

BOARD OF APPEALS

Minutes of Meeting

July 25, 2023

A regularly scheduled and noticed meeting of the Board of Appeals was held on **Tuesday July 25, 2023**, remotely on Zoom, and was called to order by Chairman Bill Moriarty at 7:30 PM.

Present were five Board members *Lipkind, Barlow, Labrecque, Rudolph, Liebman, Casey*.

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.

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7:30 PM 21 Washington Street – George Malcolmson – construct an addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, side yard setback, open area and parking located in the Central Residence District. The new construction will be within the side yard setback and further reduce the open area requirement. Architect Tom Saltzman (Saltzman Brenzel, Boston, MA) and home owner George Malcolmson were on the call. Mr. Saltzman explained that the property has existing nonconformities and the proposed addition needs new dimensional relief for a nonconformity in the sideyard setback. There will be 302 additional square feet to the home and a new patio, at grade, will be at the back of the house. A deck at the rear of the home will be removed and would be replaced with a new walkway. The project has received OHDC approval. Mr. Barlow inquired about the basement plan for the home. Mr. Saltzman said that they are adding a pair of doors from the street that will allow for parking within the building. Mr. Rudolph asked about the overhang into the street. Mr. Saltzman replied that there is a zero setback in the front but the overhang itself is 12". There were no additional questions from the Board. No one spoke in favor or in opposition to the project. A motion was made to close the hearing. Barlow, Labrecque (Barlow, Rudolph, Labrecque, Liebman, Lipkind). All in favor. (Deliberations) Mr. Barlow added that design brings harmony to adjacent homes and is appropriate for the area. Mr. Lipkind agreed. A motion was made to issue a special permit with the usual conditions. Barlow, Rudolph, Labrecque, Liebman, Lipkind. (All in favor). **SPECIAL PERMIT WILL ISSUE**

7:30 PM 12 Liberty Lane – Keith and Kathryn McDonald – construct an addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, frontage and front yard setback located in the Single Residence District. The new construction will be within the front and side yard setbacks and exceed 10% expansion limit for nonconforming building. Attorney Paul Lynch represented the

application for a special permit for an addition to a split level dwelling on a lot that has 11000 square feet, a portion of which is on Liberty Lane. The front elevation remains the same with the exception of an added covered porch. Back addition will be 12' on the right side and abuts the property at 10 Liberty Lane (addition will be 49' from the home at 10 Liberty Lane). The height remains the same at 26.7 feet. Mr. Liebman asked about the two sets of plans that were submitted. Mr. Lynch explained that the architect was unavailable at a previous hearing and submitted plans (plan B) and that Plan A is the controlling plan. Mr. Labrecque asked about the shed; it is compliant. The spa (shown on plan) is a pool and it does not have setback requirements. Mr. Lipkind asked about the pool and the table on the front of the site plan identifying various setbacks including a 7.5 rear yard setback. Mr. Lynch stated that the surveyor put that on the plans, additionally stating that the pool is not a structure because it's in the ground. No one spoke in favor or opposition. A motion was made to close the hearing. Barlow, Rudolph, Rudolph, Labrecque, Liebman, Barlow, Lipkind. (All in favor). The Board expressed that the only concern might be with the neighbor on the right side, but they have given support, so there is not an issue. A motion was made to issue a special permit with the usual conditions. Barlow, Labrecque, Liebman, Rudolph, Lipkind. (All in favor). **SPECIAL PERMIT WILL ISSUE**

7:45 PM 260 Ocean Street – Stephen Salemi – Request for six month extension.

Attorney Paul Lynch filed a request a six extension for the special permit issued in _____ 2022. A notice was mailed to all of the abutters 14 days prior to the hearing. He explained that the applicant was experiencing difficulty obtaining bids in a timely manner in order to begin the project before the special permit expiration date. A motion was made to grant the extension. Labrecque, Liebman, Rudolph, Barlow, Lipkind. (All in favor). **EXTENSION GRANTED**

7:45 PM 35 Pickwick Road – Matthew and Shana Smith – Request for six month extension.

In August of 2022, the Smiths were granted a special permit to take down a garage and mudroom and construct garage with bedroom above. The project went out to bid and the Smiths were in negotiation and having conversations with the bank for financing. The process took a while and the project was scheduled to being after the special permit expiration date. The Smiths requested a six month extension to allow for the project to being after the expiration date. There were no additional questions from the Board. No one spoke in favor or opposition. The board voted: Barlow, Labrecque, Liebman, Rudolph, Lipkind (all in favor) to grant a six month extension. **EXTENSION GRANTED**

7:45 PM 225 Washington Street – 225 Washington Street Condominium Trust/Julie Divirgilio – construct deck additions to an existing multi-family dwelling on a preexisting non-conforming property with less than the required lot area, lot width, frontage, side yard setback, open area and parking and exceeds the maximum allowable height located in the Central Residence District. The new construction will be within the side yard setbacks and further reduce the required open area.

Architect Craig Bosworth presented the application for decks and a second means of egress on the 3-stories-tall condo building. Each of the three units has a deck and stairs that are in

disrepair. There is no outdoor space on the property for owners to use. The building sits on the street so there is no front yard and barely space in the back yard. The two immediate abutters are in support of the project. Opposition to the project is from 20 Nicholson Street, with concerns about noise. The decks to present an open space and architect and the owners are sympathetic. Mr. Bosworth walked through the design of the stairs that includes modifying the stairs in a tight location and would include landscaping, with gardens to remain, and some trellis' to cover trash cans. The project received unanimous approval from the Old and Historic Districts Commission. Mr. Lipkind asked about being built out of sight and what could be done to reduce the noise. Mr. Bosworth said that they would try to use vegetation to shield view but admitted that voices will travel. Additionally, many properties in the area are rental properties which may represent some of the noise complaints in the area. Mr. Barlow observed that the plan for new decks at grade level and asked about the 4 rectangles on the plans. Mr. Bosworth answered that those represented stepping paving stones. Julie Divirgilio, owner of 225 Washington Street, Unit 2, has occupied the residence since 2006. She is a Trustee of the property and manages projects and handles finances. She stated that their building has never received a noise complaint and currently, there are three ladies, over aged 50, who are respectful, would continue to be so. She continued that there have been a lot of changes in the neighborhood since 2006, rental properties at 231 Washington and other properties are concerns for all neighbors who are concerned about noise. She hopes to have the right to enjoy her home and a safe point of egress.

No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Barlow, Rudolph, Labrecque, Liebman, Lipkind. (All in favor). Mr. Barlow commented the district is cheek to jowl, with very little space between the buildings and that voices will travel. The decks exist and are being used; the design does not introduce a new use, but will be more functional and the request is a reasonable one. Mr. Lipkind agreed. Mr. Liebman stated that is was a huge improvement, nice looking and appropriate. Agreement from Mr. Rudolph and Mr. Labrecque, as well. A motion was made to issue a special permit with the usual conditions. Rudolph, Labrecque, Liebman, Barlow, Lipkind. (All in favor). **SPECIAL PERMIT WILL ISSUE**

7:45 PM 1 Mitchell Road – Will Smith and Eva Antezak – construct an addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, rear yard setback, and parking located in the Single Residence District. The new construction will be within the rear yard setback. Architect Veronica Hobson, Taproot Design, presented the application for a single story addition along the left side of the home and incorporates part of the front entry porch area. The addition exceeds the rear setback by 7' and is close the 20 Euclid Avenue property. The addition will include a half bath at the first level and the kitchen will be expanded and will include a pantry. The basement level will be a crawl space. The immediate neighbor (most impacted) is in support of the addition. Bill Barlow asked about changes to the east side facing property. Ms. Hobson stated that they will be changing windows to French Doors and that area is a conforming area and they are not asking for any relief. Mr. Barlow confirmed that if it is not part of application, then it won't be included in the deliberation. Ms. Hobson stated that there remains a lot of buildable lot and would like ask the board to not have the condition that includes future permissions require ZBA approval.

No one spoke in favor or opposition. A motion was made to close the hearing (Barlow, Rudolph). Liebman, Labrecque, Rudolph, Barlow, Lipkind. (All in favor). Mr. Lipkind stated that it seems reasonable with conditions to build as shown, which would cover the French doors in the plans, and honor the request that no further open space reductions in the setbacks. Mr. Rudolph agreed. A motion was made to approve the application with the usual conditions, with the exception that no further additions or reductions take place within the setbacks. Barlow, Rudolph, Labrecque, Liebman, Lipkind. (All in favor).

SPECIAL PERMIT WILL ISSUE WITH SPECIAL CONDITION – *no further additions/reductions in setback*

8:00 PM 10 Orne Street – Janet and Adam Sogoloff – Administrative Hearing – change mechanical systems to include air conditioning unit and proposed mechanical pad. Architect Craig Bosworth presented a request to include adding a mini split air conditioning system and mechanical pad (3’x3’). The neighbors are in favor, the updated plans reflect this addition. The location of the mechanical pad is the only reasonable place to put it, the back of the building is for parking. Mr. Lipkind asked if the pad would be on the property line. Mr. Bosworth stated that it will be within the sideyard setback, for sure. Mr. Lipkind expressed concern about incrementalism and worried that neighbors might get upset. He suggested the request would require a full application and considers it to be a substantial change. Mr. Lipkind asked if there is neighbor support. Mr. Bosworth stated, they have no support was in writing. Mr. Barlow commented that because the mechanical pad and compressor sit next to property line and falls within setback, the request requires a public hearing. Mr. Labrecque stated that he would like to see neighbors support. A request was made to withdraw the administrative request. There is no need to vote on a withdrawal of an administrative request.

ADMINISTRATIVE REQUEST WITHDRAWN

8:00 PM 14 Lattimer Street – Philip and Amanda DiBuono – construct an addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, side and rear yard setbacks located in the Unrestricted District. The new construction will be within the side yard setback, reduce the open area to less than required and exceeds the 10% expansion limits for nonconforming buildings. Applicant requested to withdraw the application without prejudice. Barlow, Rudolph, Labrecque, Lipkind. (All in favor. 4). **APPLICATION WITHDRAWN WITHOUT PREJUDICE**

8:00 PM 9R Spray Avenue – Linda S. Garnitz – construct an addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, lot width, frontage, front, side and rear yard setbacks and parking located in the Shoreline Single Residence District. The new construction will be within the front and side yard setback and exceed the 10% expansion limits for nonconforming buildings. Because this is a repeat petition within two years of an unfavorable action, the petitioner also requests a determination in accordance with MGL 40A sec 16 that specific and material changes in the conditions upon which the previous unfavorable action was based. Mr. Lipkind recused himself from participating in the hearing, citing a conflict of interest. Sitting members were Rudolph, Labrecque, Liebman, Casey, Barlow. Mr. Barlow will lead the hearing.

Attorney Matt Wolverton, architect Tom Saltzman, and homeowner Linda Garnitz were on the Zoom call to represent the 9R Spray Avenue for a modest second story, partially in the front and in the sideyard setback; a 41 sf. addition.

There will be a two part vote required of the Board – a determination for a Section 16 that specific and materials changes exist and, if so, the Board can proceed with a special permit vote.

Mr. Wolverton explained that on January 24, 2023 an application for an addition at 9 Spray Avenue was presented and received considerable objection and the board denied the application. There was an appeal in land court to preserve the rights on the first application. Subsequently, the Garnitz' worked with the abutters to obtain support and are now submitting revised plans for an addition. The applicant appeared before the Planning Board to obtain approval so that a ZBA application could be submitted. The Planning Board unanimously voted in support of the project. The Rogalskis, Joan Zoffnass, and Sara and John Sheldon are the neighbors most impacted by the addition. There is no access to 9R Spray except over Sheldon property. An agreement has been made between the Garnitz' Sheldons' that no vehicles or dumpsters will be on, or over, the right of way or at 8 Bass Rocks Lane and on the north side. Furthermore, hedges will not be damaged and no vehicles for block the ability of fire trucks to enter. A motion was made to vote on if the application has specific and materials changes. (Casey, Liebman). Rudolph, Labrecque, Liebman, Casey, Barlow. (All in favor). **YES. THE APPLICATION IS A SPECIFIC AND MATERIALS CHANGE**

Plans for the addition were presented for the 94.25 sf addition, inside the sideyard setback, over the sunroom, no first floor changes. Related agreements with the neighbors include, if permit is issued, the petitioner will compensate for any property damage. During construction, insure that vehicles are secured to prevent damage to 5 Spray Avenue (Rogalski) and 9 Spray Avenue (Zoffnass) and contain vehicle exhaust. Petitioner will screen and soundproof all HVAC units. Mr. Lieban commented that the roof is small and flat with the current plans and conditions and support with neighbors (9 and 5 Spray, 8 Bass Rocks) is reasonable.

Mary Ellen Walsh Rogalski and Bill Rogalski, 5 Spray Avenue, a direct abutter, spoke in support of the project.

BJ Selenkow, 9 Spray Avenue, spoke in support of the project. (She is Linda Garnitz' sister) John Sheldon, 8 Bass Rock Lane, spoke in support of the project, based on agreements with the Garnitz'.

Joan Zoffnass, 9 Spray Avenue spoke in support of the project and appreciates the Garnitz' effort to work with neighbors.

A motion was made to close the hearing (Casey, Rudolph). Casey, Rudolph, Labrecque, Liebman, Barlow. (All in favor). Mr. Casey suggested to the Board to approve the application with standard conditions and voluntary conditions. Mr. Liebman commented that the revised plans are respectful and the showing of support is positive. A vote was made to approve the application with usual conditions. Rudolph, Casey, Labrecque, Liebman, Barlow. (All in favor). **SPECIAL PERMIT WILL ISSUE**

8:15 PM 25 Lee Street – David and Cheryl Patton – construct additions to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, side setback, open area, parking and exceeds the maximum allowable height located in the Central Residence and Shoreline Central Residence District. The new construction will be within the side yard setback, and further reduce the open area. Architect Veronica Hobson presented the application to construct two small additions to the dwelling (single level along the rear of the home and a dormer at the attic level). The project will expand the kitchen and mudroom and increase second floor of the home. A low-pitched gable roof will give head height to bathroom laundry and closet. The neighbors are in support of the project. Mr. Lipkind asked if the first floor might be used as a rental efficiency and, is it an allowed use for the property? Cheryl Patton (owner) replied that the dwelling is a legal two family house, and most of the time the space is used for family, sometimes rent. It is a pre-existing non-conforming use, listed in the tax rolls. The previous owners used it as a multifamily dwelling. The project received unanimous support from the Old and Historic Districts Commission on June 27, 2023. No one spoke in favor or opposition. A motion was made and approved to close the hearing. Labrecque, Rudolph, Liebman, Barlow, Lipkind. (All in favor). A motion was made to vote and issue a special permit with the usual conditions. Liebman, Labrecque, Rudolph, Barlow, Lipkind. (All in favor). **SPECIAL PERMIT WILL ISSUE**

8:15 PM 12 Davis Road – Davis Point LLC c/o Keane Aures – construct an addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot width and exceeds the maximum allowable height located in the Expanded Single Residence and Shoreline Expanded Single Residence District. The new construction will be within the side yard setback, exceed max height and exceed the 10% expansion limit for nonconforming buildings. Architect Craig Bosworth and attorney Matthew Wolverton presented the application for an addition located partially in the side yard setback. The addition exceeds the height requirement due to a reduction in grade. There is an easement agreement that is included as a condition that allows access over a portion of the land of an abutter. Peaches Point/Crownshield Boat Realty Trust is a shared community space and owners who have rights can access the property. Part of the addition will include a three car garage. The project has received Conservation Commission approval, Planning Board approval, and a curb cut approval. There are very large homes in the area and the existing height is 33' (shoreline district restricts height at 30', so it is currently nonconforming). The application is proposing 34.2' height. Additionally, there is a 25' sideyard setback requirement and the addition will overlap 7' into the sideyard setback. Gambrels and shed roofs will create an elegant entryway. The porch will expand and windows replaced with porch doors. There were no further questions from the Board. No one spoke in favor or opposition. A motion was made to close the hearing. (Labrecque, Barlow, Casey). Barlow, Casey, Rudolph, Labrecque, Lipkind. (All in favor). Mr. Lipkind proposed approving the application and that, because there is so much land, that they could approve application with build as shown. Casey, Barlow, Labrecque, Rudolph, Lipkind. (All in favor). **SPECIAL PERMIT WILL ISSUE**

Respectfully submitted,
Senior Clerk, Engineering