krasker, Moriarty.

8:00 PM – 4 Garnet Street – Craig and Colleen Murray
The Board of Appeals held a public hearing on the request of Craig and Colleen Murray to vary the application of the present Zoning By-law by allowing a Special Permit to construct a shed as an accessory to an existing single family house on a preexisting nonconforming property with less than the required lot area, lot width, frontage, front and side yard setback located at 4 Garnet Street in a Single Residence district. The new construction will be within the rear and side yard setback.

Craig and Colleen Murray presented their application for a shed that was constructed to replace an existing shed that was falling apart. The new shed is larger than the old shed. At the time of construction (2018), some of the neighbors vocalized support for the shed. The old shed was 4’x 10’, the new shed is 10’ x 14’ (lengthwise). The height of the old shed was 6’-7’, peeking just over the fence; the height of the new fence is 10.5’. They received a complaint letter in August or September of 2018. The Chairman asked if there was anyone to speak in favor or opposition of the project.

- Diane Capstaff of 146 Atlantic Avenue spoke in opposition. She doesn’t remember being told about the shed and submitted a letter and pictures to the Board. She commented that the previous shed was smaller and that the new shed is larger, and it’s what she sees from her property. She proposes making the shed smaller or moving it.

- Don Dewitt of 154 Atlantic Avenue spoke in opposition and had similar concerns with dimensions not conforming to gross square footage of the original shed, that a survey had not been done, and the shed is an eyesore, and there is no room between the shed and fence for anything (possibly arborvitae) to grow.

- Craig Murray commented that they do not have a basement or an attic and that the shed is inconspicuous location for Stowaway Sweets.

- Daniel Hogan resides at 4 Garnet Road and spoke in favor of the project and said that the shed is not an eyesore.

- Alex Forsythe of 34 Beach Street spoke in favor of the project and said that he/they have a full view of the shed and insists it’s not an eyesore.

- Colleen Murray submitted a list of signatures of neighbors who are in support of the shed but could not attend the ZBA meeting who couldn’t attend the meeting.
Chairman went over the options for the applicant; the Board can vote, the applicant can withdraw, or possibly work out an arrangement with the neighbors. The applicants requested to continue the hearing to June 25th at 8:15 p.m. in the Mary Alley Building. A motion was made to continue the hearing. All in favor 5-0. Drachman, Labrecque, Lipkind, Krasker, Moriarty.

8:00 PM – 14 Mechanic Square – Charles Hibbard
The Board of Appeals held a public hearing on the request of Charles Hibbard to vary the application of the present Zoning By-law by allowing a Special Permit to reconstruct an existing wall along the property line on a property with an existing single family house on a preexisting nonconforming property with less than the required lot area, lot width, frontage, rear yard and side yard setback and parking and exceeds the maximum allowable height located at 14 Mechanic Square in an Unrestricted District. There is no new construction other than the wall.

Charles Hibbard presented the application describing the home as a single-family, half structure; their home is located on the right-hand side, Elm Street. The home shares a parting wall with #12 Mechanic Street. Charles and his wife spoke with three neighbors about the wall prior to construction and all expressed support for the project its configuration. The project went through OHDC. Mr. Hibbard was not aware that a building permit was needed for a structure over 4’ high’. A conversation about the wall included review of plot plan, pictures of the reconstructed wall that follows the path of existing wall, but is also higher to retain fill. Mr. Hibbard referred to the Memorandum of Law submitted by Cheryl Henderson’s attorney and stated that the reconstructed wall is further from 58 Elm than the former structure and that a person can now walk the length of 58 Elm and reach any part of the structure. The adjacent window sills are 5.3 above finished grade; wall is 5.10 finished grade. Pictures were submitted showing the window sills and wall. Mr. Hibbard said the intent of the wall is to improve the situation for all parties and instead of replacing the wall with in-like-kind (stone and railroad ties) it would be replaced with all stone.

Conversations about possible encroachment took place. Building Commissioner, Rich Baldacci, defined boundary fence or wall, as long as it is not a retaining wall, can be 1-2 feet. The wall is a structure and does not have a building permit, needs a building permit. It is not a repair because there isn’t validity to where the wall originally stood. Building Department doesn’t have objection to height as long as the project got approval from ZBA. A conversation about how height was determined took place. (Included the height of the old wall and overriding topsoil, a 1995 survey, an old garage that used to be on the site – the wall may have supported the garage).

The Chairman asked if anyone wanted to speak in favor or opposition of the project. Favor. Tom MacMillan, attorney, representing Cheryl Henderson spoke in opposition and referred to a document submitted to the Engineering Department on Friday, May 24th that contained a chronological history of the project and a number of disagreements, including filing an application for restoration and repair along two property lines with in a setback, wall height and width, etc. Photos were submitted showing a small gap between wall and Ms. Henderson’s property, prohibiting property maintenance efforts. Luellen Finch of 56 Elm Street spoke in opposition stating that prior to the new wall, someone could walk around Ms.
Henderson’s house and that the there is no room to do work with the new wall. Mr. Lipkind commented that was lower and seems higher and closer to the house, nearer to the windows. He has concerns about height and encroachment. Mr. Krasker inquired about the height and inquired about an engineering study. An engineering study had not been done. A motion was made and seconded to close the public hearing. All in favor 5-0. The board discussed encroachment and height issues; the inclination is to deny the special permit. The applicant asked to continue the hearing to June 25th in an effort to resolve the issue with the neighbor and possibly take 6” off the height of the wall. All in favor 5-0. Drachman, Labrecque, Lipkind, Krasker, Moriarty.

8:15 PM – 149 Pleasant Street – Anthony Paone
The Board of Appeals held a public hearing on the request of Anthony Paone to vary the application of the present Zoning By-law by allowing a Special Permit to convert an existing nonresidential building to a combined residential/nonresidential building with two residential units on the proposed second floor on a preexisting nonconforming property with less than the required lot area and side yard setback located at 149 Pleasant Street in an Business One District. The new construction will be within the required side yard, reduce the parking to less than required and exceed 10% expansion limits for a non-conforming building.

Attorney Paul Lynch represented the application and explained that the project had gone before the Design and Review Board on two separate occasions and recommendations were made and accepted by the client. The building requires renovations and they are proposing a 490 sf second story and covered parking, and a residential unit above the original structure. There will be five parking spaces; two covered spaces, three in the back (spaces will 9x20). A traffic analysis stated that the parking spaces are accessible. The project impacts open air ratios. The height is just over 27.3’. The new addition will comply with all zoning conditions. Mr. Drachman inquired and confirmed with Mr. Lynch that the project will maintain the original structure and that the new construction is around it and on top of it and all setback violations exist and there are not any new ones. Mr. Lynch said that all construction, vehicles materials will be on site; confined to that property. Richard Rocket of 165 Pleasant Street said his only concern is having the ability to pull in and out the spaces, and expressed concern about the dumpster pickup. The traffic study was referenced and Becky Curran (Town Planner) said that design review was concerned without use of shared driveway and it was approved. They have been asked to stripe spaces. All in favor 5-0. A motion was made and seconded to approve the special permit with usual conditions and two additional conditions 1) construction materials, trucks, etc. will be confined to that property and 2) the applicant will strip the boundary area. All in favor 5-0. Drachman, Labrecque, Lipkind, Krasker, Moriarty.

Respectfully submitted,

Lisa Lyons
Senior Clerk, Engineering