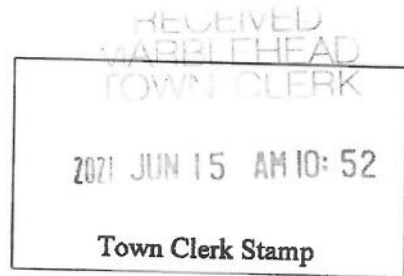




Town of Marblehead
Zoning Board of Appeals



APPEAL FORM

(Appeal of the Building Commissioner's Action/Inaction Regarding Zoning Enforcement)

Date: 09 June 2021

With respect to the property at (address): 76 Clifton Ave

Assessor Map Number: _____ Parcel Number: 25 25 0

Pursuant to Chapter 40A, §8 of the General Laws and Chapter 200-2-I of the Marblehead Zoning Bylaw and **Section 7 of the Rules and Regulations of the Board of Zoning Appeals**, I (we) respectfully appeal to the Board of Appeals the following action taken or not taken, or determination made, by the Building Commissioner and/or Local Inspector:

- _____ (a) the failure to take a requested enforcement action. The written request for enforcement, the written response (if any), and a written statement specifying the grounds for this appeal are attached to this Form
- _____ (b) the failure to issue a requested building permit. The application for the building permit, the written notice (if any) of the denial of the permit, and a written statement specifying the grounds for this appeal are attached to this Form.
- X (c) an order or decision of the Building Commissioner and/or Local Inspector. The written order or decision (if any) and a written statement specifying the grounds for this appeal are attached to this Form.

Applicant Signature: Mark Pelletier

Applicant Name Printed: Mark Pelletier

Applicant Address: 76 Clifton Ave

Applicant Phone Number: (Home) 781-990-6154 Work) 617-592-6577 (Fax) _____
(Email) markpelletier1@gmail.com

Form Complete: Town Engineer's Office: [Signature] Date: 6-10-21
(Signature)

Eng. Dept. - Mary Alley Municipal Building, 7 Widger Road, Marblehead, MA 01045
Phone: 781-631-1529 **Fax: 781-631-2617**

Revision Date: 9/22/2011

Mark Pelletier
76 Clifton Ave
Marblehead, MA 01945
617-592-6577

09 June 2021

To Whom It May Concern on the ZBA,

Do you ever wonder why Marblehead makes the news, radio stations, social media pages or other public venues and everyone points the finger and laughs at us? In this memo, you will under why.

As we all know, the pandemic of 2020 has led many folks to go stir crazy. Interior and exterior renovations at every other house on the street all the while lumber costs have increased 400%. My wife and I are no exception, opening a building permit so we could construct a new shed under the new half setback amendment and opening an electrical permit to provide necessary electricity to the shed for exterior lighting and electrical outlets. A quick look at our permit record and you will see we have an exemplary record opening and closing many permits in a timely fashion on our property. Simply put, we play by the rules and this structure we are discussing in this memo is no exception.

In late April 2021, after construction of our shed and electrical completed and permits were closed, we commenced into phase 2 of our project adding a little decorative touch by adding a pergola to our patio in hopes of growing concord grape vines for our two small children to enjoy in a few years after they matured. A quick walk of my property you'll notice beautiful roses, vast arrays of perennials, tall grasses, well-kept grass, and a vegetable garden. Gardening and growing my own food are something I always grew up with and plan to pass down the tradition to my children. As such, I had previously reviewed building and zoning codes regarding this and found two specific bylaws I needed to contend with, one being Chapter 30-3 in the building code bylaws, and the other being Chapter 200-7 in the zoning bylaws.

In Chapter 30-3, Scope, of the town building code bylaws it states the following:

"New buildings and structures hereafter erected in the Town of Marblehead shall conform to all the requirements of this code."

"The following shall be excepted from the provisions of this code...(3)Buildings less than eight feet in height, and having an area of less than 200 square feet (unless a proposed alteration would increase them beyond these dimensions)."

I clearly knew I did not want to go down the building permit road and deliberately set forth in constructing my pergola to be less than eight feet tall to not meet the definition of a new structure and what the process entails. It simply was not worth the effort.

On 20 May 2021 I received a notice of violation from acting building commissioner Robert Ives (Bob) regarding a violation of section 200-15.A (Minimal Dimensional Regulations). In my conversations with Bob and further determination by town counsel Lisa Meade in a letter dated 04 June, Bob was determined to be incorrect in telling me that I required a building permit for my "structure" based on the code as written in Chapter 30-3 of the bylaws. Additionally, town counsel referenced section 200-7 where the term "pergola" is referenced which thus could make the zoning bylaws potentially apply.

However, there was no mention of the rest of the bylaw referencing pergola stating, "having and roof, to form a structure for the shelter of persons, animals, or property."

In Chapter 200-1, Zoning Authority, section G, the town zoning bylaws state the following:

"Applicability. All buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of the Zoning Bylaw. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located except where it is allowed or allowed by special permit or variance. Where the application of this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control."

As you will see further down this memo, town counsel has corrected Mr. Ives in that I did not meet the definition of the building code to create a "new structure" that would require a building permit. In 200-1, Applicability, it clearly states that all buildings or structures, hereinafter shall be in conformity with the provisions of the Zoning Bylaw. It further goes on to say that buildings, structures, or land can only be used for the purpose which they are allowed or allowed by special permit or variance. Reading through the rest of Chapter 200, multiple references are made about obtaining building permits prior to the commencement of work with ZBA special permits. Nowhere does it reference procedure if it is excepted from building code for not meeting the definition of a new structure per Chapter 30. So how does the applicability of the zoning bylaw apply?

The violation that Mr. Ives issued to me says that I violated 200-15.A, minimum dimensional regulations. Had I built a building, structure, pergola, or anything else over 8' that would necessitate me obtaining a building permit, I might be inclined to agree. However, in the very same Article V, Dimensional Regulations, section 200-16, it states the following:

"Minimum developable lot.

(1) A lot can be altered as a matter of right only if no new or increased nonconformities are created.

(2) Notwithstanding the area and frontage requirements a single detached one-family dwelling or lawful building other than a dwelling may be constructed and used on a lot having not less than 12 feet of frontage but having less than the prescribed minimum area and/or minimum frontage (provided that all other regulations of this Bylaw are complied with) if at the time of application for a building permit, the lot is a minimum of 5,000 square feet in area; and said lot prior to the date of the adoption of the requirements in question:

- (a) Was lawfully laid out by plan or deed duly recorded in the Essex South District Registry of Deeds (or registered in the Essex South District of the Land Court); and*
- (b) Was otherwise exempted from such requirements by statute; and*
- (c) Conformed to the area and frontage requirements of the Bylaw applicable at the time of said recording or approval.*
- (d) Was not held in common ownership with any adjoining land at the time of recording or approval, whichever occurred first."*

By definition, aren't all "new or increased nonconformities" required to have a building permit? Noting the underlined sections above, why am I not able to alter my lot as a matter of right? By-right zoning specifically exists to remove unnecessary discretionary approval processes to reduce cost and prevent NIMBY's from doing what they do best. The Town of Marblehead has already determined that no "new or increased nonconformities" have been created in the fact that they agreed that no building permit is required for what I built. If I did create one I'd need a building permit. It's actually excepted by statute as already shown in Chapter 30-3 of the building code bylaw. Additionally, the assessor's office has confirmed that the structure in question is not subject to assessment because it is decorative and does not increase the finished living area thus not increasing value of my home. So, reading 200-16, given that I have not created a new or increased nonconformity by law requiring a building permit, not created an assessable structure, my lot size is over 5,000 sq ft (~6,500), and meets all of the A-D requirements, why is my alteration not considered a by-right case?

Moving on, in Chapter 200-7, Meaning of Words, the town zoning bylaws state the following:

"BUILDING...A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition, "roof" shall include pergola, trellis or canopy or any similar covering whether or not permanent in nature. The word "building" includes "structure."

Clearly the word pergola exists here, there is no disputing that and I never have. However, the way it is written as "for the purpose of this definition, "roof" shall include pergola, trellis, or canopy, or any similar covering whether or not permanent in nature." Then goes on to say "'The word "building" includes "structure."'" This is poorly written at best leaving enormous ambiguities about what is a roof, is a roof a building, is it a structure, is it part of a building or structure, etc. Additionally, the choice of words like pergola and trellis equating to a roof makes zero sense as some pergola and trellis have a roof, and some do not. Therefore, I asked for clarification from the town building commissioner at the time, Rob Scott, and I was instructed that as long as the "structure" does not have a roof (everyone knows what a roof is) it does not meet the definition of the zoning bylaw because no shelter is created. The example I was given is that it's the reason that we see children's play "structures" without a roof on them in the setback because then they would be providing shelter for persons, animals, or property. In this case children. I've seen it go as far as to be interpreted by previous building commissioners that the soft Sunbrella roof on play structures is acceptable with my neighbor next door having a structure like this no more than 5 feet from the fence, but a firm fixed roof is unacceptable. With this advice and knowing I did not need a building permit, we commenced our project planned during the 2020 pandemic to construct a pergola, under 8' in height, and having no roof as the purpose was not to shelter persons, animals, or property.

Continuing in Chapter 200-7, Meaning of Words, the town zoning bylaws state the following:

"BUILDING, NEW...A building which did not exist immediately prior to commencement of construction, as well as the reconstruction, alteration, or repair of an existing building involving both 50% or more of new exterior walls (cladding excluded) and the replacement by 50% or more of the structural elements of that building."

Note, new buildings are defined as having both 50% or more of new exterior walls and the replacement by 50% or more of the structural elements of that building. The pergola I built does not have walls, nor

does it have a roof. As we saw in 200-7, Meaning of Words, BUILDING, it states "the word building includes structure". By definition, the new structure that I built that Mr. Ives is referring to would have to meet the definition of BUILDING, NEW which it simply can't because it has no exterior walls given that "the word building includes structure."

I'd like to bring your attention to the way the bylaw was previously written to the major 2019 update. Taken from the "FINAL DRAFT (RED-LINE VERSION) – January 29, 2019" that was voted on at Town Meeting which included numerous zoning by laws changes:

"BUILDING - A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition, "roof" shall include ~~an awning~~ pergola, trellis or canopy or any similar covering whether or not permanent in nature. The word "building" includes "structure."

Take notice here that the original intent of this definition was always to include a roof with the word awning (have you ever seen an awning that has no roof and/or does not provide shelter?) and the new definition which included the already defined word "canopy"

"CANOPY - A permanent structure which stands alone or in conjunction with another structure, which has a roof, whether pitched or flat, supported by a vertical base, but without walls"

reiterates the fact that this bylaw was written specifically for the intent of regulating structures that have a roof forming a structure for the shelter of persons, animals or property. Specifically note in the definition of canopy where it says, "has a roof, whether pitched or flat, supported by a vertical base, without walls." Both the original word ~~awning~~ which was removed, and the defined word "canopy" demonstrate that the intent was to create shelter, with a roof. In simple terms, if you stand under it during a rainstorm, you'll remain dry. Based on these definitions, and the fact that the words pergola and trellis are not defined, common sense interpretation is that the pergola and a trellis contained in this definition must also have a roof otherwise the rest of the building definition "or any similar covering whether or not permanent in nature" would not make sense. Keep in mind, I have already demonstrated in the attached photos that my pergola does not have a roof and Mr. Ives has also agreed with me that not all pergolas have a roof. What I built does not meet this definition.

Continuing in the letter issued by Ms. Mead, she mentioned that "The Town of Marblehead bylaws apply as a whole, not in pieces or parts." I 100% agree with this statement and am not here to dispute that. As you have read thus far, there is no roof, permanent or not, on my pergola. There are no walls as defined in BUILDING, NEW. It is wide open to the sky. Zero shelter is provided by this pergola under any condition. If I had built this structure with the intent to shelter persons, animals, or property then would common sense not dictate building a structure with a roof? See attached images for any of the pergolas I could have purchased that have a full roof and meet the definition of forming a structure for the shelter of persons, animals, or property. I would absolutely have needed a ZBA special permit for any of those structures if that was my end goal. Mr. Ives has said himself that not all pergolas have a roof and yet the definition in 200-7 clearly says that it must have a roof. I am here to dispute that by the letter of the bylaws of the Town of Marblehead as written, the definitions stated in 200-7, the bar that Ms. Mead has set saying that the bylaws apply as a whole, not in pieces or parts has clearly not been met. Just because one zoning bylaw includes the undefined term of "pergola" does not exclude the rest of the definition or other definitions from applying within the same bylaw.

This is where I get into definitions and the Town of Marblehead trying to redefine history. All of the town bylaws I have reviewed failed to explicitly define what a pergola is. Not a single other local town has the word pergola in any of their bylaws. This is for a reason. In conversations with Mr. Ives, he told me that when the town fails to define a particular term in the code or bylaws, the common sense accepted use definition applies. In other words, what does the rest of the world outside of Marblehead believe it to mean and what has history meant it to mean? A quick internet search led me to an article from Infinite Canopy I have attached here called *How Pergolas Have Stood the Test of Time* where you can read that modern day definitions and interpretation of pergolas are still the way they have been since the 1640's and even dating back to 1400 BC which is for the purpose of providing decorative structure for vines to climb, create hanging gardens, and produce vegetation (e.g Concord Grapes) which aligns with our original purpose and scope. I cannot control what other people do with their pergola, but I can assure the ZBA that if I wanted to create shelter I would have purchased a pergola with a roof and we would be sitting here reviewing a special permit application.

As an example, *Pulullo v. Croft*, 86 Mass. App. Ct. 908 (2014) (Zoning, Board of Appeals, decision, building inspector, issuance of permit, Judicial review, Lot. Practice, Civil, Zoning Appeal, Summary Judgement. Words, "Lot Depth") it's noted that the Appeals Court upheld the Land Court's decision that undefined terms does not give those charged with enforcing the zoning bylaw a license to interpret those terms based on their personal views. This judgement was derived from numerous pieces of case law stating that in the absence of definition, the meaning of a word or phrase used in a local zoning enactment is a question of law, *Kurz v. Board of Appeals of N. Reading*, 341 Mass. 110 (1960), and is to be determined by the ordinary principles of statutory construction. Here we have Mr. Ives interpreting the word "pergola" to always be a structure that has a roof to form a shelter for people, animals or property based on terribly written bylaw despite commonplace definition of a pergola to be used for growing flowers and vines. He later agreed that not all pergolas have a roof and I've further proven this by the images included of mine as well ones I could have purchased and opted not to. Given hundreds of years of history and going back into the Roman heritage of the term, his interpretation should be deemed unreasonable using his own methodology of commonly accepted definitions of words that are undefined within the town bylaws. Quoting from *Commonwealth v. S.S. Kresge Co.*, 267 Mass. 145, 148 (1929). *Shuman v. Aldermen of Newton*, 361 Mass. 758, 766 (1972). *Jackson v. Building Inspector of Brockton*, 351 Mass. 472, 475 (1966), and cases cited. "We derive the words' usual and accepted meanings from sources presumably known to the [by-law's] enactors, such as their use in other legal contexts and dictionary definitions." *Commonwealth v. Zone Book, Inc.*, 372 Mass. 366, 369 (1977). In the case of my pergola, usual and accepted meanings of the word "pergola" clearly establish they do not have a roof nor are for the purpose of sheltering people, animals, or property, thus creating a bylaw that is written illogically, despite whatever the intention was of the writer. Additionally, to define a "pergola" as a "roof" as written is flawed.

It's because of cases like this where some group of people in town believe they are above everyone else and try to redefine history and remove common sense from everyday life that we find ourselves negatively in the news, on radio stations, social media, etc. It has become tradition in town that the majority of the time when we make the news to get laughed at. This would certainly be no exception. The last many years of Town Meeting warrant articles are a clear demonstration of the road to lunacy we are heading down and this ZBA case is no exception. Gas leaf blowers, no more fun at Brown's Island, etc. to give just a few examples of other things we get laughed at for. I hope that we can put an

end to it or at least slow it down so some of us can continue to enjoy town the way it was known for since inception.

So I ask here, why is the Town of Marblehead trying to redefine history? Do we know better than the Romans who came up with the concept of the pergola and its purpose? Are we really trying to regulate "structures" that serve no function to provide shelter, are non-permanent, decorative by design, and unable to be assessed for these very same reasons? I sure hope not and look forward to common sense prevailing. At the end of the day, my pergola is constructed of FSG certified cedar, sustainable by definition and practice, and will provide a good future home for many birds, bees, and provide a food source making our town a healthier and happier place to live. The purpose of these bylaws are to promote the general welfare of the town and to protect the health and safety of its inhabitants. Is that really being violated here? If my intention as Mr. Ives interpreted the law is to create shelter, is it really safer to have a large offset patio umbrella that I would have no choice but to install which poses the risk to go airborne during a windstorm? At some point common sense has to prevail. Does it really make sense to tear this structure down that clearly impacts no one from a health and safety perspective to install a large umbrella constructed of plastic and acrylic and provides no home for our local wildlife? The answers to these questions are no, absolutely not. I believe at this point I have proven unquestionably that it fails to meet numerous aspects of the definitions set forth by the Town of Marblehead zoning bylaws in 200-7 either due to vagueness or being completely undefined. The town made a major mistake modifying 200-7 in 2019 with little to no thought put into the language. The way 200-7 was originally written is a carbon copy of the bylaws of the Town of Arlington, MA and theirs still has the original language with appropriate definitions for "canopy" and "awning". Why did we change this and add confusion to a bylaw already adopted and in use by other communities local to us verbatim?

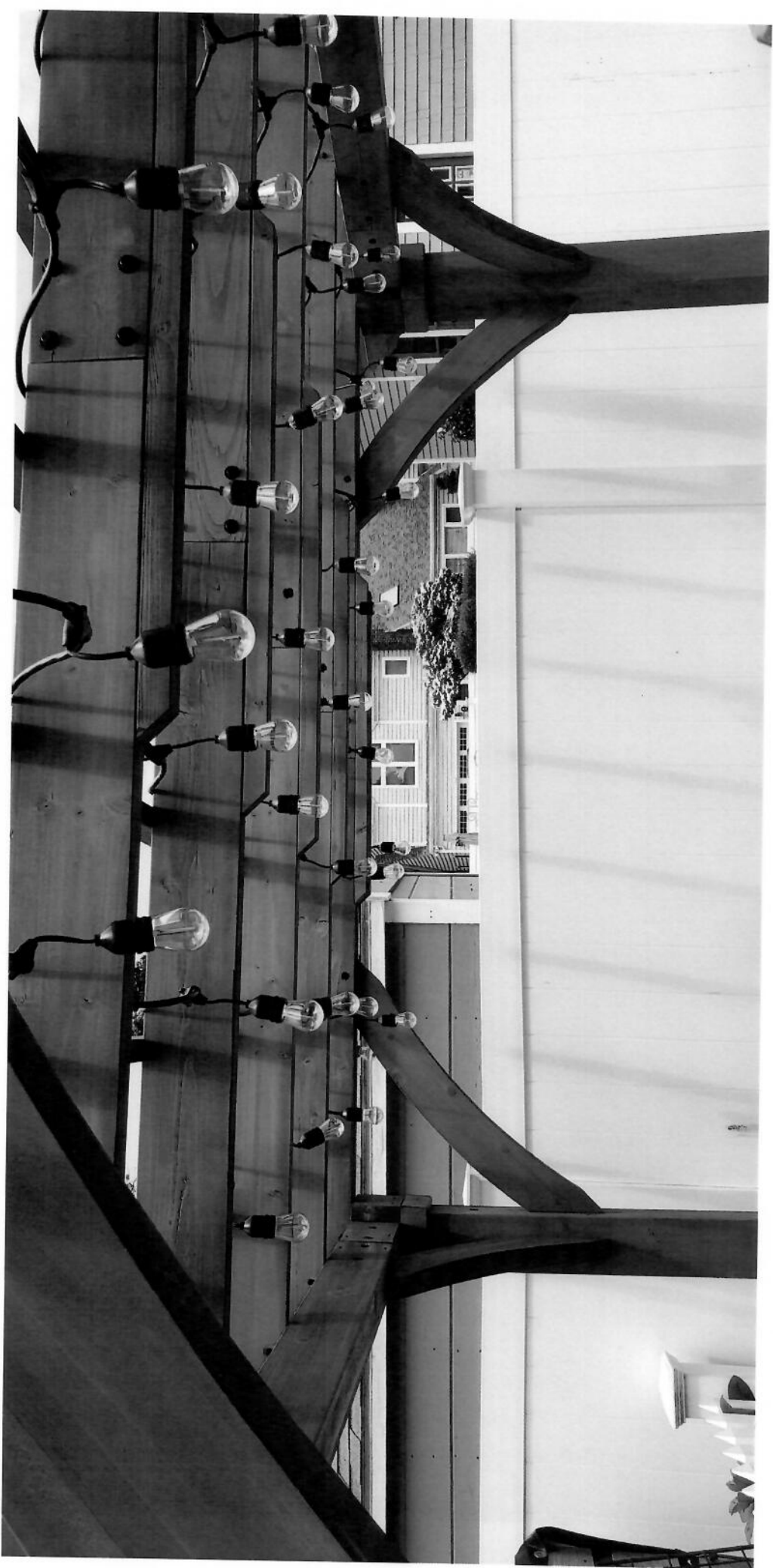
Furthermore, while not having bearing on this decision, it should be noted that Ms. Gifford, 63 Ware Lane, employee of the Town of Marblehead, who filed the original complaint, has a rear fence that is over 6' tall, partially on my property (see attached plot plan) and with my pergola being under 8' tall, less than ~25% of it is exposed to her view assuming no obstructions on her side. However, more than ~50% of what is exposed to her is blocked by her shed which is 6 inches from the property line. In a best-case scenario, she cannot see more than ~10% of the structure at any time unless she is looking out the window on her second floor. It is obscured from view by other neighbors either by my shed, arborvitaes, or other tall shrubbery that all exceed the height of the pergola. I can't reiterate how much that this is a non-impactful item, creating no health or safety risk (actually quite the opposite with the wildlife it will attract), proven by definition it does not make a new structure requiring a building permit here in Marblehead, and does not meet multiple definitions cited in 200-7, using usual and accepted interpretations.

All the best,

Mark Pelletier
76 Clifton Ave
Marblehead
617-592-6577

Attachment 1 – Pergola installed at 76 Clifton Ave







Attachment 2 – Pergola with roof examples

Sale



Bellucci 14' W x 10' D Pergola

See More by [Sunjoy](#)

★★★★☆ 4.0 [1 Review](#)

\$2,110.53
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\$118/mo. for 18 mos - Total \$2,110.53* [with a Wayfair credit card](#) ⓘ

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Description





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Attachment 3 – History of the word “pergola”

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INFINITE SHADE

INFINITE DESIGN

INFINITE POSSIBILITIES

How Pergolas Has Stood the Test of Time

A pergola is a decorative archway found in a garden or park with climbing leaves covering it. Around for thousands of years, pergolas may have changed materials, styles, and identified by different names, but they have truly stood the test of time.

It is rumored that the first successful pergolas date back to 1400 BC. The first surviving plant archway is rumored to have been owned by an Egyptian official of high court in Thebes. It remains a mystery as to what inspired creating pergolas- maybe it was driven by the weather or someone recognized its aesthetic beauty- but it has proven to remain a timeless entity.

Pergolas have had many uses over the years and have even defined someone of a certain social status. Elite and wealthy people used pergolas to develop intricate hanging gardens, but average citizens also utilized pergolas to produce certain vegetation. They can simply be a structure for vining plants to climb, providing additional privacy and shade. Now the common person has access to the pergolas and all of its uses; it is not only for the wealthy anymore.

The term "pergola" has a Latin origin, meaning "projecting eave". It is commonly noticed as an arbor, trellis, or extended roof. Back in the 1640's in the tail end of the medieval period, Roman John Evelyn first used the term "pergula" to refer to the Trinita dei Monti cloister. Photos of climbing vines in the Medici Villas found near Florence in the 16th century are good examples of what John Evelyn was most likely describing. Coincidentally, Eastern Asia inhabitants were also creating their own version of pergolas during this time. They used curved beams which arched over their pagodas, closely resembling the Roman versions.

With the 17th century came an archeological boost to the design of pergolas. The revival of this artistic period brought the creation of structures that please the eye over their functionality. The Great Italian Renaissance constructed big and dramatic smooth stone pillar pergolas. Great garden designers of the 19th and 20th century including Sir Edwin Lutyens and Gertrude Jekyll embodied the creation of pergolas of that era. Pergolas of the new age are mainly constructed of fiberglass and vinyl, not the stone and brick used by former generations. Vinyl and fiberglass are ideal materials for pergolas because they require very little maintenance and last a lifetime. Stylish pergolas made of red cedar or number one grade treated pine in two-beam or four have become the new industry standard.

Along with decorative archways, pergolas have been used to cover roads, walkways, or as building extensions. Permanent pergolas created out of rock, stone, vinyl, and fiberglass have also become an option. An artistic structural feature that once flourished in Egypt, Greece, France and Asia have now spread to all parts of the world.

The functionality and simplicity of pergolas is a staple in history and will most likely continue to be a popular feature. Even though pergolas did lose popularity in 18th and 19th century naturalistic gardening styles due to its obviously artificial construction, changing the materials to include stone and brick pillars helped pergolas make its comeback in the 19th and 20th centuries. The dynamic and powerful structures pioneered by Gertrude Jekyll and Sir Edwin Lutyens to complement pergolas epitomized their non-official trademark of luxuriously planted firm erections. The gardens at The Hill in Hampstead, London, showcase a particularly extensive pergola designed by Thomas Mawson who created it for W.H. Lever.

6/8/2021

- Order Fabric Samples

Pergolas History | Infinity Canopy



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Attachment 4 – Memo from Ms. Mead, town counsel to Jason
Silva



Mead, Talerman & Costa, LLC
Attorneys at Law

30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747
www.mtclawyers.com

TO: Jason Silva, Town Administrator
FR: Lisa L. Mead, Special Town Counsel
DA: June 4, 2021
RE: 76 Clifton Avenue and Mark Pelletier

Reference is made to the above captioned matter and a recent enforcement order issued by Robert Ives to Mr. Mark Pelletier of 76 Clifton Avenue. In that connection, you requested I review the issues raised by Mr. Pelletier relative to the interpretation of the Town of Marblehead General Bylaws and Zoning Bylaws and the application of same to the facts as I understand them.

Those facts are as follows:

- 76 Clifton Avenue is located within the Single Residence District.
- The Single Residence District has a rear yard setback of 15 feet under the zoning bylaw dimensional requirements.
- Mr. Pelletier has constructed and located a pergola within the 15 foot rear setback.

I have read all of the correspondence from Mr. Pelletier as well as the enforcement letter from Mr. Ives. While Mr. Pelletier is correct that under the Town of Marblehead General Bylaws, the pergola would not be considered a building for the purpose of receiving a building permit. That provision is as follows:

General Bylaws, Building Construction, section 30.3 Scope

A. New buildings and structures hereafter erected in the Town of Marblehead shall conform to all the requirements of this code.

B. Existing buildings need not conform to the requirements of this code except that all ordinary masonry construction buildings and all frame buildings hereafter built or altered in which the lower stories or portions thereof are used for business and the stories above for residence purposes shall have partitions and ceilings separating the business portions from the residence portions covered with metal lath and plaster or other equivalent fire-retardant material.

C. The following shall be excepted from the provisions of this code:

(1) Buildings belonging to the United States or to the Commonwealth of Massachusetts.

(2) Bridges and wharves.

(3) Buildings less than eight feet in height, and having an area of less than 200 square feet (unless a proposed alteration would increase them beyond these dimensions).

(4) Temporary structures erected for storage or for offices during construction operations, provided such structures shall be removed at the completion of such operations.

(5) Farm buildings not used for human occupancy, situated not less than 50 feet from any other building.

Millis Office
730 Main Street, Suite 1F
Millis, MA 02054
Phone 508.376.8400

(6) Ordinary repairs and alterations of buildings, but not including changes in structural members or supports, means of egress or anything which would violate any provision of this code.

(emphasis added)

However, one cannot merely rely on one section to the Bylaws when determining what can or cannot happen or occur on a piece of property. Indeed there are many provisions which might apply to any piece of property. In this instance the foregoing provision says that a building permit is not needed. The lack of a requirement for a building permit does not exempt one from complying with other provisions of local bylaws which might also apply to the property.

In this instance the Zoning Bylaws also apply and they have their own definitions. Indeed the Zoning Bylaw considers a pergola a building as follows:

Section 200-7 Definitions

BUILDING A combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition, "roof" shall include pergola, trellis or canopy or any similar covering whether or not permanent in nature. The word "building" includes "structure." [Amended 5-6-2019 ATM by Art. 26]

Once it is determined to be a Building for zoning purposes, the question is, what other zoning parameters apply? Here, the dimensional requirements for property in the Single Residence District would apply as follows:

V Dimensional Regulations

200-15 Minimum dimensional regulations. Table 2, Dimensional Regulations, sets forth the minimum lot area, frontage, yard setbacks, open area requirements, and the height limitations for all uses

Single Residence District – 15 foot rear setback

The Town of Marblehead bylaws apply as a whole, not in pieces and parts. For example, if this property were also located next to a pond, for example or marsh land, then the owner would also need to comply with the local and state wetland protection regulations. In that instance, if he were installing a fence, even though he may not be required to seek a building permit for it or even obtain zoning relief, he would have to obtain an Order of Conditions. The mere fact that a particular action does not meet the threshold of one particular bylaw does not exempt it from another requirement. Mr. Pelletier does not need a building permit. Indeed, Mr. Ives did not require one. However, under the Zoning Bylaw, the construction of a pergola very clearly requires a special permit from the Board of Appeals to be located within the rear yard setback.

Different bylaws "operate in separate and mutually exclusive spheres." *Shirley Wayside Ltd. Partnership v. Board of Appeals of Shirley*, 461 Mass. 469, 477 (2012) (Compliance with Board of Health Regulations cannot substitute for compliance with Town's Zoning Bylaws); *Town of Granby v. Landry*, 341 Mass. 443, 446 (1960) (MA Statute regulating licensing of trailer parks was not a zoning regulation and Town zoning bylaw requiring additional

permitting for mobile homes was valid). Here, the General Bylaw concerns compliance with the State Building Code, and not compliance with the Town Zoning Bylaws. They are in separate spheres with different requirements and applicability. Just because an individual may be eligible for a building permit, or may not even require one under the State Building Code, does not mean there will not be other approvals required. *Building Inspector of Lancaster v. Sanderson*, 372 Mass. 157, 167 (1977) (“holding of a license or permit... does not entitle the licensee or permittee to operate that business in a place where such a business is prohibited by zoning by-laws or ordinances”); *Pratt v. Building Inspector of Gloucester*, 330 Mass. 344, 345 (1953) (permit received from City Council for horse stable did not preclude City’s Zoning from applying); see also *Davidson v. Board of Selectmen of Duxbury*, 358 Mass. 64 (1970) (Despite receiving Special Permit, applicant could still be denied other required licenses). Structures, such as the pergola at issue, need to be compliant with both the State Building Code and the Marblehead Zoning Bylaws.

Further, when bylaws, same as statutes, appear to conflict with one another, they are interpreted where the more specific bylaw prevails over the more general one. *Plainville Asphalt Corp. v. Town of Plainville*, 83 Mass.App.Ct. 710, 712-13 (2013); *Grady v. Commissioner of Correction*, 83 Mass.App.Ct. 126, 131-132 (2013); *Boston Housing Authority v. Labor Relations Commission*, 398 Mass. 715, 718-19 (1986); *Boston Teachers Union v. School Comm. of Boston*, 370 Mass. 455, 472, (1976); *Pereira v. New England LNG Co.*, 364 Mass. 109, 118, (1973); see also *Shirley Wayside Ltd. Partnership v. Board of Appeals of Shirley*, 461 Mass. 469, 477 (2012); *Mulrain v. Selectmen of Leicester*, 13 Mass.App.Ct. 48, 52 (1982). Here, while the General Bylaw does not mention pergolas or setbacks, the Zoning Bylaw does. Even if one were assert that the General Bylaw and Zoning Bylaw are conflicting, under the rules of statutory interpretation used by every court in Massachusetts, the more specific Zoning Bylaw will apply to this situation.

Should Mr. Pelletier not agree with Mr. Ives, he has a right to appeal that determination as Mr. Ives as advised. Please let me know if you require anything further.