

**BOARD OF APPEALS
TOWN OF MARBLEHEAD
BOARD OF APPEALS
Minutes of Meeting
March 27, 2018**

A regularly scheduled and noticed meeting of the Board of Appeal was called to order by Chairman Moriarty at or after 7:30 p.m. in the Selectmen's Room at Abbot Hall, 188 Washington Street, Marblehead, Massachusetts. Present were Board members, Lipkind, Barlow, Moriarty (Chairman), LaBrecque, Drachman, and later, Rudolph (to hear 7 Lincoln Ave).

7:30 P.M. – 42 Lee Street, 54 Lee, LLC – (Request to continue this hearing to May 22, 2018 – no evidence taken)

At the written request of the applicant, a motion was made and seconded to continue the hearing with no evidence taken to May 22, 2018. All in favor 5-0.

7:30 P.M. Public Hearing – 10 Blanchard Street, Paula Clairmont Poss

A public hearing was opened on the on the request of Paula Clairmont Poss to vary the application of the present Zoning By-law by allowing a Special Permit to construct a new one story addition on an existing, single family house at 10 Blanchard Street. The new construction is within the rear yard setback on a preexisting nonconforming lot with less than the required lot area, frontage and rear yard setback. Kirt Poss (owner) was present and Sean Barrett, architect from Saltsman Brenzel, presented the application for a permit at a single family dwelling on a preexisting lot with nonconforming frontage. Relief is needed for a one-story construction of a 16.0 x 29.6 addition on the southeast corner of the existing house. He stated that the Poss' reached out to neighbors and they are in support of the project. Letters of support were submitted. There was no additional comment. 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 application for a special permit with normal conditions. All in favor 5-0.

A motion was made and seconded to approve ZBA Minutes from December 5, 2017, with edits and January 23, 2018. All in favor 5-0.

7:45 P.M. Public Hearing – 41 Ocean Avenue, Steven Hahn

A public hearing was opened on the on the request of Steven Hahn to vary the application of the present Zoning By-law by allowing a Special Permit to build an addition on an existing single family structure located at 41 Ocean Avenue on a preexisting lot with less than the required lot area, lot width, frontage, and side yard setback. The new construction is located within the front yard setback and exceeds 10% expansion of a nonconforming building. Present for the application were Steven Hahn, owner and Heather Deschenes, architect with HND Architects. Ms. Deschenes explained project and stated that Mr. Hahn spoke with everyone in the neighborhood and all abutters are in support of the project. A document with corresponding support signatures was submitted. The Chairman asked if there was anyone in the assembly to speak in opposition or in favor. 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 application for a special permit with usual conditions. All in favor 5-0.

7:45 P.M. Public Hearing – 16 Gingerbread Hill, Vanessa Moody (Continued from February 27, 2018 – no evidence taken)

A public hearing was continued from the February 27th, meeting where no evidence was taken on the request of Vanessa Moody to vary the application of the present Zoning By-law by allowing a Special Permit to construct an addition to a single family dwelling located at 16 Gingerbread Hill. Veronica Hobson, architect (Taproot Design, Inc.) presented the application on behalf of Sam and Vanessa Moody. The request is for a Special Permit to construct a single story addition with landing and steps to an existing single-family dwelling in a Shoreline Single Residence and Single Residence district. The proposed plan would remove the existing 8' x 8' landing and steps along the right side of the home and a new 8'-6" x 12'-0" addition with an 8'-5'-6" landing and steps would replace it. The addition allows for a defector front entry – mudroom, laundry, closet, and steps that lead to parking area. Ms. Hobson described the orientation of the house on Gingerbread Hill stating the door is on the right side of the home, but the left side of the lot. The existing structure exceeds the front setback on the left side because there is a divide in the neighborhood. The proposed addition would exceed setbacks, also. The plans received full support from the Marblehead OHDC on March 7, 2018. All of the neighbors were at OHDC meeting and are in full support of the project. Letters of support were submitted. No one spoke in favor or opposition of the project. A motion was made and accepted to close the hearing. All in favor 5-0. A motion was made and seconded to approve the application for a special permit for the modest addition with usual conditions. All in favor 5-0.

8:00 P.M. Public Hearing – 25 Nicholson, Alasdair Conn (Continued from February 27, 2018 – no evidence taken)

A public hearing was continued from the February 27, 2018 meeting where no evidence was taken on the request of Alasdair Conn to vary the application of the present Zoning By-law by allowing a Special Permit to construct a detached garage as an accessory to a single family dwelling on the property located at 25 Nicholson Street in the Central Residence District. The new construction is within the required side yard setback and further reduces the open area on a pre-existing nonconforming property with less than the required lot area, side yard setback and open area. Veronica Hobson, architect (Taproot Design) and Alasdair Conn were present at the hearing. Ms. Hobson presented a revised design for the garage addition that includes the demolition of a shed and garage and the construction of a new 20' x 20' garage, holding 4' off side line and street (Nicholson Hill). The Hill has limitations and there's a drop from the hill to the street and the revised plans allow for a better turning radius. The setback relief being sought is for single parking inside a gate (two pieces of fencing); so that one parking space (off street) remains and the roadway will remain clear. The original plan showed two parking spaces but the grade pitch is too dramatic and hard to access. The new plans are trying to be faithful to the space and one parking space will be maintained. The plans have received OHDC approval for the modest two-car garage with side door. Mr. Conn said that neighbors like the idea of replacing the shed garage and that the previous parking issues brought up in late September (previous

occupants) were being addressed. Mr. Lipkind inquired about the fence on the plans. Ms. Hobson said that OHDC is working on the fence issue. There was no additional comment. 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 application for a special permit for with usual conditions. All in favor 5-0.

8:00 P.M. Public Hearing – 5 Blueberry Road, Kevin Palmara

A public hearing was opened on the on the request of Kevin Palamara to vary the application of the present Zoning By-law by allowing a Special Permit to replace an existing bulkhead with steps and retaining wall on a preexisting nonconforming lot with less than required lot area, frontage, front and sideyard setback, and within the side setback pursuant to a previous Board of Appeals decision condition at 5 Blueberry Road. Mr. Palamara presented the application which is for the second phase of a landscaping project that includes replacing a bulkhead with a walk-in feature that will have a patio wall and railings. Because the railings are 42", it requires a special permit. There are no new nonconformities. The bluestone patio is complete. Chairman Moriarty confirmed that Mr. Palamara was seeking forgiveness for the railings and that Lot 3/78 Blueberry is not impacted. Tom Samuelson, 12 Blueberry Road, is a direct abutter/side yard spoke in favor 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 application for a special permit for with usual conditions for the modest but undersized lot. All in favor 5-0.

8:15 P.M. Public Hearing – 17 and 24 Casino Road, Michael Kattman

A public hearing was opened on the on the request of Michael Kattman to vary the application of the present Zoning By-law by allowing a Special Permit to construct a garage on a vacant lot at 17 Casino Road as an accessory to an existing, single family structure located at 24 Casino Road. The lot has less than the required area frontage and width. The structure would be constructed within the front, rear and side yard setbacks. Mr. Kattman was present and the application was presented by Veronica Hobson, architect (Taproot Design) seeking to construct an addition and two-car garage on an empty lot (17 Casino Road) across the street. Ms. Hobson presented documentation that included a plot plan from 1937 showing a garage that was once on that lot. The house at 24 Casino is deeded together with 17 Casino. It is considered one lot divided by a road. A proposed 22' x 22' detached accessory structure to the left and back of the lot will provide a good turning radius. Mr. Drachman inquired about adjacent lot 200-13 (define the adjacent lot) and asked for confirmation that owner owns both lots. Mr. Conn answered in the affirmative. A discussion about the 1937 garage took place. No known knowledge of when it was built or when it was taken down. Approximate location is the only thing known. The plans will not reuse the foothold because of turning radius and pitch – it slopes and drops away towards intersection. The structure is positioned far left to respect the neighbor's (Plunkett's) water view, and they did a mock up for neighbors so they could see and understand the project. Neighbors were contacted and letters of support were presented. Continued conversation about seeking relief for sideyard setbacks and the undersized parking on the lot because one space is on a house lot and the second is on an adjacent lot. The two parking spots are split between the two property lots. Brian and Laura Plunkett, 15 Casino Road, spoke in favor of the application and project. A motion was made and seconded to close the public

hearing. All in favor 5-0. The Board acknowledged the strange configuration and voted in favor of the accessory use with conditions; including clarifying that restrictions are for both lots. All in favor 5-0.

8:15 P.M. Public Hearing – 5 Leggs Hill Road, Adam Wesson

A public hearing was opened on the request of Adam Wesson to vary the application of the present Zoning By-law by allowing a Special Permit to construct an addition to a single family structure located at 5 Leggs Hill Road. The new construction will exceed 10% expansion limits on a preexisting nonconforming lot with less than the required lot area, lot width, frontage, and side yard setbacks. Ryan McShera, architect (Red Barn Architects) represented Mr. Wesson for the project hearing. The addition violates the side setback and needs relief from the other side, running the length of existing building and wrapping around the back. All other new constructions will meet requirements. No one spoke in favor or opposition of the project. A motion was made to close the 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.

8:30 P.M. Public Hearing – 8 Roydon Road, Richard and Ann-Marie Jordan (Continued from February 27, 2018 – no evidence taken)

A public hearing was opened on the on the request of Richard and Ann-Marie Jordan to vary the application of the present Zoning By-law by allowing a Special Permit to construct an addition at 8 Roydon Road. This hearing was continued (without evidence taken from February 27, 2018 and December 5, 2017). Attorney Paul Lynch represented the application. Richard and Ann-Marie Jordan were present. Mr. Lynch stated that there is no change in the application and that the only change is with design and location of stairway. Marblehead Conservation Commission advised not having the stairs constructed facing the harbor. The Jordans are seeking a permit for the construction of a deck on the first level on the harbor side with 300 sf under the area - cement pad (kayak storage). The current deck is being demolished, rebuilt, and extended. It is within the sideline setback, front yard, and rear yard setback. There will also be a new covered entrance in the main entrance (77 s.f.), putting a cover on an entranceway and a small dormer of 16 s.f., creating some light over a stairwell. New plans were presented showing the turn of stairway, as requested by Conservation. All of the neighbors are in support of this 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 application for a special permit for with usual conditions. All in favor 5-0.

8:30 P.M Continued Hearing – 7 Lincoln Street, Marblehead Laundry, Inc.

This public hearing was continued from the February 24, 2018 meeting where the public hearing was opened and evidence was taken on the application of Marblehead Laundry, Inc. to: (1) confirm the existence of a pre-existing nonconforming use consisting of boat services on a portion of the property located at 7 Lincoln Avenue in an expanded central residence district; (2) if confirmed to allow the expansion of boat services use to other portions of the property; (3) if not confirmed to vary the application of the present Zoning By-law by allowing variance, a finding under MGL chapter 40A section 6 or a special permit affirming and allowing the present use of the property for boat services into the area not covered by the present nonconforming status; (4) whether or not confirmed by

granting a general Special Permit for the boat services use on the property. The property is a pre-existing non-conforming property with less than the required rear yard setback.

Mr. Rudolph commented that when he drove home from the hearing in February, he recalled having one of his boats stored on the property a while back for one year and asked if it would create a conflict? Mr. McCann stated that he has no concerns.

Attorney Cockfield asked Mr. Rudolph if it was just one year and if there was another relationship with the applicant. Mr. Rudolph answered, no.

Mr. Moriarty asked if there were neighbors who would like to speak in opposition of the project.

Bruce Lothrop, 22 Lincoln Ave., was not present for the last meeting, commenting that every time there's a debate, it's not about Chris Peach (owner), it's about Ryan Marine. His observation is that the Laundry is much improved, and the circular driveway is good for safety. He said that Chris can put as many boats as she'd like.

Barbara Rosenberg, 23 Lincoln Ave., said she can't walk down Lincoln Avenue and that the sidewalk has not been shoveled since the storms and she has to walk in the street to go by 7 Lincoln Ave. She expressed concerns for children walking toward Coffin School.

Mark West, 10 Lincoln Ave., a 25-year resident, said that Mr. Gordon Peach had boats on property, where there was cash exchange and there were 20 boats. Over the last 10 years, the number of boats has multiplied 12X, and site now has 240 boats. He commented that there has been systematic change where the swampy area is filled in and 10-wheelers were dumping stuff to expand the boatyard in 2000 to make room for more boats, and demolishing the Laundry will make room for more boats. Since the expansion, both Laundry and commercial tenants have brought in forklifts that run up and down the street. There is propane exhaust, paint fumes, and dust from sanding bottom paint (where the people doing the maintenance are wearing respirators). There is a lot of noise with people yelling and screaming across the lots at each other. With 23,000 people on a 2 square mile rock, we need zoning.

Mary Boyce, 4 Lincoln Ave., said she moved there in 1995 and didn't know there was a boat yard at 7 Lincoln Ave. A few years later her husband noticed a few boats there. In 2007, the boat yard was filled with boats, the area was much more congested and a dog got run over because the street was so busy. Ms. Boyce's car was hit by a marine environmental truck because the road was congested. 2007 has seen a lot of car volume on Lincoln Avenue. Ms. Boyce brought that matter to Selectmen's office in 2007 and felt patronized.

Steven Cooper, 2 Lincoln Ave., said that it is true that the property has some commercial use (shoe manufacturing, potato chip factory, cheerleading uniforms). He acknowledged the noticeable change since 2016 when the building came down, and everything is out of scale and that there is a different type of use – outdoor commercial business (what it is now) is out of scale with what it was. He wonders if they can co-exist.

Christine Ayers, 12 Lincoln Ave. Ms. Ayers lives across from 7 Lincoln and adjacent to Ryan Marine. She heard whispers of the Laundry building coming down and thought it seemed like a good idea. She is concerned about that the reclassification of building and if it threaten home values.

Resident, ?? Lincoln Ave. Gentleman and his fiancé live near Ryan Marine and abut Chris Peach's property. He said that when Chris was doing work, she came over and gave them her cell phone number. Every time he saw equipment on the property, he saw Chris. He said that Mark and Chris have displayed neighborhood consciousness and that any problem was addressed right away. He has no problem with them as neighbors, and he has no problem pulling out of his driveway. He feels confident that he can go to them anytime and that any problem will be fixed as soon as possible, adding that a fence had fallen down and it was fixed right away. Chris' uncle built his house and they have experienced nothing but courtesy and consideration.

Michael Rosenberg, 23 Lincoln Ave., said that he has lived in his house since 2001. They have a deck that faces towards conservation land and Peach property and they have been unable to sit on the deck because of dust, noise, loud voices, and trucks. There is no supervision on weekends, and boat owners show up to work on boats on weekends.

Gavin Cockfield (attorney for Lincoln Avenue neighbors) asked that the Board focus on the application, protected nonconforming use, and that there is not a mechanism for zoning to say that it is nonconforming.

He continued with information about property

- There has been a marked increase in boats on the property
- Ryan Marine started in 2007
- Peach's was not providing boat services and now they are. There is commercial machinery moving boats, creating noise and odor
- Ryan Marine might be leasing at Peaches but they're using public way to move boats around and over to Ryan Marine
- Lincoln Street is a hazard because of this

He continued to talk about the general purpose of the Special Permit, concerned with protecting residences for safety and convenience, while asking if this request was an appropriate use for this specific site, further commenting that taking down the building makes a significant difference, especially since 1987. Maintenance was not commercial in 1987, like it is now.

He offered considerations and suggestions for the Board including

- Requiring greater than minimum yard setback
- Creating some buffers – landscaping

- Requesting a one for one open space (for every one foot of area they need, they should match with one foot of open air. Ryan Marine is there – there is a need to regulate parking (example of authorizing use)
- Ensuring that use of development will not adversely affect neighborhood (sounds, dust, etc.)
- Limiting number of boats, limiting maintenance
- Ensuring adequate sanitary facilities were on the property to accommodate boat owners and people coming and going on the property

He continued, suggesting that the Board can decide to make things less impactful on the neighbors, including balancing the impact of storage, requiring fencing, regulating traffic and having site plan that includes additional parking, onsite loading and parking, ground markers – where boats cannot be stored, screen parking areas from view (arborvitaes were in proposal), control of lighting and number of signs.

Attorney McCann joined the table and agreed that certain conditions were approved and that some were left out.

Chairman Moriarty inquired about a site plan. Mr. McCann said they did not have one yet because of recent snow storms, and thought it was a good idea to talk about the Board's thoughts and then proceed with the site plan.

Mr. Cockfield said he submitted a memo that addresses concerns (U-shaped access road, arborvitaes along front of property).

Site plan must accommodate 18-wheeler deliveries, temporary loading areas, unattended cars, and provide adequate access, curb cut.

Conversations continued about hours of operation, power washing equipment, etc. Mr. Cockfield has asked for a \$5M liability insurance policy because of the petroleum products in use. (In the event of fire, neighbors can go after the client if they file for bankruptcy – this coverage would specifically apply to abutters).

A conversation about extensive activity periods in the spring and fall and determining how many people are on the property and if there is adequate onsite parking took place.

A conversation about security screening took place.

Suggestions for the Board included prohibiting storage containers and having designated areas for snow removal.

Mr. McCann responded that zoning bylaws are subject to strict and literal interpretation. Had the Town of Marblehead restricted boatyards with setbacks, parking screening, etc., it would be in the bylaw.

He presented a letter from the Building Inspector noting that “legal nonforming use is allowed because it is a continuation of use.” The area where the Laundry building was is not allowed.

A conversation about the accommodations, including having a fire lane (reviewed by Fire Chief), and boats not stored on the Laundry lot but can still operate as a boat service.

Mr. Baldacci, Building Commissioner, was in attendance and said that it was his opinion that the use of land is okay, and that the building lot is not okay; the approach was to file for a special permit to use the laundry and trade spaces with the roadway.

A motion was made and approved to continue the meeting to June 26, 2018 when all of the Board members (Moriarty, Barlow, Rudolph, Lipkind, and LaBrecque) can be present. A site plan will be needed so the Board has something to work with and conditions need to be negotiated, and potentially, the Board could approve the special permit with conditions.

7 Lincoln Avenue will be first on the ZBA Agenda on June 26th.

The meeting was adjourned.

Respectfully submitted,
Lisa Lyons