



**Paul L. Feldman**  
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April 5, 2024

Lisa Lyons  
Senior Clerk, Engineering  
Town of Marblehead  
7 Widger Road  
Marblehead, MA 01945

Re: REQUEST TO CHANGE RECORD PLAN  
Site Plan Review Approval dated February 26, 2024  
84 Harbor Avenue

Dear Lisa,

The Planning Board issued a Special Permit for Site Plan Approval Decision dated February 26, 2024 (filed with the Town Clerk on February 28, 2024) granting the special permit regarding the proposed construction of a new house at the above address (the "Decision"). No appeal of the Decision was taken within the appeal period. During the hearing with the Planning Board, an abutter questioned the ownership of the subject lot that was shown on the survey plan. The Applicant had its title examiner re-confirm the title to their property.

Under General Conditions 1 of the Decision, the Project is required to be constructed substantially in accordance with the Record Plans, and any proposed changes, whether major or minor, shall be submitted to the Town Planner and/or the Board for approval. The Record Plans included Site Plans prepared by Patrowicz Land Development Engineering dated October 11, 2023 ("Site Plans"). As zoning counsel, we reviewed the title work and determined that the zoning information shown on the Site Plans needs to be changed. Accordingly, the Applicant now requests that the Site Plans be substituted with the plan entitled "Modified Existing Conditions" prepared by Patrowicz Land Development Engineering dated April 4, 2024, and with the plan entitled "Modified Site Plan Showing Proposed Work" prepared by Patrowicz Land Development Engineering dated April 4, 2024 (together "Modified Site Plans") and enclosed with the application requesting this change.

Notwithstanding the request to modify the Record Plans, the proposed house is to remain the same as originally presented to the Planning Board, the proposed lot is the same land as previously presented to the Planning Board, and the siting of the house on the lot is the same. The enclosed Modified Site Plans update the location of the frontage for the lot on Harbor View.



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As initially filed, the frontage was understood to be 20 feet on Harbor Ave and therefore, the lot was non-conforming regarding the required 100-foot frontage requirement under the zoning by-law. In fact, based on a review of the title and the lot configuration of the Applicant's property at the time it was created, the lot has 112 feet of frontage on Harbor View, and therefore is conforming as to the 100-foot frontage requirement. Enclosed is a 1958 plan that created the adjacent lot known as 86 Harbor Ave, showing the required 100 feet of frontage along Harbor View for that lot. In 2019, the Land Court approved a plan that showed the complete property owned by the Applicant with more than 100 feet of frontage along Harbor View. That plan is also enclosed. Thus, the Applicant owns the land shown as Lot 2 on the 2019 plan as registered land, and as confirmed by the title attorney, also owns the land that comprises Harbor View, which is recorded land. But, as stated, given the orientation of the frontage, the zoning information on the Record Plans should be updated.

As stated, I have enclosed the Modified Site Plans that updates the zoning information. Below is a chart (changes from original submission highlighted in yellow) and an explanation of the changes to the zoning information.

	Required	Revised Required	Exiting	Revised Existing	Proposed	Revised Proposed
Lot Area	35,000	35,000	26,400+/-*	22,000'+/-*	26,400+/-*	22,400'+/-*
Frontage	100'	100'	20'	112'+/-	20'	101'+/-
Front	20'	25'**	269'+\-	19'+/-	126'+\-	5'+/-
Side	25'	25'	11.4'+\-	0'	25.5'+/-	26'+/-
Rear	15'	25'**	N/A	11.4'	N/A	25.5'+/-
Waterfront	25'	25'	0'	0'	58'+/-	26'+/-
Building Height	30'	30'	55.6'	55.6'+/-	29.5'	29.5'+/-

\* To mean High Water

\*\* Perpendicular to the Shoreline

Lot Area is currently and will continue to be non-conforming, but the total area is slightly different because under the zoning by-law, the area within a street is not included in lot area.



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Lot frontage is conforming and will continue to be conforming. Harbor View is a street because under the zoning by-law, a street is a “way in existence when the Subdivision Control Law became effective, having sufficient width and suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon.” Harbor View is a constructed asphalt private way with gravel surface for 112 feet, which has provided access to the single-family house (and although not used for access by the house at 86 Harbor Ave., is capable of providing access thereto) for over 65 years and has existed for over 100 years. Eleven (11) feet of the current way will be removed as part of the proposed construction, leaving 101 feet of frontage that is in compliance with the zoning by-law.

Given the revised orientation of the lot, the existing home is non-conforming as to front, side, rear and waterfront setbacks, and as to height. The proposed new dwelling will eliminate all current dimensional non-conformities, other than front setback.

For completeness, lot width and open space are both conforming given the revised orientation of the lot, and will remain conforming with the proposed home.

Given the forgoing, and in compliance with the Decision, the Applicant requests that the Site Plans be substituted with the Modified Site Plans and enclosed with the application requesting this change. Because no changes are proposed to the new house to be constructed or any other physical improvements to the property, and dimensional zoning relief is still required from the Zoning Board of Appeals, the Applicant submits the previous findings of the Planning Board set forth in the Decision are still applicable and the above request should be approved.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Paul L. Feldman', written over a horizontal line.

Paul L. Feldman

PLF: