

TOWN OF MARBLEHEAD

BOARD OF APPEALS

Minutes of Meeting

January 24, 2023

A regularly scheduled and noticed meeting of the Board of Appeals was held on **Tuesday, January 24, 2023**, remotely on Zoom, and was called to order by Chairman Bill Moriarty at 7:30 PM.

Present were five Board members *Moriarty, Lipkind, LaBrecque, Liebman, Krasker* as well as Becky Curran, Town Planner.

This hearing was held in accordance with the provisions of the Marblehead Zoning Bylaw, and Chapter 40A of the General Laws as amended. Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this public hearing of the Marblehead Zoning Board was conducted via remote participation.

Zoom recording is available at : **NOT AVAILABLE**

Roll call was taken to ensure a quorum was present and the meeting was called to order. *Moriarty, Lipkind, LaBrecque, Barlow, Liebman, Krasker, Casey.*

7:45 PM 181 Washington Street – Nancy Mantilla and Andrew Finley (continued from November 22, 2022 – evidence taken) The Board of Appeals continued a public hearing to vary the application of the present Zoning By-law by allowing a Special Permit for a change of use from an accessory use to a single family use pursuant to sec 200-31 of the zoning bylaws on a preexisting non-conforming property in a Central Residence District. Attorney Matthew Wolverton, along with Nancy Mantilla and Andrew Finley presented the application for the property which has two dwellings – a three-story home and a carriage house at the rear of the property. The Planning Board divided it into two lots that made it almost conforming in lot area and frontage. Sitting on this hearing are Moriarty, Lipkind, Labrecque, Liebman, Casey.

Matt Wolverton represented the applicant and was with architect Peter Pitman. Mr. Wolverton re-introduced the project to the board, saying that the two lots were subdivided in July and that the structure at 181 Rear is an accessory structure. The request from the applicant is to convert the accessory dwelling unit to a single, residential use (which would require two parking spaces). After the meeting in November 2022, the plan to include parking off of Rockaway Ave was reconsidered and it was determined that there was room on the Washington Street side to accommodate parking for both the existing structure at 181 Washington Street and the carriage house. There is no need for a new curb cut. Mr. Krasker inquired about assuring two parking

spaces from Washington Street would be permanent. A ZBA access easement could be a condition. Mr. Wolverton will draft an easement for the Board to review. There were no further questions from the Board.

Ann Marie Murphy, 15 Rockaway Street, inquired about setbacks and questioned the relationship of the building – what would be the front of the building. Mr. Wolverton confirmed that current north elevation of the carriage house is the front of the building and would remain the front of the building if it's converted to address 181R Washington Street, emphasizing that the request from the application is purely a change of use. Ms. Murphy stated that she did not want the carriage house to become a home.

There was an inquiry about if the parking spaces would be deeded to the property. Mr. Moriarty stated that the decision could contain easement language Mr. Wolverton said that the decision would be recorded in part of the deed.

John Coehlo, 2 Rockaway Street, is 5' from carriage house and has concerns about the proximity to his home and any windows that might face his property. Mr. Wolverton stated that the request to Zoning Board was a matter of right.

A motion was made to close the hearing. Casey, Liebman, Moriarty, Krasker Labrecque. (All in favor).

The board discussed parking spaces and it appeared that there is enough. Mr. Krasker would like to see easement language before approving the application, which would also include language that the owners would have to come back before the Board if changes were needed in the future. Mr. Casey asked if easement language in the conditions would be perpetual. A motion was made to continue the hearing to February 28, 2023 at 8:30 PM to review the language of the easement. Casey, Labrecque, Moriarty, Krasker, Liebman (All in Favor).

APPLICATION CONTINUES TO FEBRUARY 28, 2023 at 8:30 PM

7:30 PM 34 Bubier Road – Mary Rockett and Peter Reuter

The Board of Appeals opened a public hearing on the request of **Mary Rockett & Peter Reuter** to vary the application of the present Zoning By-law by allowing a Special Permit to allow the construction of additions to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, frontage, front yard setback and parking located at **34 Bubier Road in** the Single Residence District. The new construction will be located within the front yard setback and exceeds the 10% expansion limits for nonconforming buildings. Attorney Paul Lynch and architect Jeff Tucker presented the application for new stairs off the front of the house and a covered porch on mudroom on the first floor and a 719 sf addition on the Second floor over the second floor. No one spoke support or in opposition to the application and that the home on a 9049 sf lot with the modest additions fits the scale of the neighborhood. The board had no further questions. No one spoke in favor or opposition. A motion was made to close the hearing. Mr. Moriarty said that there is extra area on the lot and with the usual conditions the Board could make findings for special permit. Labrecque, Barlow, Lipkind, Krasker, Moriarty. (All in favor).

7:45 PM 31 Jersey Street – Hugh and Brenda Greville

The Board of Appeals opened a public on the request of **Hugh & Brenda Greville** to vary the application of the present Zoning By-law by allowing a Special Permit to allow the construction of a shed as an accessory to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, lot width, frontage, front & side yard setbacks located at **31 Jersey Street** in the Single Residence District. The new construction will be located within the side yard setback. Hugh Greville represented his application for a 10' 12' shed that would mirror the back side of the garage. The garage will be used for garden and tool storage. Mr. Lipkind commented that the plans shared with the Board/gallery on screen (Zoom) indicated a 12' x 20' shed. Mr. Greville said that it was an older plan and that the actual shed would be 10' x 20' shared screen. No one spoke in favor or opposition to the shed. A motion was made to close the hearing (Barlow, Labrecque). Barlow, Lipkind, Krasker, Labrecque, Moriarty (All in favor). A motion was made to issue a special permit with the usual conditions and a notation that the shed will be 10' x 20' as shown and oriented 3.8 from side yard setback and 5' offset from the garage and reference the plot plan dated 10-22-22 in order to confirm the dimensions. Mr. Krasker asked about the exterior details and it was stated that the exterior of the house will match the exterior of the home. Labrecque, Lipkind, Barlow, Krasker, Moriarty (All in favor). **SPECIAL PERMIT WILL ISSUE**

7:45 PM 47 Glendale Road – Scott Moore

The Board of Appeals opened a public hearing on the request of **Scott Moore** to vary the application of the present Zoning By-law by allowing a Special Permit to allow the construction of additions to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, front & side yard setbacks and parking located at **47 Glendale Road** in the Single Residence District. The new construction will be located within the front and side yard setbacks and exceeds the 10% expansion limits for nonconforming buildings. Attorney Paul Lynch and architect Jeff Tucker presented the application for a second floor addition. The addition will not increase the footprint of the house and there will also be a covered entrance at the front. There were no additional questions from the Board. Ken McClure at 49 Glendale did not speak on opposition to the project and thinks the design will improve the home, but inquired about the property line, the enlarged driveway. Mr. Moriarty commented that the Board does not get involved with other laws, such as shoveling snow, etc. Mr. Lipkind stated that it appeared that work appears to be taking place already. Mr. Lynch stated that the applicant had pulled a permit as a matter of right and that the project stalled and then delayed to due to cancelation of December 2022 zoning board meeting. He said that as soon as the appeal period was over, construction would resume. A motion was made to close the hearing. (Barlow, Krasker) Labrecque, Barlow, Lipkind, Krasker, Moriarty. (All in favor). A motion was made to issue a special permit with the usual conditions. Labrecque, Barlow, Krasker, Lipkind, Moriarty. (All in favor). **SPECIAL PERMIT WILL ISSUE**

7:45 PM 286 Ocean Avenue – QBW LLC

The Board of Appeals will hold a public hearing on the request of **QBW LLC** to vary the application of the present Zoning By-law by allowing a Special Permit to allow the construction of additions to an existing single-family dwelling on a preexisting non-conforming property with less than the lot area, front yard setback and side yard setback located at **286 Ocean Avenue** in a Shoreline Expanded Single Residence District. The new construction will conform to the dimensional requirements of the By-law and exceeds the 10% expansion limits for a non-

conforming building. Attorney Paul Lynch and architect Jeff Tucker presented the application for a two story addition on the right side of the home.

Jeff Tucker shared his screen with the Board for the 1241 sf addition, with 125 feet of frontage. It exceeds the 10% expansion limit and is

They had discussions with the neighbors with respect to stormwater, a situation that has existed on the property for some time and was not alleviated. The Applicant hired Hayes Engineering and they devised a plan to maintain stormwater and divert rainwater into the catch basin on Atlantic Avenue and not be diverted onto other properties or into the bird sanctuary on Dennett Road. Plans were shared with the neighbors and the design is keeping in style with other homes on Ocean Avenue. When finished, the home will have 4700 sf, exclusive of the garage and the basement.

Mr. Krasker asked if other houses in the area included basement space in square footage. Mr. Lynch stated that he used Patriot Properties data which showed land area and living area. He stated that basement will be used for mechanical equipment and storage. Mr. Tucker stated that there may be a playroom. Mr. Barlow commented that it was an extensive addition and that front facing elevation shows the first the floor and the rear elevation appears as three stories.

Mr. Lynch presented a list of neighbors in support of the project. Mr. Moriarty asked if there was anyone present who was in opposition. Paul Kelly, 284 Ocean Avenue, stated that he had not been reached out to and not signed a letter of support. He inquired about the sideyard setback. Mr. Lynch stated that the project would not move closer to 284 Ocean and that there would be more open area in the front by removing the deck and trellis.

Sheila Gerrity, 295 Ocean Ave, commented that the houses on the ocean side are large and that the current design for 286 Ocean was large scale for that side of the street. She said that standing water on the property all year long, it's a wet property that ponds and wondered how the construction of the new home would impact the bird sanctuary. Mr. Lynch stated that he thought the property was under Conservation jurisdiction but Hayes Engineering submitted a drainage plan to Town Engineer, Charles Quigley, that found that the area was non-jurisdictional and the body of water is less than what the Conservation Commission has jurisdiction over. The plan would be to connect storm drains on Ocean Avenue and down to Sargent Road. Mr. Barlow asked if the DPW needed to approve the plan. Mr. Lynch stated that he has the endorsement from DPW Director, Amy McCue.

Mr. Moriarty asked to see the drainage plan submitted by Hayes Engineering. Tony Capachietti, Hayes Engineering 603 Salem Street, Wakefield, MA, commented that the land had been evaluated and to see if the land could hold ¼ acre foot site water. He discussed elevations and drainage on the north east corner of the property. He explained that water would be intercepted and then pumped to drain into a manhole at the edge of the road and suggested added a back-up generator to reduce impact of a flood/storm. He explained calculations of a 100-year storm and the land's ability to drain out into the Ocean within 12 hours of a storm.

Mr. Moriarty asked if the Town Engineer had seen the plans and was the concept proved to and approved by the DPW. DPW has not passed on the detail, location of power and pump sizes. He emphasized that there cannot be an increase in stormwater runoff to the neighbors. He asked if the building expansion could happen when it is known that the lot is wet.

Mr. Lipkind asked Mr. Capachietti if he designed the system and if the system is required to make the lot more suitable for this type of expansion. Mr. Capachietti stated that it's not required, and that the water could be stored. Knowing that the issue is more with the neighbors, the pump system is a consideration.

Attorney Tom Beatrice, representing abutters Stellatos and Gallants, said that he spoke with Mr. Quigley and he had not yet received the drainage plans and upon receipt, would send them to Mr. Beatrice. Seekamp Consultants were hired by Mr. Stellato and they identified that the property is in a low area and there was a big concern about flooding, it was an open issue. As late as the past Saturday, there was a pond near Mr. Stellato/s property and a sump pump was draining for two days into the street. He continued that the roof exceeds the 33' minimum and there will be a lot of water draining onto the property, more so than before.

Additional concerns mentioned included, decreased views, massive 7K sf addition when most additions averaged 3K sf, and drainage, protecting bird sanctuary.

Mr. Gallant and Mr. Stellato emphasized the need to see the plans for draining. Mr. Moriarty stated materials would be required for Board consideration.

Randy Sigler, 1 Peabody Lane, added that he hoped the Board would be mindful of right-of-way encroachments, particularly at the 286 Ocean Avenue. He asked that the ZBA issue a condition as part of the Decision that requires that the right of way be free of obstruction and if the permit is issued without the condition, it's conceivable that there could continue to be out-structures running the length of the property. Additionally, the parking on the site plan is incorrect. Parking would be located in the right of way.

Mr. Capachietti commented that the plan submitted with the application was created by North Shore Survey (instrument survey) and that the proposed parking is within bounds and would not encroach on Ocean Avenue. Plantings would be removed to accommodate parking.

Mr. Barlow commented it appeared the previous parking was wrong and new parking is on the property. Mr. Krasker asked to clarify the plot plan. Mr. Barlow would like to see the drainage system and get a letter from the Town Engineer that the proposal is effectively approved and responds to the abutters' attorney's concerns. He would like the board to review plans, comments from DPW engineer before making a judgement. Branden Scimone (owner) stated that the Mr. Quigley review the plans from Hayes and that the area was not subject to flooding. Mr. Moriarty suggested that the applicant assemble materials and continue the hearing to February. The Board voted to continue the hearing to February 28, 2023 at 8:30 PM. Labrecque, Barlow, Lipkind, Krasker, Moriarty. (All in favor).

HEARING CONTINUES TO FEBRUARY 28, 2023 at 8:30 PM

8:00 PM 31 Shetland Road – Matthew DiFrancesco

The Board of Appeals opened a public hearing on the request of **Matthew DiFrancesco** to vary the application of the present Zoning By-law by allowing a Special Permit to allow the construction of additions to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, front and side yard setback located at **31 Shetland Road** in the Single Residence District. The new construction will be located within the side yard setback and exceeds the 10% expansion limits for nonconforming buildings. Architect Craig Bosworth presented the application for an addition on the left side of the house for a family room and an addition in the back for an expanded kitchen area and second story that will be on existing footprint that is in the sideyard setback; there will be a cantilever off the master bedroom. The application is before the Board due to a previous special permit condition requiring an application for any changes. There exists a large sewer easement. 40' wide. Mr. Bosworth spoke with the Water and Sewer commission in November and asked permission to build the addition and received permission on January 3, 2023. The neighbors are full support, signed a letter Mr. Barlow inquired about the survey. Mr. Bosworth clarified areas that represented the sewer easement. No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Labrecque, Barlow, Lipkind, Krasker, Moriarty. (All in favor). The Board discussed the project. Mr. Barlow said that the document easement should be part of the Decision and that DPW permission is a condition at the beginning of construction. The Board voted to issue a special permit with the usual conditions plus written permission from the DPW to build on the easement.

SPECIAL PERMIT WILL ISSUE

8:00 PM 7 Blueberry Road – Micheal Appellis

The Board of Appeals opened a public hearing on the request of **Michel Appellis** to vary the application of the present Zoning By-law and a previously issued Special permit by allowing a new Special Permit to allow the construction of additions to an existing single-family dwelling on a preexisting non-conforming property with less than the required side yard setback located at **7 Blueberry Road** in the Single Residence District. Architect Craig Bosworth presented the application to build a greenhouse that would have water and electricity and also install a new window in the attic space of the home. There was a condition on a previously approved Zoning Board application/Special permit had a condition that required a new application for any changes. No one spoke in favor or opposition. A motion was made to close the hearing. The Board voted to issue a special permit with the usual conditions and previous conditions in effect. Labrecque, Barlow, Lipkind, Krasker, Moriarty. **SPECIAL PERMIT WILL ISSUE**

8:15 PM 12 Redstone Lane – Jennifer and Steven Pratt – ADMINISTRATIVE HEARING

Change siding material from stucco to clapboard, window change/front elevation, column design change to side decks. Architect Craig Bosworth made the request for modifications to a project approved in July 2022. The current home is stucco, painted yellow. The July application was approved with clapboard but the estimates for removal/replacing with clapboards and new cornerboards were too high. The owners would to patch and repair the stucco and install siding on the dormers only. Additionally, they would like to enlarge an existing window on the second floor and change the column design on the side decks. The Board agreed that the requested changes were not material or substantial or dimensional changes and that the Board could vote to

administratively approve the requested changes. Labrecque, Barlow, Lipkind, Krasker, Moriarty. (All in favor). **REQUESTED CHANGES ADMINISTRATIVELY APPROVED**

8:15 PM 8 Nashua Avenue – Don and Andrea Souter

The Board of Appeals opened a public hearing to vary the application of the present Zoning By-law and a previously issued Special permit by allowing a modification to a Special Permit to allow the addition of a third air handle unit to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, lot width, frontage, front, rear and side yard setbacks and open area located at **8 Nashua Avenue** in the Shoreline Expanded Single Residence District. The new unit will be located within the rear and side yard setbacks. Architect Peter Pitman, Pitman and Wardley, introduced the application stating that a home office addition, constructed over an existing one story was approved last summer. Although two compressors exist for the home, a third is needed for an independent zone for the new office. Because the compressors are in the setback, it required a new application. The condenser is small, like a back pack, and will be masked by a stone wall and heavy vegetation nearby. A 2x2 window (not showing on the elevation) was removed from an existing closet. An awning window will replace an office window. The awning window will open about 4". There were no further questions from the Board. A motion was made to close the hearing (Krasker, Labrecque) Labrecque, Barlow, Lipkind, Krasker, Moriarty. (All in favor). A motion was made to issue a special permit. Krasker, Lipkind, Barlow, Labrecque, Moriarty. (All in favor).

SPECIAL PERMIT WILL ISSUE

8:15 PM 9R Spray Avenue – Linda Garnitz (continued from November 22, 2022 – no evidence taken) The Board of Appeals continued a public hearing on the request to vary the application of the present Zoning By-law by allowing a Special Permit to allow the construction of an addition to a single-family dwelling on a preexisting non-conforming property in a Shoreline Single Residence District. The applicant has requested to continue the hearing to December. ZBA Board member Marc Liebman joined the hearing.

Attorney Matt Wolverton and architect Tom Saltzman presented the application for 9R Spray/4 Bass Rock Lane. Mr. Wolverton re-introduced the project to the board and explained the proposal to add a second floor over an existing first floor, exceeding the 10% expansion. The lot does not have frontage and has a 25' setback all around. The Garnitz' have support from all but three neighbors for the project.

Tom Saltzman reviewed the plans for the 320sf addition and the design would unify the structure and create a craftsman/bungalow style home. There is no change to the first floor, just a reconfiguration of space only, second floor addition is on the side of the home, allowing for an additional bedroom.

BJ Selenkow and Ripp Berger, 3 Bass Rock Lane, spoke in support of the project, stating that the addition was small and has minimal impact on neighbors.

Joan Zofnass, 9 Spray Avenue, spoke in opposition saying the pitched roof and expansion would deprive air, light, and views at her house.

Mary Ellen Walsh Rogalski and Will Rogalski are direct abutters to the property and are happy that the Garnitz can renovate their home

But they are unable to support the project due to three issues: 1) Expansion of second floor 2) decreased light and air and peaceful enjoyment of their home, 3) and that the addition would increase crowding. She has additional concerns about the prospective condensers installed on the property as well.

Letters submitted by Evans and Jessica Liebowicz were read.

Leonard Horowitz, 119 Rockaway Avenue, agreed with issues and does not see benefit for the neighborhood.

Bruce Goldberg, 119 Clifton Ave, walks Bass Rocks Lane a lot and says the corner is crowded.

Tonya Nye, 107 Rockaway Avenue, a resident since 1993, walks Bass Rock Lane and can't imagine what addition would do to the neighborhood.

Mr. Wolverton stated that the project went before the Conservation Commission and that conditions are imposed to protect wetlands. Ms. Rogalski appealed to the Mass. Dept. of Environmental Protection and the appeal was dismissed. He said he had meetings with Jonathan Sheldon and the Walsh/Rogalskis in November at Wolverton's office to go over everything. Concern regarding mechanical equipment took place and it was explained that all equipment would where it exists, except for mini split systems that would be hung off the side of the building. Mini splits are known to be quieter systems.

Mr. Saltzman reviewed the light study with the Board and spoke to decibel level of minisplits. Mr. Saltzman explained that his approach to project is always to speak with neighbors and community to get a general feeling. The Garnitz' put up story poles were put up for neighbors to consider and to demonstrate the 2.6" roof is dramatically less than what might be assumed.

There is not a parking lot and increasing the size of the home would not increase number of cars or people on the property. He disagreed with Ms. Zofnass' concern about prevailing winds as it relates to the addition and potential impact to the area.

A motion was made to close the hearing. Labrecque, Kraker (All in favor). Barlow, Kraker, Liebman, Labrecque, Moriarty.

Mr. Liebman commented that it was hard to argue about the prevailing winds and light study presented to Mr. Saltzman and that HCAC units and minisplits run at variable speeds.

Mr. Barlow asked about the 35' feet between the buildings and can't see how that distance would be an impediment to the light; and that the back of 5 Spray and 9 Spray get sunlight most of the day, further commenting that the light issue is a non-issue and an emotional one. The addition vastly improves the house and structure and enhances the neighborhood and adjacent property values. Mr. Kraker disagreed, commenting that the property was built prior to Zoning ordinances. Mr. Moriarty proposed approving the special permit with the usual conditions, with

an additional condition that the home remains a four bedroom home, and that parking does not impede the right of way, as to not damage other's property. The board voted. Krasker – No, Labrecque – No, Barlow – Yes, Liebman – Yes, Moriarty Yes. The application fails with a 3-2 vote.

SPECIAL PERMIT DENIED

Meeting adjourned at 10:52 PM

Respectfully submitted,

Senior Clerk, Engineering