

**TOWN OF MARBLEHEAD
BOARD OF APPEALS
Minutes of Meeting:
January 23, 2018**

A regularly scheduled and noticed meeting of the Board of Appeals was called to order by Chairman Moriarty, at or after 7:30 p.m. in the Selectmen's Room at Abbot Hall, Marblehead, Massachusetts. Present were Board members Moriarty, Krasker, Barlow, Drachman, and Lipkind.

HEARINGS:

7:30 p.m. – 21 Sunset Road, James Bailey

The public hearing was opened on the application of James Bailey to appeal the Building Commissioner's action regarding zoning enforcement of conditions of a previously issued special permit on the property located at 21 Sunset Road in a Shoreline Residential District.

The application was presented by James and Marguerite Bailey, applicants. Mr. Bailey distributed maps of 21 Sunset to Board and stated that neighbors were in continued violation of a special permit issued in 2008 that would ensure arborvitae shrubs would be maintained at 9' height. Mr. Bailey contends that, since 2010, there have not been pro-active efforts to maintain the 9' height of the shrubs, and that he and his wife have made requests to their neighbor in an effort to police the situation.

Recently, in October, Mr. Bailey wrote to the Building Commissioner about the situation and two months later, the shrubs were cut.

A discussion took place with regards to the Appeal and the letter to the Building Commissioner, Rich Baldacci about the enforcement and potential \$300 penalty if 21 Sunset did not comply. A conversation about a maple tree on the property took place, also regarding a branch that crosses over into the arborvitae. The Baileys' stated that have less of an issue with the tree branch.

Attorney for the property owner, Bob McCann, spoke and indicated that the owner, Terry McMahon, and landscaper, Robert Forgione, were also present at the Hearing.

Mr. McCann distributed copies of the 2008 ZBA decision and pointed out the special permit requirements language within. He continued, stating that the McMahon's had hired and instructed the landscaper to tend to the shrubs. Mr. Forgione commented that the shrubs are maintained once a season and that they try to keep it at 9' or under. Mr. Forgione said that shrubs can grow as much as 6'-12'. Conversation continued about height of fence (6') and the arborvitae photos that had been taken in October and November of 2017.

The Chairman asked if there was anyone in the assembly to speak in opposition or in favor. No one spoke in favor.

Terry McMahon, owner of property, spoke in opposition of the Appeal, stating that in 12 years, she had been asked twice to trim the shrubs, and that she had instructed her landscaper to keep the shrubs at 9’.

Mr. Moriarty stated that in October, they didn’t comply. Moriarty suggested to Mr. Bailey that when the shrubs are higher than 9’, he should get in touch with Baldacci to enforce a penalty.

Mr. Barlow said that if there’s a dilemma every year, the Baileys will have to come in to Building Department and inquire why the abutter would have to enforce the Appeal.

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 uphold the determination (with direction) and deny the Appeal. All in favor 5-0. Moriarty advised the Terry McMahon/owner to ensure proper height of arborvitae, and gave further instruction to Mr. Baldacci (present at the meeting) that fines can be enforced on future violations, if sufficient and reasonable.

7:30 p.m. – 66-70 Washington Street, Patty’s Pet Care

The public hearing was opened on the request of Patty’s Pet Care for a special permit or variance to operate a dog day care business on the property located at 66 – 70 Washington Street in an Unrestricted District. This application is for use only and will not require any structural changes to the building because this Application has been withdrawn.

A motion was made and seconded to close the hearing. All in favor: 5-0.

A motion was made and seconded to allow the application to be withdrawn. All in favor: 5-0.

7:45 p.m. – 18 Bowden Street, Andrew Boyd

The public hearing was opened on the application of Andrew Boyd to vary the application of the present Zoning By-law by allowing a Special Permit to construct a new detached garage to replace an existing detached garage as an accessory to a single family dwelling on the property located at 18 Bowden Street in a General Residence District. The new construction is within the required side yard setback of a pre-existing non-conforming property with less than the required lot area rear yard and side yard setback.

The application was presented by Andrew Boyd and the contractor Phil Rizzoli.

Mr. Boyd and Mr. Rizzoli explained the process of taking down the existing structure and rebuilding it, saying that the square footage is minimal and part of the structure will act as a fence, but it is not a fence.

Mr. Krasker expressed concern about encroachment on the neighbor and that his preference would be to maintain distance.

Mr. Boyd stated that his neighbor was fine with the plan.

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 hearing. All in favor: 5-0.

A motion was made and seconded to approve the application with modifications and usual conditions. All in favor: 5-0.

7:45 p.m. – 75 Overlook Road, Mark Vail

The public hearing was opened on the application of Mark Vail 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 the property located at 75 Overlook Road in a Single Residence District. The new construction is within the required side yard setback on a pre-existing non-conforming property with less than the required lot area, frontage, front yard and side yard setback, and less than the required parking. Mr. Vail presented his case seeking relief from a pre-existing, non-conforming lot and setback. Plans were presented. Board member Bill Barlow commented that the dimensions of the survey seemed off.

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 hearing. All in favor: 5-0.

A motion was made and seconded to approve the application and issue a special permit with the usual conditions. All in favor: 5-0.

8:00 p.m. – 149 Humphrey Street, Thomas Testa

The public hearing was opened on the application of Thomas Testa to vary the application of the present Zoning By-law by allowing a Special Permit to enclose a sun porch of an existing single family dwelling on the property located at 149 Humphrey Street in a Single Residence District. The construction is within the required side yard setback a pre-existing non-conforming property with less than the required lot area, lot width, rear yard and side yard setback and less than the required parking.

The application was presented by Thomas Testa.

Mr. Testa explained to the Board that he would like to enclose a screened porch and make it part of interior living space. The footprint would stay intact. The bulkhead will remain where it is. Bob Krasker reviewed drawings, inquired about demolition and reconstruction and raising the floor, and commented about the construction being too close to the side yard. Additionally, Mr. Krasker suggested that the decision should reflect the option to demolish.

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 hearing. All in favor: 5-0.

A motion was made and seconded to approve the application and issue a special permit with conditions. All in favor: 5-0.

8:00 p.m. – 20 Stacey Street, Lawrence and Virginia Field

The public hearing was opened on the application of Lawrence and Virginia Field to vary the application of the present Zoning By-law by allowing a Special Permit to construct new additions to an existing single family dwelling on the property located at 20 Stacey Street in a Single Residence District. The construction is within the required rear and side yard setback on a pre-existing non-conforming property with less than the required lot area and side yard setback and less than the required parking.

The application was presented by Lawrence Field and Bruce Greenwald, architect.

Mr. Field and Mr. Greenwald presented the 20 Stacey Street application that calls for replacing a shed and deck and would include taking down a longer deck and changing the proportion (the new deck would be shorter and wider). They spoke about the dilapidated shed. Mr. Moriarty inquired about Historic District requirements, Mr. Greenwald answered in the affirmative, saying that a Certificate of Appropriateness had been granted.

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 hearing. All in favor: 5-0.

A motion was made and seconded to approve the application and grant a special permit.

8:15 p.m. – 4 Hunsley Lane, Eliza Smith Cushman

The public hearing was opened on the application of Eliza Smith Cushman to vary the application of the present Zoning By-law by allowing a Special Permit to construct railings on an existing single family dwelling on the property located at 4 Hunsley Lane in a Shoreline Expanded Single Residence District. The new construction is within the required side yard setback on a pre-existing non-conforming property with less than the required lot area, lot width, side yard setback and exceeds the maximum allowable height.

The application was presented by Brigitte Fortin, architect. Ms. Fortin presented plans for replacing a garage due to fire damage and for constructing an addition that would increase roof height. They are seeking relief because they are reconstructing a deck with a new railing which is an encroachment. A signed petition and letters from neighbors in favor of the addition were presented. Neighbors supporting the application for special permit include James Krebs, Johannes Naerger, Mark Forziati, Patricia Shea, Robert Poss, Michael Tyrell, Frank D'orio.

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 hearing. All in favor: 5-0.

A motion was made and seconded to approve the application and issue a special permit with normal conditions. All in favor: 5-0.

8:15 p.m. – 6 (formerly 4R) Nashua Ave., David B. & Wilson L. McKane

The public hearing was opened on the application of a Special Permit to construct additions to an existing single family dwelling on the property located at 6 (formerly 4R) Nashua Avenue in a Shoreline Expanded Single Residence District. The new construction is within the required side yard setback and further reduces the required open area on a pre-existing non-conforming property with less than the required lot area, lot width, frontage, front, side and rear yard setbacks, parking and open space.

The application was presented by Skip Kiley, architect and Bob McCann, attorney. The McKane's are in Florida at the time of the hearing; brother Joe McKane is present at the hearing.

Mr. McCann introduced the application and talked about the history of the area – camp sites that were chopped into lots with a variety of nonconformities. The McKanes are seeking a special permit in side yard set-back and adding 425 s.f. Mr. McCann explained that Wilson McKane had been in touch with neighbors about the proposed changes. Possibly, neighbors Lucas (#4 Nashua) and Walsh (#3 Nashua) were not reached by Mr. McKane.

The architect showed the Board the plans for reconstruction that includes an elevator and enclosing a screened porch. He explained that interior work was currently being done and they have a permit for the modifications.

Mr. Krasker inquired about the possibility of rebuilding (due to interior walls being 1" thick). Mr. Kiley responded, "No."

The Chairman asked if there was anyone in the assembly to speak in opposition or in favor.

Mr. Brian Lucas of 4 Nashua Street spoke in opposition, stating concerns about proximity and that the right-of-way he shares with the McKane residence is very tight. In addition, the enclosure of the porches and the increased roof height (to accommodate the elevator) impacts his family and they are concerned about a decrease in natural light. Mr. Lucas distributed photos showing his current window views. He maintains that there should be an open view. Mr. McCann replied that the porch is not usable.

Mr. Kiley stressed that the contractors are ready to start work and that the client would like to have construction complete and ready for summer.

A motion was made and seconded to close the hearing. All in favor: 5-0.

A motion was made and seconded to approve the application and issue a special permit with standard conditions. All in favor: 5-0.

8:30 p.m. – Continued 15 Indianhead Circle, Luciana Stantial

This hearing was continued from the December 5, Zoning Board of Appeals Meeting – no evidence taken at the meeting.

The application was presented by Veronica Hobson (Taproot Design); Luciana Stantial also present.

Ms. Hobson presented to the Board and issued new (revised) plans for the project that had recently received Marblehead Planning Board approval. Photos of the property with story poles were also shared and distributed. The revised plans show a shift in the gable orientation to reduce square footage (which would accommodate visibility sightline impact that was a concern for neighbors).

The property is a tri-level home, with a small basement and a two-car garage in the lower half. The rest of the house is on a ledge. Construction plans for a first floor and second floor addition was presented.

Ms. Hobson noted that sight poles were put in place and that with the reductions, the Planning Board had unanimously approved the new plans.

The Chairman asked if there was anyone in the assembly to speak in opposition or in favor.

Neighbors, Robert and Wren Sooy, of 6 Thomas Circle spoke in opposition of the project and presented photos, claiming that their water views would be obstructed by the proposed second story addition. More specifically, the dormer that is being constructed to accommodate stairs to the second floor is a particular hindrance, and suggested moving stairs to the other side. They supplied the Board with photos of their window views with story poles in place.

A motion was made and seconded to close the hearing. All in favor: 5-0.

A motion was made and seconded to approve the application and issue a special permit with the usual conditions. All in favor: 5-0.

The meeting adjourned at 10:15 p.m.

Respectfully submitted,

Lisa Lyons