

BOARD OF APPEALS

Minutes of Meeting

September 26, 2023

A regularly scheduled and noticed meeting of the Board of Appeals was held on **Tuesday September 26, 2023**, remotely on Zoom, and was called to order by Chairman Bill Moriarty at 7:30 PM.

Present were four Board members *Lipkind, Barlow, LaBrecque, Moriarty*.

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.

7:30 PM 24 Cloutman's Lane – Amy and Patrick Connolly

The Board of Appeals opened a public hearing to vary the application of the present Zoning Bylaw by allowing a Special Permit to construct an addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required side yard setback, located in the Single Residence District. The new construction will be within the side yard setback and exceed the 10% expansion limits for nonconforming buildings.

Four Board members present to hear the application. Patrick Connolly agrees to proceed with four board members. Lidia Szydlowska from Pionarch, LLC in Beverly, MA represented the application for construction of an addition that includes a living and deck on the nonconforming lots and nonconforming structure. The project is expected to receive conservation approval in October. The Board noticed discrepancies in the site plan and that the surveyor omitted some dimensional features. The applicant acknowledged omissions on the survey and requested to continue the hearing to November 28, 7:45PM. A motion was made to adjourn the hearing to November. Labrecque, Lipkind, Barlow, Moriarty (All in favor).

HEARING CONTINUES TO NOVEMBER 28, 2023 at 7:45 PM

7:30 PM 4 Thompson Road – David Miller

The Board of Appeals opened a public hearing to vary the application of the present Zoning Bylaw by allowing a Special Permit to construct a deck addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, lot width, side yard setback and parking located in the Single Residence District. The new construction will be within the side yard setback.

Attorney Paul Lynch and architect Susan Koelle represented the application and agreed to proceed with the hearing with the four Board members present. The application is for a deck at the rear of the dwelling with an increased footprint of 268 sf and will not increase the gross floor area. The deck will be about 10" above the ground (if more than 5' above ground they would

include the area beneath in the calculations). Survey plan shows the deck in red and is 7.1 feet from side setback. The deck has no infringement on the property at 50 Humphrey Street. No one spoke in favor or opposition. A motion was made to close the hearing (Barlow, Labrecque). Lipkind, Barlow, Labrecque, Moriarty. All in favor. A motion was made to issue a special permit with the usual conditions with no additional modifications. Labrecque, Barlow. Lipkind, Moriarty. All in favor. **SPECIAL PERMIT WILL ISSUE**

7:30 PM 17 Seaview Avenue – Danielle Johnson ADMINISTRATIVE HEARING – replace egress with bulkhead structure.

Architect Jeff Tucker represented the administrative request to replace an egress with bulkhead structure, referring to the approved application of June 27, 2023 that included a window well and deep open steps along the side of the building to access the basement spaces. The cost of these foundation elements has resulted in a request to seek alternative egress solutions. The owner is requesting to remove the foundation work within the sideyard setback. This will be replaced with a modest bulkhead structure outside of the setbacks. The result will not increase the GFA and will result in a smaller footprint and associated increase in the Open Area. There were no questions from the board. The board voted that the changes were not material in nature and the administrative request could be granted. Barlow, Labrecque, Lipkind, Moriarty. All in favor.

ADMINISTRATIVE REQUEST GRANTED

7:30 PM 45 Norman Street – Ramsey and Lisa Hoguet (*continued from August 22, 2023 – no evidence taken*) – construct an addition to an existing single-family structure on a preexisting non-conforming property with less than the required lot area, lot width, frontage, front and side yard setback, located in the Single Residence District. The new construction will be within the required front yard, side yard setbacks and reduce the open area to less than required and exceed the 10% expansion limits for non-conforming buildings.

Attorney Paul Lynch and architect Jeff Tucker, representing the applicant agreed to proceed with four Board members at this time. The application is for an addition to single-family home, the dwelling has frontage on Norman Street and two sides of Gingerbread Lane; 3-fold frontage. The home is in need of repairs and a façade. The addition went through several rounds of review with the Old and Historic District and received a Certificate of Appropriateness. The plans before the ZBA Board are the OHDC approved plans. The plans have been shared with the neighbors and many have signed a letter of support. The bulk of the first floor addition is in the rear and a covered porch in the front will be similar in style to surrounding structures. The open area of .83 is due to the covered porches. The home is the only single story house on the street and second floor addition (main request) is for a bedroom. Mr. Barlow observed that when he walked the site, he's comfortable with the design and fits in well with the context of the neighborhood, and that there is plenty of space and Gingerbread Lane is a dirt path in the back. No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Lipkind). Lipkind, Barlow, Labrecque, Moriarty. All in favor. A motion was made to issue a special permit with the usual conditions. Barlow, Lipkind, Labrecque, Moriarty. All in favor.

SPECIAL PERMIT WILL ISSUE

7:45 PM 267 Humphrey Street – Gerald Alimenti

The Board of Appeals opened a public hearing vary the application of the present Zoning By-law by allowing a Special Permit to allow a change of use from one nonconforming use – combined

residential/residential to a converted dwelling on a preexisting non-conforming property with a non-conforming use and less than the required lot width, frontage, front and side yard setbacks located in the Single Residence District.

Matt Wolverton represented the applicant, Gerald Alimenti. They are both okay with proceeding with a four person board. Mr. Wolverton reviewed the property specs with the Board; 267 Humphrey is on the outskirts of town and has two residential units. A side structure, once a hair salon operated until Covid and then closed. Subsequently North Shore Children's Theater moved in to the salon space and appeared before the Board for a change of use. Tonight, the application before the board is for change of use from commercial use to residential use. Conversion would include removing a canopy and adding some windows. There is no dimensional relief requested. Parking would be in the rear of property and has sufficient space for two cars per unit. Mr. Barlow asked about potential bottlenecking with parking and parking near the entrance. A conversation about parking spaces in tandem was considered. Mr. Moriarty asked if the school has vacated. Mr. Wolverton replied that it had vacated. A letter from Andrea Young at 6 Winthrop Street expressed concern about the land sloping and potential flooding. Mr. Wolverton showed parking area and suggested that lawn and vegetation/rhododendrons could be planted to absorb rain.

A motion was made to close the hearing. (Barlow, Labrecque). Labrecque, Barlow, Lipkind, Moriarty. All in favor. The Board discussed the application and potential ways to mitigate the water. Mention was made of a similar story of an applicant's ability to demonstrate adequacy of drainage on Ocean Avenue. It is the responsibility of the owner to keep water on the property. Town Planner Becky Curran suggested adding a condition that prior to the issuing of an occupancy permit, the owner would have to submit a statement from an engineer that water would remain on property or offer mitigation solutions.

The Board suggested having a licensed engineer create a report or plan stating that no material increase in runoff. There appears to be competing evidence with the neighbor and applicant.

A motion was made to continue the hearing to November 29, 2023 and take additional water mitigation evidence at that time. (Barlow, Labrecque). Labrecque, Barlow, Lipkind, Moriarty.

HEARING CONTINUES TO NOVEMBER 29, 2023 at 7:45 PM

8:00 PM 45 Beacon Street – Jennie and Jon Putnam

The Board of Appeals opened a public hearing to vary the application of the present Zoning By-law by allowing a Special Permit replace an existing detached garage with a new garage as an accessory to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot front and side yard setbacks and that exceeds the maximum height located in the Shoreline Single Residence District. The new construction will be within the front & side yard setback.

Architect Walter Jacob presented the application for John and Jennie Putnam. Architect Eli Albanese from Walter Jacob Architects was also present. Mr. Jacob explained that the Putnams have lived at their home for 7-8 years and having restored the main house. They would like replace the existing garage that sits on the back of Beacon Street which has a difficult access due to a nearby seawall. Teaming with OHDC the design recreates the garage and relates back to the

design of the house. The garage will be constructed away from the street but will still be in the setback. The garage will feature an accessory structure above with roof pitch for a remote office. The project also received approval from the Planning Board and the Conservation Commission.

There were no further questions from the Board. No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Lipkind, Barlow, Labrecque, Moriarty. All in favor. A motion was made to issue a special permit with Build as Shown and Delay of Permit conditions. No need to impose further restrictions on construction. Lipkind, Barlow, Labrecque, Moriarty. All in favor. **SPECIAL PERMIT WILL ISSUE**

8:00 PM 27 Mugford Street – APPEAL Margaret Clark

The Board of Appeals opened a public hearing to appeal the Building Commissioner's action regarding a request for enforcement for activity on the property located at **27 Mugford Street**.

This hearing does not require super majority for Appeals; needs only a simple majority.

Thomas McMillan and Kristen Yassenka represented the Appeal for Margaret Clark regarding a Building Commissioners denial letter of June 28, 2023 that supports the decision of the wiring inspection on an adjacent property. Ms. Clark owns 29 Mugford, neighbor at 27 Mugford is 4' away. Electrical service on the side of 27 Mugford overhangs on the 29 Mugford property. It was explained that on/around May 12, 2023, Ms. Clark contacted Town of Marblehead electrician Ron Marks saying the neighbor had not asked for permission to use her property for overhanging wires on part of her property. Mr. Marks' email of May 22nd stated that the service location was the only option and he approved the installation. A written demand on June 5th requesting enforcement was sent, and was subsequently denied by the Building Commissioner, Bob Ives (letter stated national and state of Massachusetts electrical codes and chapter 30 building codes).

Mr. Ives was on the Zoom call and explained the circumstances of the two properties, the narrow driveway that separates the two, location of meters sticking out alongside the driveway, and the 27 Mugford owner's concern for safety.

A was made to town to see if there were alternative locations, Marblehead Electric Light Colin Coleman and the owner and electrician reviewed various locations - unviable due to various concerns (door and condenser locations). The decision was made to trust the decision of the Town's electrical inspector with over 25 years' experience to make the decision for placement. Mr. Ives deferred to his judgement.

A question: Where does inspector get the authority to make a judgment? Mr. Ives believes national building code gives inspectors the discretion even though there are special space requirements. If Ron Marks says he has the authority, he has authority of any all wiring in the Town, residential or commercial.

Mr. Barlow asked if the overhead wire is trespassing the property and is that permissible? What does the law permit and doe utilities have some exemptions. In this case, Building Commissioner, wiring and the town light engineers would make determination.

Mr. Lipkind observed that survey is provided from Gaunt's/27 Mugford plan, the fence has been in place for a while, electrical service does not overhang the fence. A conversation about the fence representing line of occupation took place. No one else spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Lipkind, Barlow, Labrecque, Moriarty. All in favor. Hearing is closed.

The Board discussed the issue at hand. Mr. Moriarty stated that he's not confident that the appeal request is within jurisdiction, determining electrical code. Lipkind concurs that the Board does not have the authority unless the Building Commissioner does something that relates to zoning codes.

The vote would be to deny the Appeal because the Board lacks jurisdiction.

Lipkind – Deny the appeal

Labrecque – Deny the appeal

Barlow – Approve the appeal

Moriarty – Deny the appeal

APPEAL IS DENIED (3 -1 in favor of denial)

8:15 PM 1 Gregory Street – Thomas and Ashley McMahon

The Board of Appeals opened a public hearing on the request to vary the application of the present Zoning By-law by allowing a Special Permit to construct an addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, rear and side yard setbacks open area and parking land exceeds height limit located in the Shoreline Central Residence District. The new construction will be within the rear and side yard setback and further reduce the open area.

Architect Bruce Greenwald represented the application for the McMahons (also on the Zoom call). The request is for a dormer over an existing footprint and has received approval from the Old and Historic District. Presently, there is a widowswalk and an unsightly vertical drop – the dormer will go into that space and contain a bathroom. Open air space is reduced by a minor amount due to raising the head room over 5'. No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Barlow, Labrecque, Lipkind, Moriarty. A motion was made to issue a special permit with the usual conditions. Lipkind, Barlow, Labrecque, Moriarty. **SPECIAL PERMIT WILL ISSUE**

8:15 PM 7 Redstone Lane – APPEAL – Mark Medlinsky

The Board of Appeals opened a public hearing to appeal the Building Commissioner's action regarding a request for enforcement for activity on the property located at **7 Redstone Lane**.

Attorney Sean Regan represented the Appeal application regarding vegetation and height of light placements at 7 Redstone Lane. The issue is code enforcement issue and the Board can't enforce it. It was stated that the Building Commissioner didn't refuse to enforce the issue but time had lapsed and the fact that it was delayed, by operational law, it was denied (action wasn't taken during the time period). Per Planning Board, vegetation is required to be a certain height and any light should not trespass from one site to another. Mr. Barlow stated that he has walked the site twice, accessed the site via easement. The vegetation/shrubbery is behind the wall alongside Redstone Lane. The alleged light is in a courtyard (incandescent string lights) and is not sight lighting. Building Commissioner Bob Ives indicated that his predecessor (John Albright) brought

the matter to his attention on/about May 15, 2023. Pictures were taken and he made the determination at that time.

He further explained that there's a gate at Redstone Lane. There are two pillars and one pillar had a brass lantern and that three lightbulbs were bright. He had a conversation with the owner and that they were required to change lightbulbs to reduce the brightness. New 25 watt bulbs were subsequently installed in the fixture. On May 15th, a string of event lights were placed, down a pathway to the front door of #7. The lights on the path were so guests could see is not unreasonable.

Mr. Moriarty asked how the lights are controlled. Mr. Ives explained that some light spills onto the gate but is not egregious in any way, not like fog lights which emit more excessive light. Mr. Ives suggested quieter lighting to the owner. Mr. Ives was not aware that vegetation was an issue and hadn't been addressed. The condition imposed by the Planning Board stated that site lighting would be controlled to keep light on sight.

Mr. Barlow asked if neighboring properties were bothered by light. Town Planner Becky Curran brought up two letters from neighbors. Sean Methuen at 5 Redstone Lane stated the lights had little negative impact and good in the dark. The lights are not troublesome. Ted and Julie Moore at 16 Redstone Lane stated the lights are not troublesome.

A motion was made to close the hearing. (Barlow, Labrecque). Lipkind, Barlow, Labrecque, Moriarty.

Mr. Moriarty stated that regarding the lights, there doesn't appear to be evidence that light is trespassing and the stipulation doesn't say to prevent it (avoid it). The home owners complied by reducing the wattage. Regarding the hedge, there is a stipulation that new vegetation should not reach more than 8' high. Mr. Moriarty encouraged Building Commissioner Bob Ives to revisit the site and take action required, including noticing a violation, but he shouldn't issue a violation. Mr. Barlow agreed with the comments. Mr. Lipkind disagreed stating future plantings should be 8', existing plants can be 8.6'. He believes Mr. Regan's client has shown a violation. By sending Mr. Ives out there, it shows they haven't proven a violation. A motion would be deny the Appeal in all respect but encourage the Building Commissioner to go out to the site and investigate to see if vegetation is a problem. Two votes regarding the appeal – deny the the appeal for light violation; second vote instruct the inspector/commissioner to visit the site to determine if there's a violation

First vote - light trespassing - appeal

Lipkind – Deny

Barlow – Deny

Labrecque – Deny

Moriarty – Deny

Light trespassing Appeal Denied – All in favor

Second vote – instruct a building inspector to visit the site to determine if there's a violation

Lipkind – Yes

Barlow – Yes

Labrecque – Yes

Moriarty – Yes

Site visit to determine vegetation issue – Yes. All in favor.

Mr. Moriarty thanked Board Members Barlow, Labrecque, Lipkind, Moriarty for extending the Board services for another year.

A motion was made to adjourn the hearing.

Barlow, Labrecque, Lipkind, Moriarty. All in favor.

Respectfully submitted,
Senior Clerk, Engineering