

BOARD OF APPEALS

Minutes of Meeting

November 28, 2023

A regularly scheduled and noticed meeting of the Board of Appeals was held on **Tuesday November 28, 2023**, remotely on Zoom, and was called to order by Chairman Bill Moriarty at 7:30 PM.

Present were five Board members *Lipkind, LaBrecque, Drachman, Barlow, 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.

Roll call for attendance: Bill Barlow, Ben Labrecque, Leon Drachman, Alan Lipkind, Bill Moriarty.

7:30 PM 16 Hathaway Street – Isaac Dyer and Julie Duffy – Administrative Hearing –

Requesting administrative approval for second floor window revision and lower deck reduction. Tony Barletta architect (Rob Bramhall Architects – Andover, MA) represented applicants' request for an administrative approval for a second floor window revision and a deck reduction. The applicants were approved for a special permit for an addition a year ago, subsequently came back for a window change, and are appearing for a second administrative request for minor modifications. There were no questions from the Board. A motion was made to the close the hearing. (Barlow, Labrecque). Barlow, Labrecque, Drachman, Lipkind, Moriarty. (All in favor). The Board agreed that the changes were non-material in nature and approved the administrative request for a deck reduction and window change. Barlow, Labrecque, Drachman, Lipkind, Moriarty. **ADMINISTRATIVE REQUEST APPROVED.**

7:30 PM 21 Sunset Road – Appeal – James G. Bailey – appeal the Building Commissioner's action regarding a request for enforcement for activity on the property located in the Single Residence District.

Attorney Ken Shutzer and owners James and Marguerite Bailey (169 Jersey Street) were on the Zoom call to explain the Appeal application for their neighboring property at 21 Sunset Road regarding trees and plantings that were not in accordance with a prior special permit that had a special condition that would arborvitaes maintain a height of 9'. Prior owners (McCanns) were denied a special permit in 2008 and then presented a modified plan with a conditional allowance for a house and pool at 21 Sunset Road. The landscaping plan indicated plantings in the southeast corner that included arborvitaes (19) not grow to a height of more than 9'. The McCanns sold the house to the Smiths and they removed arborvitaes and planted new trees. Mr. Bailey had a conversation with Building Commissioner, Bob Ives, who suggested an Appeal

before the ZBA to discuss the matter. Mr. Bailey displayed photos with the arborvitaes, maple trees, and flagpole and his understanding that the special condition in the previous decision was a condition that would continue to next/future owners.

Mr. Lipkind stated that he thought the intent of the previous decision was to alleviate the concerns of the neighbors and the pool and house was conditioned upon a landscaped plan and that anything that had the potential to grow should not be planted. A landscape plan from the conservation commission approval (at that time) was used as reference. Charles Smith, current owner of 21 Sunset Road (owner of the 21 Sunset property for four years) understood that the arborvitaes were planted for blocking the view of the pool and that the neighbor was appealing to the Board for a right of view. Mr. Smith said that Bob Ives, Building Commissioner said that trees were fine. The flagpole was part of a permit two years ago and was related to repair work for the seawall and dock.

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

Bill Barlow asked for clarification on what rights people have regarding water views. Mr. Moriarty stated that there are not rights to views but the previous owners agreed that there would be preservation of keeping arborvitaes trimmed. Mr. Lipkind read that that last portion of that decision stated arborvitaes should not exceed 9' in height. Given the merits of the Decision, Mr. Moriarty was leaning towards agreeing with Mr. Ives. Mr. Lipkind stated that he did not agree and referred to the favored application subject to the landscape agreement with trees. Mr. Drachman stated that he can imagine why the 9' height restriction was put in place at the time and could deduce that it was to protect a view at the time.

A vote was held and a *yes* vote would be in favor of the appeal/applicant and that the building commissioner was wrong. A *no* vote would be a vote against sustaining the Building Commissioners decision and that he was right.

Drachman Yes
Barlow No
Lipkind Yes
Labrecque No
Moriarty No

APPEAL DENIED (3-2 deciding in favor of the Building Commissioner's decision).

7:30 PM 169 Jersey Street – James G. Bailey – 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 and side and rear yard setbacks, located in the Shoreline Single Residence District. The new construction will be located within the side yard setback and exceed the 10% expansion limits for nonconforming buildings. Architect Bruce Greenwald represented the application for an addition to the home at 169 Jersey that would infill the space on the right side of the existing home. The idea being, that the owners are looking to the future would like accommodations to owners to age in place. Plans for the addition were approved with standard

conditions by the Planning Board and neighbors have no objections to the addition. There were no additional questions from the Board. No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Drachman, Labrecque, Barlow, Lipkind, Moriarty. (All in favor). The Board agreed to make special permit findings and issue a special permit with the usual conditions. Barlow, Labrecque, Drachman, Lipkind, Moriarty. (All in favor). **SPECIAL PERMIT WILL ISSUE.**

7:45 PM 25 Lee Street – David Patten – Administrative Hearing – Requesting an administrative approval for window and door location changes. Veronica Hobson from Taproot Design represented Mr. Patten's administrative request to relocate (flip the location of a door and window) on plans that were previously approved by the Zoning Board of Appeals in July 2023. A motion was made to close the hearing. Labrecque, Barlow, Drachman, Lipkind, Moriarty. (All in favor). The Board agreed that the changes requested were of a non-materials nature and that the Board could approve the requested changes. Barlow, Labrecque, Drachman, Lipkind, Moriarty. (All in favor). **ADMINISTRATIVE REQUEST APPROVED.**

7:45 PM 24 Cloutman's Lane – Amy and Patrick Connolly – (continued from September 26, 2023 - evidence taken) 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. Labrecque, Lipkind, Barlow, Moriarty were at the original hearing but Mr. Drachman was not. The hearing will proceed with four Board members. Adriana Fernandez, Pionarch Architects, represented the continued application for an addition. A new survey plan, correcting discrepancies from previous submittal, was submitted to Board members for consideration at this hearing. The project was approved by Conservation Commission. The addition will expand the basement and include a new deck and living room space above. There are no changes to the front of the home. There were no additional questions from the Board. No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Barlow, Labrecque, Lipkind, Moriarty (All 4 in favor). A motion was made to issue a special permit with the usual conditions. Labrecque, Lipkind, Barlow, Moriarty. **SPECIAL PERMIT WILL ISSUE.**

7:45 PM 267 Humphrey Street – Gerald Alimenti – (continued from September 26, 2023 - evidence taken) 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. Board members Labrecque, Barlow, Lipkind and Moriarty (4) were present for previous hearing.

Attorney Matt Wolverson representing owner, Gerald Alimenti, updated the Board with new information relative to drainage and parking that included new plans developed by Hayes Engineering; hard copies had been distributed to the Board in advance of the continued hearing. The original application was a request for a change of use from a commercial property to three residential units. A neighbor expressed concerns about the parking and runoff at the prior hearing. Hayes Engineering prepared a schematic drainage design with the intent to mitigate surface runoff and includes a drywell to capture and contain water. Additionally there is a stone

apron and curb around the driveway. Additionally, the parking area shifts a further from the property than originally proposed – reference plans dated November 21, 2023. No one spoke in favor or opposition to the project. A motion was made to close the hearing. Barlow, Labrecque). Labrecque, Lipkind, Barlow, Moriarty (All in favor/4). In view of the drainage plan and moving the parking area, the Board voted to issue a special permit with the usual conditions that includes incorporation and compliance with the schematic drainage design referenced in the 11/21/23 Hayes Engineering document. Barlow Labrecque Lipkind Moriarty. (All in favor/4) **SPECIAL PERMIT WILL ISSUE.**

8:00 PM 30 Pilgrim Road – Ronshagen Residence – Administrative Hearing – Requesting administrative approval for changing windows on the front facade. This includes shifting some windows as well as providing additional window units. Jeff Tucker, Tucker Architects, presented plans for revising window plans on the front elevation of 30 Pilgrim Road. The Board issued a special permit for additions and alterations to a nonconforming structure in March 2023. There we no additional questions from the Board. No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Barlow, Labrecque, Lipkind, Drachman Moriarty. The Board decided that the changes were non-material I nature and window changes could be approved. Labrecque, Drachman, Barlow, Lipkind, Moriarty. (All in favor). **ADMINISTRATIVE REQUEST APPROVED.**

8:00 PM 15 Trinity Road – Regina and Cody Brown – construct an addition to an existing single-family dwelling on a preexisting non-conforming property with less than the required lot area, side and front yard setbacks and parking, located in the Single Residence District. The new construction will exceed the 10% expansion limits for nonconforming buildings. Attorney Paul Lynch represented the application for a one-story 540 sf addition to the rear of the property and would include a basement area. Exiting screen porch would be removed. Proposed project meets all dimensional requirements but is before the Board because project is 10% increase for a nonconforming structure. The open air ratio is 1 – 1.14 and is in compliance with the ratio under the bylaw. There we no additional questions from the Board. No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Barlow, Labrecque, Drachman, Lipkid, Moriarty. (All in favor). A motion was made to issue a special permit with usual conditions. Labrecque, Barlow, Lipkind, Drachman, Moriarty. (All in favor) **SPECIAL PERMIT WILL ISSUE.**

8:00 PM 41 Smith Street – Charles and Monika Ngowe – 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, side and front yard setbacks located in the Single Residence District. The new construction will be located within the front and side yard setbacks and exceed the 10% expansion limits for nonconforming buildings. Architect Walter Jacob presented the application for an addition on behalf of the homeowners, Charles and Monika Ngowe. The existing house is a nonconforming structure and the addition will build on the existing footprint except for the front porch. The application is before the board because the addition exceeds the 10% expansion rule. The addition includes taking the roof off of the home and adding a third floor. The two immediate abutters have been informed about the project and did not have any objection. No one spoke in favor or opposition of the project. A motion was made to close the hearing. (Barlow, Labrecque). Labrecque, Barlow, Drachman, Lipkind, Moriarty. (All in favor). A motion was

made to approve the application and issue a special permit with the usual conditions. Barlow, Labrecque, Drachman, Lipkind, Moriarty. (All in favor). **SPECIAL PERMIT WILL ISSUE.**

8:15 PM 189 Pleasant Street – Old Town Properties LLC/Julius Sokol – convert the existing combined residential commercial building to a converted dwelling at on a preexisting non-conforming property with less than the required lot area and side yard setback, located in the Business One District. Attorney Paul Lynch and architect Derek Bloom presented the application to allow for an existing building (unchanged) to be converted into a dwelling. The property has the required parking that includes one business parking space and two parking spaces for each residential unit. No one spoke in favor or opposition. A motion was made to close the hearing. (Barlow, Labrecque). Lipkind, Drachman, Labrecque, Barlow, Moriarty (All in favor). A motion was made to allow for the conversion and issue a special permit. Barlow, Labrecque, Drachman, Lipkind, Moriarty. (All in favor). **SPECIAL PERMIT WILL ISSUE.**

8:15 PM 6 Atlantic Avenue – Atlantic Mayflower Realty Trust – change form a commercial use to a combined residential/commercial building with a commercial use on the first floor and six residential units on second and third floor and a special permit for addition to an existing building at on a preexisting non-conforming property with less than the required lot area, side yard setback, open area and parking, located at in the Business One District. The new construction will be located in the side yard setback and further reduce the open area and parking and exceed the 10% expansion limits for nonconforming buildings. Attorney Paul Lynch explained that the owner of the property Atlantic Mayflower Realty Trust has the property under agreement with JB Capital, an agreement that is subject to conditions. The applicant is requesting a variance and a special permit to convert the space into one non-residential use space and six residential units. It is a requirement Business One district that allows for only three units and the application seeks six units. Six units are necessary to make the project economical feasible and to alleviate financial hardship from construction and interior clean-up costs.

Mayflower Cleaners ceased operations last year and is a vacant building. In 2004, the Board of Appeals granted a permit for a second floor and attic (4094sf). There are two parking spaces at the rear of the building, off of Washington Street. Mr. Lynch continued, the size of the building prohibits large business use and location of the building limits its potential for a total commercial use (it is not near retail and lacks parking which deters from potential office space use).

Zoning by laws allow for combined residential and non-residential and the plan would be reduce the commercial space and remaining interior space would become six indoor parking spaces. Second level would have 3500 sf for three units and additional three smaller units on the third floor/attic level that would have dormers in the roofline. The location would have ready access to public transportation.

Mr. Lynch reiterated that the cost of acquisition and required improvements would cause a delay in construction. The building would continue to lay idle. The ZBA considered a financial hardship in the past at 197-183 Humphrey Street. Mr. Lipkind asked what the hardship is. Mr. Lynch stated that variance is for accepting the six units to be developed. Having the third floor units makes the project financially feasible. The special permit would be for the dormer additions on the third floor. Mr. Sokol spoke to the series of cleanups required that is in excess of \$400K.

Mr. Barlow commented that the attic is not really a third floor and reconfiguring it to be three units didn't seem like it could happen. There was a brief conversation about area properties with parking and use and about affordable housing, and if the units were proposed for affordable housing. It was stated the units would not be considered affordable housing at this time. The question about financial hardship was reintroduced and Mr. Lynch spoke to the total cost of construction, removing existing infrastructure and putting in indoor parking. Mr. Barlow spoke to fixing the sidewalk. Mr. Lynch said that there would be new water and fire protections installed and curbs and sidewalks could be revised.

There were no further questions. Jack Attridge spoke and had concerns about the parking spaces for all of downtown and for the commercial spaces and residential units at this location. – technically 14 spaces. He thinks the development would be problematic.

A conversation about financial hardship consideration are usually due to site conditions (topography, soil, or other structural considerations). Section 10 of Chapter 40 bylaw.

Mr. Lynch asked to withdraw the application without prejudice. Motion was made to allow the application to be withdrawn without prejudice. (Barlow, Drachman). Barlow, Labrecque, Drachman, Lipkind, Moriarty. (All in favor). **APPLICATION WITHDRAWN WITHOUT PREJUDICE.**

Final comments from Board Chair, Bill Moriarty, expressed the Board's deep gratitude to Town Planner, Becky Curran for all her work in recent years and wished her well in retirement. Mr. Drachman stated that Becky did amazing work for the Board and she will be missed. Mr. Barlow echoed sentiments and has always been impressed with savvy and perseverance, wishing her the best.

Next Zoning Board of Appeals meeting is January 23, 2024.

Meeting adjourned

Respectfully submitted,
Senior Clerk, Engineering