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JEFFREY J. PHILLIPS, P.C.
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NICHOLAS P. SHAPIRO
ROBERT K. HOPKINS

October 14, 2014
BY HAND

Town Clerk
Town of Marblehead
Abbot Hall
188 Washington Street
Marblehead, MA 01945

RE: Brian O'Sullivan, et al v. William Moriarty, et al
Misc. Case No. 14 MISC 487181(KCL)

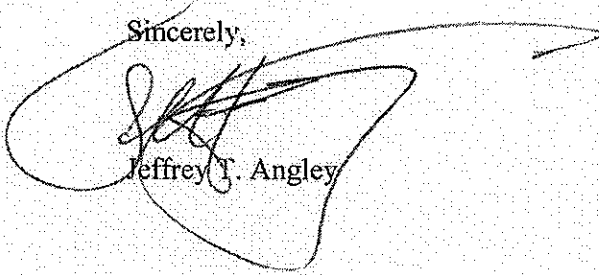
Dear Sir/Madam:

Enclosed for filing please find the following:

1. Notice of Appeal of Board of Appeals Decision;
2. Copy of Complaint, filed with the Land Court on October 14, 2014.

Please process in your usual manner.

Sincerely,



Jeffrey T. Anglely

RKH/hs

Encls.

cc: Client – [w/encl.]
Jeffrey T. Anglely, Esq. – [w/o encl.]

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

LAND COURT DEPARTMENT
OF THE TRIAL COURT
MISC. CASE NO.14 MISC 487181KCL

BRIAN O'SULLIVAN and
MARINA O'SULLIVAN,

Plaintiff,

v.

WILLIAM R. MORIARTY, CHRISTOPHER
CASEY, LEON DRACHMAN, WILLIAM L.
BARLOW IV, and ALAN LIPKIND, as they are
MEMBERS of the TOWN OF MARBLEHEAD
BOARD OF APPEALS, JONATHAN G. CURTIS,
LESLIE DEMORAES, and JAMES L.
WALTERS, as TRUSTEES OF THE
HARBORSIDE CONDOMINIUM TRUST,

Defendants.

RECEIVED
MARBLEHEAD
TOWN CLERK
OCT 14 PM 1:23

NOTICE OF APPEAL

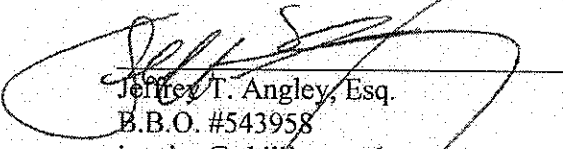
To: Town Clerk
Town of Marblehead
Abbot Hall
188 Washington Street
Marblehead, MA 01945

Notice is hereby given that on October 14, 2014, an action was filed with the Land Court Department of the Trial Court by Brian O'Sullivan and Marina O'Sullivan, appealing the decision of the Marblehead Board of Appeals, filed with the office of the Town Clerk of the Town of Marblehead on September 25, 2014, on the application of Jonathan G. Curtis, Co-Trustee of the Harborside Condominium Trust, for a variance to reconstruct and expand certain

decks and stairwells attached to a pre-existing nonconforming multi-unit condominium, located at 24 Lee Street, Marblehead, MA 01945. A copy of the Complaint is attached hereto.

BRIAN O'SULLIVAN and
MARINA O'SULLIVAN,
By their attorneys,

Date: October 14, 2014



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COPY

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ROBERT K. HOPKINS

October 14, 2014
BY HAND

LAND COURT
FILED
2014 OCT 14 AM 11:26

Ms. Deborah Patterson, Recorder
Land Court
Three Pemberton Square
Boston, MA 02108

RE: Brian O'Sullivan, et al v. William Moriarty, et al
Misc. Case No. 14 MISC 487181 RCL

Dear Ms. Patterson:

Enclosed for filing please find the following:

1. Complaint;
2. Civil Cover Sheet; and
3. Filing Fee of \$255.00 (\$240.00 filing fee and \$15.00 surcharge).

Please process in your usual manner.

Sincerely,



Robert K. Hopkins

RKH/hs

Encls.

cc: Client -- [w/encl.]
Jeffrey T. Angley, Esq. -- [w/o encl.]

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**Commonwealth of Massachusetts
Land Court
Department of the Trial Court**

Case No. 14 MISC 487/81 KCL

Civil Cover Sheet

First Plaintiff Brian O'Sullivan First Defendant William Moriarty

Locus Address/Description 24 Lee Street City/Town Marblehead, MA

Instructions

Part I - To Be Completed by Plaintiff(s)' Counsel:

FOR ALL MISCELLANEOUS CASES (EXCEPT cases filed pursuant to Servicemembers Civil Relief Act):

1. Using the list below, please number, with the Number 1, the main cause of action on which you base your complaint.
- and
2. Place an "X" next to each other cause of action in your complaint.
- and
3. Is this complaint verified ? ☐ Yes ☒ No
- and
4. Are there any related cases filed in the Land Court Department ? ☐ Yes ☒ No
- If yes, please provide the Case No.(s) : _____

X	ZAC	Appeal from Zoning/Planning Board G. L. c. 40A, § 17
	ZAD	Appeal from Planning Board G. L. c. 41, § 81BB
	ZJA	Validity of Zoning G. L. cc. 240, § 14A, 185, § 1 (j ½)
	ZEN	Enforcement of Zoning G. L. c. 40A, § 7
	COT	Remove Cloud on Title G. L. c. 240, § 6 - 10
	DOM	Discharge of Old Mortgage G. L. c. 240, § 15
	LVT	Affirm Tax Foreclosure - Land of Low Value - G. L. c. 60, § 80B
	MTB	Try Title G. L. c. 240, § 1 - 5
	MWA	Recover Freehold Estate (Writ of Entry) - G. L. c. 237
	MRC	Determine Validity of Encumbrances G. L. c. 240, § 11 - 14
	CER	Enforce Restrictions G. L. c. 240, § 10A - 10C

	MAD	Determine Fiduciary Authority G. L. c. 240, § 27
	PAR	Partition G. L. c. 241
	RED	Redemption G. L. c. 60, § 76
	SP	Specific Performance of Contracts G. L. c. 185, § 1 (k)
	MBF	Determine Municipal Boundaries G. L. c. 42, § 12
	MFE	Determine Boundaries of Flats G. L. c. 240, § 19
	CNC	Certiorari - G. L. c. 249, § 4
	MAN	Mandamus - G. L. c. 249, § 5
	TRE	Trespass to Real Estate Involving Title - G. L. c. 185, § 1 (o)
	EQA	Equitable Action Involving Any Right, Title or Interest in Land G. L. c. 185, § 1 (k)
	AHA	Affordable Housing Appeal G. L. c. 40B, § 21
	OTA	Other

Part II - Uniform Counsel Certificate - to be filled out by **Plaintiff(s)' Counsel** at the time of initial filing. All other counsel shall file within thirty (30) days of initial entry into the case, whether by answer, motion, appearance or other pleading.

FOR ALL MISCELLANEOUS CASES (EXCEPT Mortgage Foreclosures under the Servicemembers Civil Relief Act)

I am attorney-of-record for: Brian O'Sullivan and Marina O'Sullivan

☒ Plaintiff ☐ Defendant in the above-entitled matter.

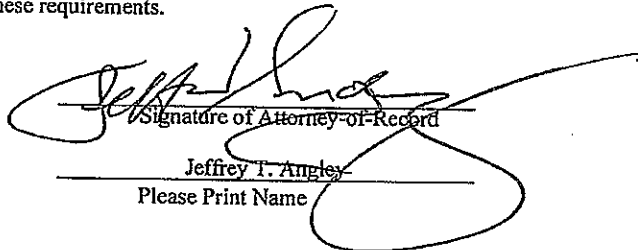
If Defendant(s) Attorney, please provide Case No. _____

- A. In accordance with Rule 5 of the Supreme Judicial Uniform Rules on Dispute Resolution (SJC Rule 1:18) which states in part: "... Attorneys shall: provide their clients with this information about court-connected dispute resolution; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent ..."
- B. In accordance with Land Court Standing Order 1-12, I certify that I am aware of the requirement to, "...serve a copy of the "Limited Assistance Representation (LAR) Information Sheet" upon all defendants at the same time as service of the summons, complaint, and civil cover sheet is made", and I will comply with this requirement.

I hereby certify my compliance with these requirements.

BBO# 543958

Date: 10/14/2014



Signature of Attorney-of-Record
Jeffrey T. Angley
Please Print Name

Exempt Cases: Tax Foreclosures, Mortgage Foreclosures under the Servicemembers Civil Relief Act and all cases related to original and subsequent registration under G. L. c. 185, §1.

COPY.
LAND COURT
FILED

COMMONWEALTH OF MASSACHUSETTS 2014 OCT 14 AM 11:26

ESSEX, ss.

LAND COURT DEPARTMENT
OF THE TRIAL COURT
MISC. CASE NO. _____

BRIAN O'SULLIVAN and
MARINA O'SULLIVAN,

Plaintiff,

v.

WILLIAM R. MORIARTY, CHRISTOPHER
CASEY, LEON DRACHMAN, WILLIAM L.
BARLOW IV, and ALAN LIPKIND, as they are
MEMBERS of the TOWN OF MARBLEHEAD
BOARD OF APPEALS, JONATHAN G. CURTIS,
LESLIE DEMORAES, and JAMES L.
WALTERS, as TRUSTEES OF THE
HARBORSIDE CONDOMINIUM TRUST,

Defendants.

14 MISC 487181



COMPLAINT

INTRODUCTION

The Plaintiffs, Brian O'Sullivan and Marina O'Sullivan (the "O'Sullivans"), appeal pursuant to G.L. c. 40A, § 17 from the decision of the Town of Marblehead Board of Appeals (the "Board"), which granted the Defendants, Jonathan G. Curtis, Leslie deMoraes, and James L. Walters, Trustees of the Harborside Condominium Trust ("Harborside"), a variance to reconstruct and expand certain decks and stairwells attached to a pre-existing nonconforming multi-unit condominium. The O'Sullivans bring this action because the Board's decision was arbitrary, capricious, in excess of authority and legally untenable. Accordingly, the decision of the Board must be annulled.

PARTIES

1. Plaintiffs Brian O'Sullivan and Marina O'Sullivan (the "O'Sullivans") reside at and are the owners, as tenants by the entirety, of real property known as and located at 30 Lee Street, Marblehead, MA 01945.
2. Defendant William R. Moriarty is the Chairman of the Board, and resides at 19 Amherst Road, Marblehead, MA.
3. Defendant Christopher Casey is an alternate member of the Board, and resides at 6 Knights Hill Road, Marblehead, MA.
4. Defendant Leon Drachman is a member of the Board, and resides at 24 Countryside Lane, Marblehead, MA.
5. Defendant William L. Barlow IV is a member of the Board, and resides at 41 Hawkes Street, Marblehead, MA.
6. Defendant Alan Lipkind is a member of the Board, and resides at 2 Surf Street, Marblehead, MA.
7. Defendant Jonathan G. Curtis, Co-Trustee of the Harborside Condominium Trust ("Harborside"), upon information and belief, resides at 24 Lee Street, Marblehead, MA 01945, Unit B-2.
8. Defendant Leslie deMoraes, Co-Trustee of Harborside, upon information and belief, resides at 24 Lee Street, Marblehead, MA 01945, Unit C-8.
9. Defendant James L. Walters, Co-Trustee of Harborside, upon information and belief, resides at 24 Lee Street, Marblehead, MA 01945, Unit C-6.

FACTS

10. The O'Sullivan's own and reside at the real property located at 30 Lee Street, Marblehead, MA (the "O'Sullivan Property"), acquired by deed dated August 22, 2014, and recorded with the Essex South Registry of Deeds (the "Registry") at Book 33495, Page 379.
11. The O'Sullivan Property consists of approximately 0.094 acres of land (4,094.64 sq. ft.) and is improved with a historic single-family residence that was built in approximately 1730.
12. The eastern-most portion of the O'Sullivan Property consists of a steep rock shelf/ledge. As a result, the eastern lot line is substantially below the grade of the rest of the property.
13. Surrounding the O'Sullivan Property to the north, east, and southeast are the Harborside Condominiums, which consists of four (4) residential buildings (Buildings A, B, C and D) containing twenty-three (23) condominium units (the "Harborside Property").
14. The Harborside Property is located in both the "Harborfront" and the "Shoreline Central Residence" ("SCR") zoning districts, and contains approximately .71 acres of land (31,000 sq. ft.).
15. Pursuant to Table 1 of the Town of Marblehead Zoning Bylaw (the "Bylaw"), entitled "Land Use Regulations", multi-family dwellings are not a permitted use in the Harborfront or the SCR zoning districts. Thus, the condominium units on the Harborside Property operate as a pre-existing nonconforming use.
16. Building B of the Harborside Property ("Building B") directly abuts the O'Sullivan Property to the east, at the bottom of the rock shelf, and contains nine (9) condominium units.
17. A portion of Building B encroaches upon the O'Sullivan Property, at the lateral face of the rock shelf, by approximately two (2) feet.

18. In addition to the encroachment, Building B and the other residential structures on the Harborside Property contain further non-conformities; such as, rear-yard setback, side-yard setback, height, open area, and less than required parking spaces.
19. Owing to a fire in October 2013, four (4) of the condominium units in Building B are currently uninhabited. Harborside intends to reconstruct the fire-damaged units.
20. Contemporaneous with reconstructing the damaged units, Harborside proposes to construct new exterior decks and stairwells to replace and expand upon those which currently exist (the "Project").
21. The Bylaw does not permit the alteration, reconstruction, or extension of a pre-existing nonconforming structure containing a pre-existing nonconforming use, such as proposed by the Project, without a variance.
22. The Project will also increase the gross square footage of Building B's egress areas by 317 square feet, and will result in the creation of a *new* side-yard setback nonconformity.
23. The Bylaw does not permit the creation of a new dimensional nonconformity from the extension of a pre-existing nonconforming structure containing a pre-existing nonconforming use, without a variance.
24. The Project calls for "pinning" one of the new, multi-story stairwells to the rock ledge behind Building B, either onto, into or in extreme proximity to the O'Sullivan Property.
25. In furtherance of the Project, Harborside filed an application with the Board requesting a "Variance, a Finding under the provisions of M.G.L. c. 40A, § 6 and/or Special Permits", which included existing floor plans and proposed egress plans for various points on Building B, with the Marblehead Town Clerk's office on August 21, 2014.

26. The Board held a public hearing on Harborside's application on September 23, 2014, at which time the Board determined that a variance, and not a special permit or G.L. c. 40A, § 6 finding, was the appropriate zoning relief for the Project. The public hearing concluded with the five (5) sitting members of the Board voting unanimously to approve Harborside's variance.
27. The Board filed its written decision approving Harborside's application with the Marblehead Town Clerk's office on September 25, 2014 (the "Decision"). See Exhibit 1 (Certified Copy of the Decision).
28. The Decision granted Harborside a variance "allowing the reconstruction, expansion of certain decks and stairwells for Building Code compliant egress as presented to the Board".
29. The Decision does not identify what element of the Project required a variance, does not identify the extent of the dimensional relief granted and does not identify the Bylaw provision which is being abrogated.
30. The Decision does not identify what circumstances relating to soil conditions, shape, or topography uniquely affect the Harborside Property, which do not affect the zoning district generally.
31. The Decision does not identify the hardship to Harborside stemming from any circumstances relating to the soil conditions, shape, or topography of the Harborside Property.
32. The Decision also imposed eight (8) conditions on the grant of the variance of which the following are relevant here:
 - Condition 1 prohibits any construction which differs from the approved plans, or inconsistent with the Decision, without prior approval from the Board;
 - Condition 2 prohibits any permits from issuing until the Decision is appropriately recorded at the Registry with a Clerk's certificate noting that twenty (20) days has

elapsed and no appeal of the Decision was taken, *or* noting that an appeal *has been timely filed*;

- Condition 3 prohibits the issuance of a certificate of occupancy if any of the construction differs from the approved drawings or the Decision, without prior approval from the Board;
 - Condition 7 requires a “Geotechnical Study” to be performed and approved by the Building Inspector prior to the issuance of a building permit for the egress construction; and
 - Condition 8 requires Harborside use best efforts to not damage, and to protect, the property of others during construction.
33. On October 7, 2014, a contractor for Harborside began removing the vegetation and topsoil from the rock ledge on the O’Sullivan Property, exposing the bare stone over a considerable portion of the ledge.
34. In order to complete the Project, Harborside will have to excavate and blast substantial portions of the rock ledge.
35. The O’Sullivans’ historic house contains numerous fragile structural elements; of particular concern is the original brick chimney. The O’Sullivan Property’s small lot size means the entire structure is located in very close proximity to the ledge. Any excavation or blasting will take place not only physically close to the O’Sullivan’s home, but will consist of, essentially, blasting away the foundation on which the home is built.
36. The O’Sullivans object to any existing or new encroachments onto their property. They have not authorized any entry onto their property, any blasting, disturbance of ledge, or pinning of any part of the proposed stairways onto their property.

COUNT I

Appeal of the Decision Pursuant to G.L. c. 40A, § 17

37. The O’Sullivans repeat and restate the allegations set forth in paragraphs 1-36 and incorporate the same by reference herein.

38. The O'Sullivans are direct abutters of the Harborside Property and, therefore, "part[ies] in interest" under G.L. c. 40A, § 11.
39. The O'Sullivans are "person[s] aggrieved" under G.L. c. 40A, § 17.
40. The Project poses a real and imminent threat to the structural soundness of the historic home located on the O'Sullivan Property. The rock ledge which exists on the eastern portion of the lot is steep and fragile, and forms a critical support for the O'Sullivans' home. Blasting and excavating portions of the ledge will result in removal of rock and earth that literally lies beneath the historic house and its attendant structures. Even the slightest shift in the foundation of the O'Sullivans' home could result in catastrophic structural problems, including the collapse of the original brick chimney.
41. The Decision is arbitrary, capricious, and in excess of the Board's authority because the Harborside Property is not affected by any soil conditions, shape, or topography that does not otherwise exist and affect other properties in the same zoning district. Accordingly, the Project does not meet the statutory criteria for the grant of a variance.
42. The Decision is arbitrary, capricious, and in excess of authority because it does not identify any conditions relative to soil conditions, shape, or topography unique to the Harborside Property, but rather contains a mere repetition of the statutory language. The Board, then, failed to make the appropriate and necessary findings relative to the statutory criteria.
43. The Decision is arbitrary, capricious, and in excess of authority because it does not articulate for what aspect of the Project the variance is required, the dimensional relief granted nor does it identify the provision of the Bylaw that the variance is abrogating.

44. The Decision is arbitrary, capricious, and in excess of authority because Condition 2 purports to unlawfully allow the Decision to be recorded at the Registry – the variance to take effect – during the pendency of an appeal.
45. The Decision is arbitrary, capricious, and in excess of authority because it fails to grant all the necessary zoning relief for the Project. Although it is not clear for what purpose the variance was granted, the Project requires at least two (2) variances – one for the extension, alteration, or reconstruction of a nonconforming structure containing a nonconforming use, and a second for the creation of an additional dimensional nonconformity. Relief for the first has been improperly granted. Relief for the latter is absent.

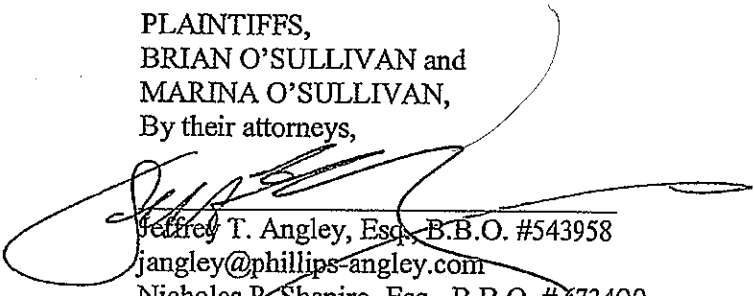
PRAYERS FOR RELIEF

Wherefore, the O'Sullivans pray that:

- i. This Court annul the Decision of the Board as unlawful and in excess of the Board's authority; and
- ii. For such other relief as the Court may deem appropriate and just.

Date: October 14, 2014

PLAINTIFFS,
BRIAN O'SULLIVAN and
MARINA O'SULLIVAN,
By their attorneys,



Jeffrey T. Anglely, Esq., B.B.O. #543958
janglely@phillips-anglely.com
Nicholas P. Shapiro, Esq., B.B.O. #673490
nshapiro@phillips-anglely.com
Robert K. Hopkins, Esq., B.B.O. #685714
rhopkins@phillips-anglely.com
Phillips & Anglely
One Bowdoin Square
Boston, MA 02114
(617) 367-8787

This space reserved for the Registry of Deeds

**TOWN OF MARBLEHEAD
DECISION OF
THE BOARD OF APPEALS**

on

**Application of
Harborside Condominium Trust**

**For a Variance, Finding and/or Special Permit
24 Lee Street
Marblehead, MA**

Report of Facts, Findings, and Decision of the Board of Appeals on the petition of:

**Harborside Condominium Trust
(Unit Owner Organization)
(collectively the "Petitioner")**

TITLE REFERENCE

Essex South District Registry of Deeds, Certificate of Title No. C23-55

requesting a Variance, a Finding under the provisions of M.G.L. c. 40A, § 6 and/or Special Permits under the Zoning By-Laws approving the expansion of certain decks and stairwells which were determined by the Building Inspector and the Fire Chief to be unfit and unacceptable for use and which are required to be constructed so as to comply with current Building Code requirements, and other modifications thereto, on the property located at 24 Lee Street in the **HARBORFRONT AND SHORELINE CENTRAL RESIDENCE ZONING DISTRICT**. The use on the property (23 residential condominium units) is a non-conforming use with multiple dwellings on one Lot. There are four (4) buildings which in part do not meet the Rear Yard Set Back, the Side Yard Set Back, the Maximum Height, the Minimum Open Space and the Parking requirements. The only new non-conformity when the decks and stairwells are reconstructed will be the Side Yard Set Back.

All statutory requirements relating to publication and notice were duly complied with including publication in the Marblehead Reporter, a local newspaper, on September 4, 2014 and on September 11, 2014. Notice to all persons deemed by the Board to be affected by the petition, as

required by Section 17 of Chapter 40A of the General Laws of the Commonwealth and the provisions of the Marblehead Zoning By-Laws, was given. The Petitioner was present through one of the Trustees, Jonathan G. Curtis who resides in Unit B-8 of the Condominium and was represented by counsel, Robert C. McCann, McCann & McCann, P.C., 89 Newbury Street, Suite 302, Danvers, MA 01923 and Architect Peter Pitman, Pitman & Wardley Architects LLC, 32 Church Street, Salem, MA 01970.

The Public Hearing was called to order at or after 7:45 PM in the Selectmen's Room, Town Hall, Washington Street, Town of Marblehead on September 23, 2014. The Board Members present and sitting on the hearing were:

Chair:	William R. Moriarty
Members:	Christopher Casey
	Leon Drachman
	William Lewis Barlow IV
	Alan Lipkind

The first order of business was a discussion of the relief required, and consideration of the provisions of Section 200-36 of the Zoning By-Laws. After discussion, the Board determined that the required relief, based on the Board's prior interpretation of Section 200-36, was a variance.

The following documents were filed with the Petition and constitute a part of the permanent record of the Board:

Y40
The Survey entitled "PLAN OF LAND IN MARBLEHEAD, MASS", Scale 1" = 10', dated August 13, 2014, drawn by Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA 01880

Architectural Plans and Renderings prepared by Pitman & Wardley Architects LLC, dated August 14, 2014 consisting of the following:

- COVER SHEET
- AB-1 Existing First Floor Plan
- AB-2 Existing Second Floor Plan
- AB-3 Existing Third Floor Plan
- A-1 Proposed Side Egress Plan
- A-2 Proposed Side Egress Plan
- A-3 Proposed Rear Egress First Floor Plan
- A-4 Proposed Rear Egress Second Floor Plan
- A-5 Proposed Third Floor Plan
- A-6 Proposed Rear Egress Elevation
- A-7 Proposed First Floor Egress Stair
- A-8 Proposed Third Floor Plan
- A-9 Proposed Elevation

Also submitted to the Board, as part of the permanent record, at the time of the hearing, were the following:

- A letter from Robert S. Ives, Building Commission of the Town of Marblehead dated December 21, 2012;
- A letter from Robert S. Ives, Building Commission of the Town of Marblehead dated September 19, 2014, the original of which had been pre-filed with the Board;
- A letter from Captain Michael A. Porter, Fire Prevention Officer in the Marblehead Fire Department dated September 22, 2014
- A copy of the "Negative Determination" issued by the Marblehead Conservation Commission signed on June 12, 2014;
- A copy of the Certificate of Appropriateness from the Old & Historic Marblehead Districts Commission dated April 27, 2014;
- Referenced was the letter from Alain Brunais, Trustee on file with the Board;
- A copy of an e-mail from Alain Brunais received by Jonathan G. Curtis on September 22, 2014 at 9:40 PM;
- Various pictures of the structure(s) on the property;
- Updated Plans Numbered A-4 and A-5 to show compliance with the requests of Alain Brunais.

The Petitioner explained the petition and the proposed construction as follows:

The property is located at 24 Lee Street and consists of 23 separate condominium dwelling units, in 4 buildings, as follows:

- A Building = 2 Units
- B Building = 9 Units
- C Building = 7 Units
- D Building = 5 Units

While the property originally had 27 condominium dwelling units, several had been combined resulting in the current 23 units. The property lies within a Harborfront and Shoreline Central Residence Zoning District. The use as multiple family dwellings on a single lot is not permitted, but is grandfathered. The old commercial buildings were converted to the Henry Baay Apartments sometime around the 1960 era, and then were converted to condominiums in 1983.

There are currently several dimensional non-conformities, as follows:

- Rear Yard Set Back
- Side Yard Set Back
- Height
- Open Area
- Parking (less than required)

The new non-conformity will be in the Side Yard Set Back.

On October 26, 2013 there was a fire in Building B, resulting in damage to five (5) of the Units, rendering four (4) of them uninhabitable. During the course of the fire, the firemen had a great deal of difficulty in navigating the egress stairs and walkways, and fell through when there was a partial collapse. Fortunately no one was seriously injured.

As a result of the extent of the damage, and the required reconstruction, in order for the damaged Units to be re-occupied, the fire egress has to be constructed so as to comply with current Building Code. Doing so will provide a safe means of egress from the building for the inhabitants and for the firefighters. The new egress has been designed to comply with the Building Code and has received the support of the Building Department and the Fire Department as evidenced in the letters submitted to the Board.

Prior to the fire, beginning in 2012, the Condominium Association was researching reconstruction of the egress stairs and was involved in that process when the fire struck. There have been four Architects involved in the planning and design of the egress stairways and walkways, two before the fire and two after. Much care has been given to insure compliance with code, and the Trustees of the Harborside Condominium Trust have continually posted the proposed plans on the Condominium Web Site advising the Owners that updated plans had been posted both by e-mail, as well as in Trustee meetings which are open to all Owners, and periodic update reports. In addition to designing a Building Code compliant means of egress, the following additional steps have been taken at the request of the Marblehead Fire Department and/or the Condominium Insurance Company:

- Installation of fire rated interior entry doors in Buildings C and D. Building A has no interior entry doors and Building B will have fire rated interior entry doors installed as part of the reconstruction process;
- Removal of second and third level deck plumbed natural gas powered grills.

The Petitioner explained that there have been very minor modifications to the plans approved by the Old & Historic Marblehead Districts Commission and that the Condominium Trust has communicated these changes with the Commission seeking a determination of whether or not another appearance will be required. The Petitioner believes that the changes are either not visible from any public areas or that they are insignificant enough that re-approval will not be necessary. However, the Petitioner indicated that he will follow up to confirm that the Old & Historic Marblehead Districts Commission approval is received, if needed.

On file with the Board was a letter from Alain Brunais, owner trustee of Unit B-7 requesting some minor changes, approximately 10 square feet, to the egress area between his unit and Marblehead Harbor. Peter Pitman submitted to the Board updated sheets A-4 and A-5 accommodating those requests, which resulted in the proposed square footage necessary to meet code compliance being decreased by approximately 10 square feet. The Board was provided with a copy of an e-mail from Alain Brunais to Jonathan G. Curtis indicating that the only option was to make the changes shown on sheets A-4 and A-5, and accepted the updated plans as part of the file and approval.

The Petitioner explained that the Trustees of the Harborside Condominium Trust followed the guidance of the Building Department and the Fire Department in their design and that the design of the new egress was completed with their fiduciary obligations of Building Code compliance and safety for the inhabitants of the condominium units.

Peter Pitman presented various display boards and explained in great detail the reasons for the proposed egress stairs and walkways, and in particular noted that:

- The current design was the only way that the egress worked mathematically for the building and the other means of egress presently existing on the property, including the egress for Building D, adjacent to Building B, on the ground level;
- The North Stairwell (being called Stair # 1 by the Board) currently encroaches over the lot line on the abutter's property. The encroachment will be removed, and the new Stair # 1 will be constructed wholly within the property lines of the Condominium;
- Stair # 1 will be pinned to the granite, and there will be a full structural review of the proposed work;
- The South Stairwell (being called Stair # 3 by the Board) has been designed so as to preserve the existing windows and doors, and access thereto, while providing the Building Code compliant egress. This design requires that the Stair # 3 extend beyond the end of the building, in the area between Building B and Building D. As with all of the proposed egress structures, this area will be constructed of galvanized steel structural frame, stainless steel supports, stainless steel wire and composite decking, and will be more open in its design so as to keep the bulk and appearance at a minimum;
- The middle stair, on the east side of Building B, (being called Stair # 2 by the Board) has been designed to fit with all of the egress walkways and to avoid interference with any windows or doors or main gas line serving the building and the units;
- A Structural Engineer has already been consulted and will be following the work as necessary.

The total square footage of the egress is increasing by 317 square feet (327 square feet being shown on the original plans with the 10 square foot reduction referenced above). The Open Space Ratio will remain well below the 1:00 : 1.00 required, but is only changing a minimal amount. The increase in gross square footage ("GFA") of the egress is approximately 1% of the GFA of the Building. Other than the egress, no other changes in the GFA are proposed for either the building or any of the units.

After the Petitioner's presentation, the Board opened the hearing to the general public for comment. Chairman Moriarty asked first for those in favor to indicate so by raising their hands. The Board recognized the support. Chairman Moriarty then asked for those in opposition and several of the neighbors spoke:

- Robert Zarelli of 28 Lee Street, one of the former Architects for the Harborside Condominium Trust, spoke about communication and neighbor concerns about the impact of the construction on the ledge and other issues;
- Brian J. O'Sullivan of 30 Lee Street spoke about communication and neighbor concerns about the impact of the construction on the ledge, degradation of the ledge and other issues;
- John Rogers and Noreen Rogers of 8 Gregory Street spoke about Stair # 3 and asked if it could be re-configured and also spoke of the potential noise from the air conditioner condenser proposed between their house and Building B;
- Robert T. Hammond of 2 Gregory Street spoke about potential concerns regarding ledge degradation.

After the abutters' comments, the Board discussed various conditions, incorporated below, that would address the concerns.

Attorney McCann then discussed the grounds for a variance, which the Board agreed with, and which are noted below.

Thereafter, upon motion duly made and seconded, the Board voted to close the public comment portion of the hearing. After discussion amongst the Board Members, the Board made the following findings and decision:

Findings of the Board

By voting positively on the Application, the Board made the following determinations and findings:

1. That all statutory requirements relating to publication and notice were duly complied with.
2. That all submitted plans and specifications meet the requirements of the Rules and Regulations of the Board.
3. That based upon the survey as well as information presented to the Board, the criteria set forth in ARTICLE IX, § 200-5 of the Marblehead Zoning By-Laws, consisting of the following, have been satisfied:
 - a. The general purposes and intent of the By-Law are met; and
 - b. That the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By-Law; and,
 - c. Owing to circumstances relating to the structures and especially affecting this property, land or building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, to the appellant. This hardship results from the existence of multiple dwelling units on a single lot, the fire damage, the

requirement that prior to the issuance of an Occupancy Permit for the remaining uninhabitable units the egress must be brought to current Building Code, and other building and structure elements including the need for public safety all of which, if not granted, would create a substantial hardship on the Harborside Condominium Trust and the owners, both financial and otherwise; and

- d. Adequate and appropriate facilities will be provided for the proper operation of the use.

Decision

Whereupon the Board voted: To grant the variance requested allowing the reconstruction, expansion of certain decks and stairwells for Building Code compliant egress as presented to the Board and as modified by the newly submitted sheets A-4 and A-5, with the following conditions:

- This Variance is issued on the condition that there shall be no construction at any time following the vote of the Board of Appeals which either differs from the construction set forth on the drawings approved and stamped by the Board of Appeals by that vote, or which is inconsistent with this Decision and these conditions, without the Petitioner obtaining prior written approval from the Board of Appeals for such construction.
- This Variance is issued on the condition that no demolition, building or occupancy permit, whether temporary, conditional or permanent, shall issue for the work proposed by the Applicant and the plans on file with the Board unless and until a copy of this nine (9) page Decision, in its entirety, and not merely the conditions, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the Decision has been filed in the office of the Town Clerk and either that no appeal has been filed, or that an appeal has been filed within such time, has been recorded in the Essex South District Registry of Deeds and indexed in the Grantor Index under the name of the owner of record or is filed for registration, if the land is registered, and noted on the Owner's Certificate of Title, all as required by Massachusetts General Laws Chapter 40A. The application for and/or issuance of any such permit prior to the recording of the endorsed copy of this Decision shall render the Variance granted herein null and void. The ongoing work on the Building not related to the egress may continue.
- This Variance is issued on the condition that no Certificate of Occupancy shall be issued by the office of the Building Inspector if any of the construction either differs from the construction set forth on the drawings approved and stamped by the Board of Appeals by that vote, or which is inconsistent with this Decision and these conditions, without the Petitioner obtaining prior written approval from the Board of Appeals for such construction.
- There shall be no future alterations, changes or additions whatsoever, including additions of less than 10%, to any structure, or any new structure constructed or

placed on the property, except pursuant to a Special Permit or Variance, as may be required, granted by the Board of Appeals.

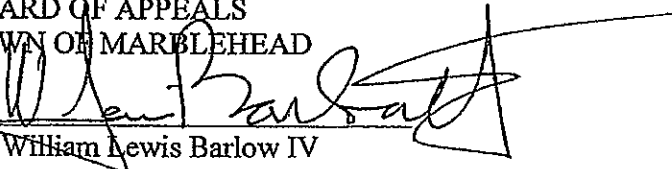
- The Harborside Condominium Trust adopted regulations relating to parking, attached hereto as "Exhibit A" shall be adhered to as well as, during construction but not thereafter:
 - Owner parking on site shall be limited to one (1) car;
 - Owners shall use their best effort to arrange for parking of other vehicles at the Boston Yacht Club;
 - Construction crews shall shuttle their workers to and from the property and arrange for parking off site;
 - Materials will be delivered and removed as expeditiously as possible and stored to the greatest extent available, within the units;
- The air conditioning condenser being shown on the plan shall be installed so as to comply with the decibel restrictions contained in the Marblehead By-Laws.
- A Geotechnical Study, satisfactory to the Building Inspector, shall be submitted to the Building Inspector and approved prior to the issuance of a Building Permit for the egress.
- The Harborside Condominium Trust shall use its best efforts, during the construction, to not damage and to protect the properties of others.

The votes by the Board Members granting the Variance were:

Chair:	William R. Moriarty	-	YES
Members:	Christopher Casey	-	YES
	Leon Drachman	-	YES
	William Lewis Barlow IV	-	YES
	Alan Lipkind	-	YES

The hearing adjourned at approximately 9:25 PM

BOARD OF APPEALS
TOWN OF MARBLEHEAD

By: 

William Lewis Barlow IV

Decision filed with Town Clerk _____, on _____ at _____

2011 SEP 23 AM 11:57

TOWN CLERK
MARBLEHEAD
MASS.

EXHIBIT A
CONDOMINIUM PARKING REGULATIONS DURING CONSTRUCTION
Harborside Condominiums
Temporary Parking Rules -- During B Building Reconstruction

During reconstruction of the B Building, expected to take several months, Harborside driveways and parking lots will be stressed by construction vehicles, scaffolding, and stored materials. Accordingly, the following parking rules will go into effect upon notification that the reconstruction period has begun and stay in effect until notification that reconstruction has reached a point where these rules are no longer required:

1. All Residents (Owners & Renters) are permitted to park only one vehicle in the lots (upper & lower) at a time. This applies regardless of the authorized number of parking spaces for their unit(s). The 2nd (or additional) vehicle must be parked elsewhere off the property.
2. If a Resident has a garage or carport, the one authorized vehicle will be parked in that carport or garage.
3. No guest parking will be permitted. No "loaning" of parking spaces will be permitted. However, in unusual circumstances, the resident may park a substitute vehicle as long as they are present at the property, have notified a member of the Board of Trustees, display a Harborside "Guest" pass, and verify that that this is the sole vehicle parked in the lot.
4. Vehicles belonging to service employees and companies (including taxi/limo drivers, cleaners, repairmen, and delivery persons) will be permitted for "drop offs" and "pickups" only.
If a Resident is going to away for an extended period of time (greater than 2 days), we ask that person to please park his/her vehicles elsewhere off the property until he/she returns. Residents with garages or carports will be permitted to park there when away.
6. Also, if a Resident will be staying here, but not needing their vehicle for long periods of time (greater than 2 days), we ask that he/she park their vehicles elsewhere off the property.
7. All Residents must "register" (i.e., notify and list) their vehicles with the Lesley Management Company and display a parking sticker on the left rear window or left rear bumper of their vehicle. Alternative display of vehicle stickers must be approved in writing by the Trustees. Parking stickers may be obtained from Lesley Management or Don Nowland.
8. All vehicles shall be parked in a manner so as to not impede access to or from the driveways, garages, carports, the designated parking areas of Harborside Residents, and construction access points. Additionally, all vehicles must be parked within the designated parking place "lines" (as best possible) and comply with the "compacts only" signs.
9. The Trustees may levy fines of \$25.00 for violations of parking rules, and may, if necessary, resort to having violators' vehicles towed at the owner's expense.
10. All other parking rules in the Harborside Rules & Regulations will remain in effect.

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