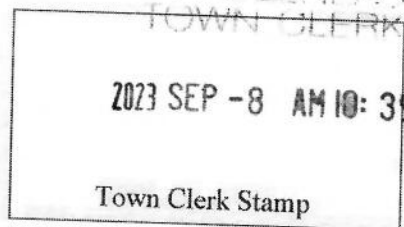




Town of Marblehead
Zoning Board of Appeals



APPEAL FORM

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

Date: SEPT. 8, 2023

With respect to the property at (address): 21 SUNSET ROAD, MARBLEHEAD, MA 01945

Assessor Map Number: 140 Parcel Number: 18 COMPLAINT (C-23-24)

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.
- ☐ (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: James G. Bailey

Applicant Name Printed: JAMES G. BAILEY

Applicant Address: 169 JERSEY STREET

Applicant Phone Number: (Home) 781-631-6126 (Cell) 781-883-8424 (Fax) N/A

(Email) JIM.BAILEY2016@OUTLOOK.COM
ATTORNEY: C/O KEN SHUTZER / 781-593-2016 / KSHUTZER@SHUTZER.COM

Form Complete: Town Engineer's Office 12/2/2023 Date: 9-8-23
(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

KENNETH SHUTZER, 152 LYNNWAY, SUITE 1-E, LYNN, MA 01902-3462

September 6, 2023

STATEMENT OF GROUNDS FOR APPEAL

(Failure of Building Commissioner to take requested enforcement action)

Attached:

- **Building Commissioner Notice:** see enclosed letter dated 8/14/2023 from Robert Ives
- **Complaint:** filed July 29, 2023 via online portal detailed below. In summary, requested that newly planted maple trees and arborvitaes at 21 Sunset Road be trimmed to 9 feet as conditioned in the 2008 Board of Appeals Notice of Decision filed February 6, 2008 and referenced below (copy enclosed)

Reference: 2008 Board of Appeals – Notice of Decision

- **Notice of Decision Filing Date:** February 6, 2008
- **Applicant:** Teresa McMahon
- **Applicant Address:** 21 Sunset Road (located within a Shoreline Single Residence District)
- **Final Disposition:** Granted **with Conditions on attached plan**

Background and Current Violation:

- In February 2008, the ZBA decided to allow the above referenced applicants at 21 Sunset Road to construct a significantly larger nonconforming structure that **resulted in a material reduction of sight/water view corridors for abutters** (primarily Bailey 169 Jersey Street and the Kiernan of 24 Sunset Road). This project also included permission to construct a pool within a few feet of Bailey house along **with a revised landscaping plan for the property**.
- In exchange for plan (Special Permit) approval (i.e., loss of air/water views resulting from house expansion), the abutters received the promise/condition from the ZBA that the **applicants would change the landscaping plan such that they would not be allowed to plant/grow new trees, shrubs, etc. that would adversely impact access to sunlight or sight/water view corridors**.
- At the time of the hearing, the applicant's plan specifically highlighted the new plantings that would adversely impact both either access to sunlight or view corridors. As a result, the actually wording in the Notice of Decision is as follows: **"The 19 arborvitaes shown on the attached plan and located at the southeast corner of the property shall be maintained at a height not to exceed nine (9) feet"** (see last sentence).
- While the ZBA members that added this sentence refers only to the specific new trees identified on the plan presented, **clearly (and logically) this Condition was granted to the abutters with the intention of permanently preserving abutter sight/water view corridors and maintaining current sunlight access regardless of the tree species or number (since the expanded house construction would permanently reduce abutters' sight/water view corridor)**.
- Since purchasing the property, the new owners (Smith) of 21 Sunset Road have recently planted (1) **two new maple trees in the pool area replacing or directly adjacent to the**

original "19 arborvitae trees" on the approved plan and (2) new arborvitae trees (7 to 8) along the property line just outside the pool area. All these trees are within Bailey sight/water view corridor and the maple trees will block the sunlight with branches that would reach over the property line and house. Bailey spoke to Smith on 7/28/23 and Smith assured Bailey that he was intimately aware of the ZBA Notice of Decision. His position is that the 9 foot restriction literally only applies to the 19 arborvitae trees that were included in the original approved plan and referenced in the ZBA Notice of Decision. He is intentionally challenging the decision and feels he is free to plant/grow trees on his property without limitation and contrary to the conditions recited in the Decision.

Building Commissioner Requested Enforcement Actions:

- Given the violation of the Conditions of the Notice of Decision, Bailey requested that the Building Commissioner order the following actions:
 - Require that the **arborvitae trees in the pool area be trimmed to 9 feet or less** as mandated in the ZBA conditions (*Note: some of the "original 19" have been removed*);
 - Require that the **newly planted "american" maple tree located within 10 feet of the arborvitae in the pool area be trimmed to 9 feet or less** as mandated in the ZBA conditions;
 - Require that the **newly planted "japanese" maple tree replacing the arborvitae in the pool area be trimmed to 9 feet or less** as mandated in the ZBA conditions; and
 - Require that the **7 to 8 new arborvitae trees located in our water view corridor along the property line just outside the pool area be trimmed to 9 feet or less** as mandated in the ZBA conditions.
 - *As noted in his letter, the Building Inspector only inspected the arborvitae specifically referenced in the Notice of Decision (as noted above, many of which the owners had removed prior to the inspection).*

Positions/ Rationales of the Parties:

Smith's (21 Sunset Road)

Bailey spoke to Smith about this issue on 7/28/23 and Smith assured Bailey that he was intimately familiar with the 2008 ZBA Notice of Decision and declined Bailey's offer to provide some additional background material. Smith's position is an **extremely narrow interpretation** of the Conditions and is as follows:

- The Notice of Decision **only refers to the 19 arborvitae trees that were shown on the referenced landscape plan**. A broader interpretation of intent is not warranted or appropriate.
- Therefore, **Smith's position is that he can plant unlimited new trees/shrubs in any location he wishes without regard to impact on abutters.**
- Or, in other words, Smith **could plant a second row of 19 arborvitae trees (#20-38) immediately behind the original trees** and let them grow 30 feet high and they would still be in compliance with the Condition as long as the first row of initial 19 arborvitae trees were trimmed to 9 feet.

Bailey's (169 Jersey Street)

A literal/restrictive interpretation of the 2008 ZBA Notice of Decision is not consistent with the original intent of the abutters or detailed in the ZBA Decision.

In summary, the final agreement of the parties was:

Applicants – approval for construction of much larger house that **permanently adversely impacted abutters** (and pool located right next to 169 Jersey Street house)

Abutters -- **permanent protection of abutter sight/water view corridors and sunlight access** regardless of any future tree/shrub species or number of plantings

More specifically, below is the Bailey argument to the Commissioner/ZBA including how to implement current and future enforcement:

- Once the ZBA decided to incorporate abutters concerns regarding the project "landscaping plan" as part of the overall review/negotiation/approval process (along with the traditional "construction plan") and explicitly reference the landscaping plan in the final Notice of Decision, **all future new landscaping actions that further impact the abutters' original concerns should be subject to the Conditions.**
- Since the original landscaping plan and the Notice of Decision only reference the 19 arborvitae trees, **then the 19 arborvitae trees are the only new landscaping elements that the applicant sought and was authorized to plant.**
- Therefore, the Smiths **must apply to the ZBA to obtain an amended Special Permit** to plant additional trees or shrubs that might potentially be inconsistent with prior Notice of Decision (i.e., grow higher than 9 feet and adversely impact abutters) **and give abutters the opportunity to speak in opposition.**

In conclusion, the Bailey's request the following:

- Require that the remaining **arborvitae trees in the pool area be trimmed to 9 feet or less** as mandated in the ZBA Conditions;
- Require that the **newly planted "american" maple tree located within 10 feet of the arborvitae in the pool area be trimmed to 9 feet or less** as mandated in the ZBA Conditions;
- Require that the **newly planted "japanese" maple tree replacing the arborvitae in the pool area be trimmed to 9 feet or less** as mandated in the ZBA Conditions;
- Require that the **7 to 8 new arborvitae trees located in the sight/water view corridor along the property line just outside the pool area be trimmed to 9 feet or less** as mandated in the ZBA Conditions; and
- That the ZBA issue a Notice of Decision that clarifies and restates the original intent of the parties/ZBA and the process for which the current and future owners of 21 Sunset Road must proceed if they wish to request an amended Special Permit from the Conditions (i.e., plant a tree or shrub that grows in excess of 9 feet).

For your convenience, please find attached copies of the following:

- **Board of Appeals – *Notice of Decision* – February 7, 2008**
 - along with attachment that documents the Conditions of the decision
- **Board of Appeals – *Minutes of Meeting* – October 23, 2007**
 - see page #2 – 21 Sunset Road – second to last sentence
 - documents abutters concerns about impact on views
- **Board of Appeals – *Minutes of Meeting* – November 27, 2007**
 - see page 2 – 21 Sunset Road – last sentence
 - documents abutters support subject to agreement on trees
- **Photographs – From 169 Jersey Street Property**
 - recent pictures of the (1) newly planted maple trees (inside pool area) and (2) new arborvitae along the south property line (between pool area and shed)
- **Map – 169 Jersey Street (Map 140 Lot 3) and 21 Sunset Road (Map 140 Lot 18)**
 - lot/house map (from MH website) with annotations (sight/water view corridor; tree locations; etc.)

Jan C. Boer
9/22/23

REQUEST FOR ENFORCEMENT ACTION

July 29, 2023

Town of Marblehead
Building Commissioner
7 Widger Road
Marblehead, MA 01945

Regarding: 2008 Board of Appeals – Notice of Decision

- **Notice of Decision Filing Date:** February 6, 2008
- **Applicant:** Teresa McMahon
- **Applicant Address:** 21 Sunset Road (located within a Shoreline Single Residence District)
- **Final Disposition:** Granted with Conditions

Dear Mr. Ives:

Thank you for taking the time to review our request for zoning enforcement. Unfortunately, this is not the first time we've had the burden of involving your office, and subsequently the ZBA, to address this issue (starting with discussions with you in 2013).

Given our previous experience, we realize that it's possible that your office may conclude that you are unable to take all the enforcement actions that we are requesting below and that we will be required to appeal to the ZBA to pursue it further. If this is the case, we only ask that you expedite this process and help to guide us in taking the required steps.

Background and Current Situation:

- In February 2008, the ZBA decided to allow the above referenced applicants at 21 Sunset Road to construct a significantly larger nonconforming structure that resulted in a material reduction of water view corridors for abutters (primarily ourselves and the Kiernans of 24 Sunset Road). This project also included permission to construct a pool within a few feet of our house along with a new landscaping plan for the property.
- In exchange for plan approval (i.e., loss of water views from house expansion), we received the promise/condition from the ZBA that the applicants would not be able to plant/grow new trees, shrubs, etc. that would adversely impact our access to sunlight or our water view corridors.
- At the time of the hearing, the applicant's plan specifically highlighted the new plantings that would adversely impact both either access to sunlight or view corridors. As a result, the actual wording in the Notice of Decision is as follows: "The 19 arborvitae shown on the attached plan and located at the southeast corner of the property shall be maintained at a height not to exceed nine (9) feet" (see last sentence).
- While the ZBA member that added this sentence refers only to the specific new trees identified on the plan presented, clearly (and logically) this Condition was granted to the abutters with the intention of permanently preserving abutter water view corridors and maintaining current sunlight access regardless of the tree species or number (since the expanded house construction would permanently reduce abutters' water view corridor).
- Since purchasing the property, the new owners of 21 Sunset Road have planted (1) a new maple tree in the pool area directly adjacent to the "19 arborvitae trees" on the original

plan and **(2) new arborvitae trees (6 to 8?)** along the property line just outside the pool area. All these trees are **within our water view corridor** and the maple tree will totally **block the sunlight** with branches that would reach over the property line and house. I spoke to the owner on 7/28/23 and he assured me that he was intimately aware of the ZBA Letter of Decision. His position is that the 9 foot restriction literally only applies to the 19 arborvitae trees that were included in the original plan and referenced in the ZBA Notice of Decision. He is intentionally challenging the decision and feels he is free to plant/grow trees on his property without limitation.

Requested Enforcement Actions:

- Given the violation of the Conditions of the Notice of Decision, we are requesting that the Building Commissioner order the following actions:
 - Require that the arborvitae trees in the pool area be trimmed to 9 feet or less as mandated in the ZBA conditions (*Note: some of the "original 19" have been removed...replacements TBD*)
 - Require that the new maple tree located within our water view corridor in the pool area be trimmed to 9 feet or less as mandated in the ZBA conditions (ideally removed given not designed to be "trimmed")
 - Require that the new arborvitae trees located in our water view corridor along the property line just outside the pool area be trimmed to 9 feet or less as mandated in the ZBA conditions
- We also strongly (and respectfully) request that the Building Commissioner exercise the special authority granted by the ZBA in our prior appeal **"immediately impose fines** set forth in the Marblehead Zoning Bylaws and seek such other enforcement as may be within his power" (see attached Decision of ZBA – Appeal of Non-action by Building Inspector – Decision section).
 - This may seem "mean" on our part but we have been unfairly burdened with the stress of enforcement for over ten years. It was the intent of the ZBA that the Building Inspector exercise this special authority of an immediate fine to ensure prompt action by 21 Sunset Road as they were very sympathetic to our situation. When I spoke to Charlie Smith on 7/28/23, I made him aware of this special authority (up to \$300 per day) and that I would be filing the Request for Zoning Enforcement. He didn't express any concern.

Positions/ Rationales of the Parties:

Smith's (21 Sunset Road)

I spoke to Mr. Smith about this issue on 7/28 and he assured me that he was intimately familiar with the 2008 ZBA Notice of Decision and declined our offer to provide some additional background material. His position is an **extremely narrow** interpretation of the Conditions and is as follows:

- The Notice of Decision **only refers to the 19 arborvitae trees shown on the plan**. A broader interpretation is not warranted or appropriate.
- Therefore, **his position is that he can plant as many other new trees/shrubs as he wishes in any location he wishes without regard to impact on abutter water view corridors or sunlight impact.**

- Or, in other words, the Smiths could plant another row of **19 arborvitae trees (#20-38) immediately behind the original/current trees** and let them grow 30 feet high and they would still be in compliance as long as the initial 19 arborvitae trees were trimmed to 9 feet.

Bailey's (169 Jersey Street)

We have two arguments supporting our position (in the unfortunate case that the Building Commissioner/ZBA do not support the "broader interpretation" below).

Broader Interpretation

Below is a summary of our broader interpretation of the 2008 ZBA Notice of Decision based on active involvement in all the public meetings:

- The abutters objectives/concerns were always **(1) maintaining future water view corridors** and **(2) eliminating potential adverse sunlight impact**, regardless of tree or shrub species. This is documented as early as the Minutes of the October 23, 2007 ZBA hearing and repeated in the Minutes of the November 27, 2007 ZBA hearing (see attached documents).
- Once the ZBA decided to include abutters concerns regarding the project "landscaping plan" as part of the overall review/approval process (along with the traditional "construction plan"), all **future landscaping decisions that further impact the abutters' original concerns** should be subject to the **Conditions** (e.g., a 100 foot maple tree adjacent to the originally identified arborvitae trees and directly in the view corridor with branches that will reach our house).
- In summary, the final "deal" was:
 - Applicants – approval for construction of much larger house that permanently adversely impacted abutter water view corridors (and pool located right next to abutter's house)
 - Abutters – permanent protection of abutter water view corridors and sunlight access regardless of the tree/shrub species or number of plantings
- The intent of the author of the last sentence was **clearly not to be limiting in scope** but rather to be clear and comprehensive by identifying the only new and problematic landscape elements identified on the originally submitted plan. **If not, the applicant could have simply immediately planted another row of 30 foot high trees (pick your species) right behind the 19 arborvitae trees and been in compliance!** Obviously, that's ridiculous example but that is exactly the position that Mr. Smith is arguing.

Narrow/Restrictive Interpretation

While we don't believe a literal/restrictive interpretation of the 2008 ZBA Notice of Decision is consistent with the original intent of the abutters or ZBA, below is our argument if the Commissioner/ZBA is considering that position:

- As noted above, once the ZBA decided to include abutters concerns regarding the project "landscaping plan" as part of the overall review/negotiation/approval process (along with the traditional "construction plan"), all **future landscaping actions that further impact the abutters' original concerns** should be subject to the **Conditions**.
- Since the original landscaping plan and the Notice of Decision only reference the 19 arborvitae trees, **then the 19 arborvitae trees are the only new landscaping elements** that the applicant was authorized to plant.

- Therefore, the Smiths must apply to the ZBA to obtain another variance to plant a tree or shrub that may potentially be inconsistent with prior Notice of Decision (i.e., adversely impact abutter water view corridors or sunlight access) and give abutters the opportunity to raise their concerns.

In conclusion, we are requesting the following:

- Require that the arborvitae trees in the pool area be trimmed to 9 feet or less as mandated in the ZBA conditions
- Require that the new maple tree located within our water view corridor in the pool area be trimmed to 9 feet or less as mandated in the ZBA conditions (ideally removed given not designed to be "trimmed")
- Require that the new arborvitae trees located in our water view corridor along the property line just outside the pool area be trimmed to 9 feet or less as mandated in the ZBA conditions
- If the office of the Building Commissioner determines that it is not able to take the requested enforcement actions, we kindly ask that you notify us in writing as soon as possible and ensure that we have taken the appropriate steps to satisfy the requirements to initiate the next step (i.e., ZBA Appeal process).

For your convenience, we have attached copies of the following:

- Board of Appeals -- *Notice of Decision* -- February 7, 2008
 - along with attachment that documents the Conditions of the decision
- Board of Appeals -- *Minutes of Meeting* -- October 23, 2007
 - see page #2 -- 21 Sunset Road -- second to last sentence
 - documents concerns about impact on views
- Board of Appeals -- *Minutes of Meeting* -- November 27, 2007
 - see page 2 -- 21 Sunset Road -- last sentence
 - documents support subject to agreement on trees
- Board of Appeals -- *Notice of Decision* -- January 23, 2018
 - see page 4 -- last sentence
 - Appeal of Non-action By Building Inspector -- 21 Sunset Road loss of right to 30-day notice prior to initiation of fines
- Photographs -- Water View Corridor from 169 Jersey Street
 - recent pictures of the (1) newly planted maple tree (inside pool area) and (2) new arborvitae along the south property line (between pool area and shed)

September 6, 2023

- Map – **169 Jersey Street** (Map 140 Lot 3) and **21 Sunset Road** (Map 140 Lot 18)
 - lot/house map (from MH website) with annotations (water view corridor; tree locations; etc.)

Thank you in advance for your assistance with the resolution of this matter.

Best regards,

Jim Bailey

Jim.Bailey2016@outlook.com

169 Jersey Street

Marblehead, MA 01945

Home Tel. (781) 631-6126

Mobile Tel. (781) 883-8424



TOWN OF MARBLEHEAD

BUILDING INSPECTION DEPARTMENT

Mary A. Alley Municipal Building • 7 Widger Road, Marblehead, MA 01945
Tel: (781) 631-2220 • Email: build@marblehead.org

Response of Building Comm.

James Bailey
169 Jersey St
Marblehead, MA 01945

August 14, 2023

RE: Zoning compliance 21 Sunset Road hedges.

Dear Mr. Bailey:

I am in receipt of your complaint (C-23-24 in our system) regarding 21 Sunset Road, a property which abuts your residence on Jersey St, and the required compliance with conditions contained in a ZBA special permit dated February 6, 2008, specifically that the arborvitae hedges shall be maintained at not more than nine (9) feet in height, to preserve views from your property.

On Friday August 10, 2023, I visited 21 Sunset Rd and found that the existing arborvitae are in fact being maintained at not more than 9 feet in height, and therefore comply with the conditions set forth on the special permit, thus no action is required.

In the complaint you state that the owners of 21 Sunset Road have planted a new maple tree, in the general area of the arborvitae hedge, apparently to provide shade for their pool. The building department has no enforcement jurisdiction for additional plantings on this site, as the special permit conditions are silent on plantings other than for those mentioned above.

If you are aggrieved by this notice you may appeal within thirty (30) days to the Zoning Board of Appeals by filing a notice of appeal specifying the grounds thereof with the Town Clerk, as outlined in the Marblehead Zoning Bylaw, §200-2.H.

If you have questions, or require additional information please contact this office at 781-631-2220.

Respectfully,

Robert Ives
Marblehead Building Department

Cc: ZBA, Files: 140/3, 140/18

BOARD OF APPEALS
TOWN OF MARBLEHEAD

Minutes of Meeting of October 23, 2007

The regularly scheduled and noticed meeting of the Board of Appeals was called to order by Chairman Moriarty at or after 7:30 p.m. on Tuesday, October 23, 2007 in the Selectmen's Room at Abbot Hall, Marblehead, Massachusetts. Present at the meeting were Board members Bennet, Papanek, Moriarty, Tenenbaum, and Lipkind.

HEARINGS:

7:30 PM **53 CHESTNUT STREET**
 STEPHEN D. ROGER
 CONTINUED FROM 8/28/07
 NO EVIDENCE TAKEN

(FILED 7/26/07)
MAP 112, PARCEL 20

The Board held a hearing on a request to vary the application of the present zoning bylaw by allowing a special permit for the construction of an addition to a multi family structure. The new construction will be within the required front yard setbacks on a preexisting nonconforming property with less than the required area and rear, front yard setbacks, open area within a General Residence District. The Application was presented by Attorney Paul Lynch of Marblehead. Mr. Roger owns a unit in a condominium which is located at this property. He is seeking relief for an addition over the roof line including a deck. The addition is already in place, and is in the common area of this condominium. Several people spoke in favor of the application including David Lovejoy of 11 Cliff Street, and Steve Kressel of 21 Cliff Street. Other neighbors expressed support in writing. Mr. Sokol of 49 Chestnut Street spoke against the application, as did the immediate abutter at 48 Chestnut Street. The Board voted unanimously that the applicant, as a unit owner, did not have standing to pursue this application, which pertained to the common area of the condominium. The Board then voted that the application for special permit would be denied even if the applicant did have standing. The second vote was unanimous as well. Mr. Moriarty is to write the decision.

7:45 PM **48 EVANS ROAD**
 JUDITH P. DESPRES

(FILED 9/25/07)
MAP 126, PARCEL 43 & 42E

The Board commenced hearing a request to vary the application of the present zoning bylaw by allowing a special permit for the construction of a garage as an accessory to an existing single family structure. The new construction will be within the required side yard setback and exceed allowed expansion limits for a nonconforming building on a preexisting nonconforming property that has less than the required area, frontage, front and side yard setbacks within a Single Residence District. The application was presented by Architect Brian Bosworth of Marblehead. Board members expressed concern about the proposed construction of the garage and green

house area close to the lot line. The hearing was continued to November 27, 2007 at 7:45 p.m. with evidence taken.

8:00 PM **38 COMMERCIAL STREET**
LAURA & CHARLES DIGNAM

(FILED 9/24/07)
MAP 114, PARCEL 19

The Board held a hearing on a request to vary the application of the present zoning bylaw by allowing a special permit for the construction of an addition to an existing single family structure. The new construction will be within the required side yard setback and exceed allowed expansion limits for a nonconforming building on a preexisting nonconforming property with less than the required area, side, rear and front yard setbacks within a General Residence District. The application was presented by Attorney Carl F. King of Marblehead and Architect Bobby Oakliegh of Marblehead. Mr. King advised the Board of discussions with town counsel regarding a water line easement. The application was unanimously approved, with conditions. Mr. Lipkind is to write the decision.

8:15 PM **21 SUNSET ROAD**
TERESA MCMAHON

10/23/07
(FILED 9/25/07)
MAP 140, PARCEL 18

The Board commenced hearing a request to vary the application of the present zoning bylaw by allowing a special permit for the construction of an addition to an existing single family structure. The new construction will be within the required side yard setback and exceed allowed expansion limits for a nonconforming building on a preexisting nonconforming property with less than the required side and rear yard setbacks. Request was further made that the Board make a finding that the present application contains specific and material changes to a prior application which was denied regarding this property, which is within a Shoreline Single Residence District. The application was presented by Attorney Paul Lynch of Marblehead, accompanied by Architect Veronica Hobson. The Board first considered whether the current application was substantially and materially different from one recently denied by the Board. The Board voted unanimously that the application was substantially and materially different from the prior denied application. The Board then began to consider the application on the merits. Mr. and Mrs. Kiernan of 24 Sunset Road, and Margaret Bailey of 169 Jersey Street, each of whom is an abutter, expressed concerns about the impact of the proposed addition upon views. The matter was continued to November 27, 2007, with evidence taken.

8:30 PM **4 NASHUA AVENUE**
BRIAN LUCAS

(FILED 9/18/07)
MAP N-22, PARCEL 7

The Board was prepared to commence hearing a request to vary the application of the present zoning bylaw by allowing a special permit for the construction of an addition to an existing

single family structure. The new construction will be within the required side, front and rear yard setbacks, exceed the maximum required height, and reduce open area to less than what is required, on a preexisting nonconforming property, that has less than the required area, frontage, side, rear, and front yard setbacks, open area and parking located within a Shoreline Expanded Single Residence District. The matter was continued to November 27, 2007 at 8:00 p.m., with no evidence taken.

The meeting was then adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alan E. Lipkind', with a long horizontal flourish extending to the right.

Alan E. Lipkind
Secretary

Minutes of Meeting of November 27, 2007

HEARINGS:

A hearing was held on a request to vary the application of the present zoning bylaw by allowing a special permit for the construction of a garage as an accessory to an existing single family structure. The new construction will be within the required side yard setbacks and exceed allowed expansion limits for a nonconforming building on a preexisting nonconforming property that has less than the required area, frontage, and front and side yard setbacks in a Single Residence District. The application was presented by Architect Craig Bosworth of Marblehead. Mr. Bosworth presented revised plans eliminating a greenhouse shown in a prior plan and otherwise reducing the size of the proposed structure. Brad Carey, an abutter, appeared and spoke in favor of the application. Nobody appeared in opposition to the application. The application was unanimously approved, with limited conditions. Mr. Bennett is to write the decision.

8:00 PM 4 NASHUA AVENUE
BRIAN LUCAS
CONTINUED FROM 10/23/07
NO EVIDENCE TAKEN

(FILED 9/18/07)
MAP N-22, PARCEL 7

The Board was prepared to hear a request to vary the application of the present zoning bylaw by allowing a special permit for the construction of an addition to an existing single family structure. The new construction will be within the required side, front and rear yard setbacks, exceed the maximum required height, and reduce open area to less than what is required, on a preexisting nonconforming property that has less than the required area, frontage, side, rear and front yard setbacks, open area and parking in a Shoreline Expanded Single Residence District. Attorney Paul Lynch of Marblehead appeared for the Applicant. Mr. Lynch's request for a continuance to January 8, 2008, was unanimously approved, with no evidence taken.

8:15 PM 21 SUNSET ROAD
TERESA MCMAHON
CONTINUED FROM 10/23/07
EVIDENCE TAKEN: BENNET, MORIARTY,
PAPANEK, TENENBAUM, LIPKIND

NOVEMBER 27, 2007
(FILED 9/25/07)
MAP 140, PARCEL 18

The Board held a hearing on a request the application of the present zoning bylaw by allowing a special permit for the construction of an addition to an existing single family structure. The new construction will be within the required side yard setback and exceed allowed expansion limits for a nonconforming building on a preexisting nonconforming property with less than the required side and rear yard setbacks. Request is further made that the Board make a finding that the present application contains specific and material changes to the prior application which was denied, for this property which is located within a Shoreline Single Residence District. The application was presented by Attorney Paul Lynch of Marblehead. The applicant previously appeared on October 23rd, when questions were raised by neighbors regarding the impact of the height of the proposed structure on views.. In the interim the applicant had prepared a ridgepole study and other materials showing the impact of the proposed construction. Kevin Boyle of 17 Sunset Road appeared in favor of the application. Jim Bailey, an abutter, appeared in favor of the application, as did Mr. Kernan of 24 Sunset Road, subject to an agreement on trees. The application was unanimously approved, with conditions.

8:30 PM 12 DRUMLIN ROAD
BRIAN BARON

NOVEMBER 27, 2007
(FILED 10/26/07)
MAP 9, PARCEL 9

Ms. Papanek replaced Mr. Lipkind for this hearing and all remaining hearings this evening. The Board then heard a request to vary the application of the present zoning bylaw by allowing a special permit for the construction of an addition to an existing single family structure. The new construction will exceed allowed expansion limits for a nonconforming building on a preexisting nonconforming property that has less than the required area, frontage, side yard setback and front

yard setback in a Single Residence District. The application was unanimously approved, with conditions. Ms. Tenenbaum is to write the decision.

8:45 PM 6 BAYVIEW ROAD
NORA FONSECA ZABRISKIE

(FILED 10/30/07)
MAP 122, PARCEL 43

The Board heard a request to vary the application of the present zoning bylaw by allowing a 6 month extension of a special permit for the construction of an addition to an existing two family structure. The new construction will be within the required side yard setback and rear yard setback and reduce open area to less than what is required on a preexisting property with less than the required area, frontage, side yard setback and rear yard set back, open area and parking, where the existing structure exceeds the maximum height in a Shoreline Single Residence District. The application was unanimously denied. Mr. Moriarty is to write the decision.

9:00 PM 446 ATLANTIC AVENUE
STEPHEN KAPSALIS

NOVEMBER 27, 2007
(FILED 10/31/07)
MAP 7, PARCEL 23

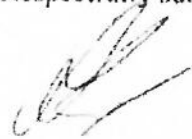
The Board commenced hearing a request to vary the application of the present zoning bylaw by allowing a special permit for the demolition of an existing single family structure and the construction of a single family structure. The new construction will be within the required setbacks on a preexisting nonconforming property that has less than the required frontage and side, rear, and front yard setbacks in a Shoreline Single Residence District. The matter was continued to February 12, 2008, with evidence having been taken.

ADMINISTRATIVE: 5 BARTLETT STREET KATHRYN NIGHTINGALE

The Board heard a request for certain relief on an administrative basis. The request was unanimously approved.

The meeting was then adjourned.

Respectfully submitted,



Alan E. Lipkind

**TOWN OF MARBLEHEAD
BOARD OF APPEALS**

**Application of Teresa McMahon
for a Special Permit pursuant to § 200-36.A.
with respect to the property located at
21 Sunset Road
Assessors Map No. 140, Parcel 18**

Pursuant to notice mailed, postage prepaid, to the petitioners, abutters, and persons to whom such notice is required to be given, and pursuant to advertisements in *The Marblehead Reporter* on October 4 and October 11 of 2007, the Board of Appeals held a scheduled hearing at the Selectmen's Room at Abbot Hall, Marblehead, Massachusetts on October 23, 2007 at or after 8:15 P.M. with evidence taken, with said meeting being continued to Tuesday, November 27, 2007 at or after 8:15 for further evidence and discussion.

Sitting for the Board of Appeals during all hearings were members Tenenbaum, Bennet, Lipkind, Chairman Moriarty and alternate member Papanek. *Wed. BK 25522 pg 373*

Attorney Paul Lynch appeared with the Applicant and her architect, Veronica Hobson of Taproot Design Inc, and plans prepared by Ms. Hobson dated 09/13/07 in addition to a Plot Plan of Land drawn by North Shore Survey Corporation, Registered Land Surveyor, dated September 10, 2007. The applicant was seeking permission to construct an addition to an existing single family dwelling with less than the required side yard setbacks, which construction would exceed the allowed height and the allowed 10% expansion limit. The property is located in the Shoreline Single Residence District and has preexisting nonconformities of less than the required side yard and rear yard setback. The applicant obtained and furnished to the Board an order of Conditions from the Conservation Commission.

Prior to the introduction of evidence for the present application and pursuant to the terms of the decision rendered by the Planning Board and the terms of M.G. L. Chapter 40A Section 16, the applicant requested a finding that the application contained specific and material changes from a prior application which was denied by this Board. The

Page 1 of 1

Filed with Town Clerk _____ on _____ at _____

Board discussed the changes, noting there was in fact a material difference in the application due to the removal of a proposed "turret-like" structure. After review of the two sets of plans the Board voted unanimously to find the new plans and application contained specific and material changes in the conditions upon which the previous unfavorable action was based and allowed the applicant to proceed with her present application.

The applicant proposes to add a two-story addition on the front of the dwelling. The existing northerly sideline of 19.4' will be maintained and the southerly sideline will be 44.8' where 25 feet is required. The maximum height of 33'.11" is the result of the sloping of the land toward the rear elevation abutting Salem harbor, where the elevation drops 10 feet from the front of the house down to the water. The front elevation will be 23' 2.5".

At the hearing on October 23, 2007, two neighbors, Marguerite Bailey Of 169 Jersey Street and Dana Kierman of 24 Sunset Road spoke of concerns of what impact the addition would have on their views and the potential resulting impact on their property values. It was noted that the elevation at the road and even higher at 169 Jersey Street. The Board, after hearing the neighbor's concerns, discussed that it would be helpful for the neighbors to be able to view CAD drawings of the elevations and view corridors to see the impact of the construction, if any. The hearing was then continued to November 27, 2007. to allow the neighbors and the applicant to review the concerns.

At the November 27th hearing, the applicant appeared with Mr. Lynch and Ms. Hobson and presented evidence that she had worked closely with the neighbors, installing ridgepoles and providing site lines on the property as well as an overlay of the existing dwelling. It was noted by the board members that the overlay showing the new roof and the minimal impact on the view was an excellent and beneficial exercise. The neighbors at 24 Sunset Road, 17 Sunset Road and 169 Jersey Street all were in favor of the revised application. However, a letter from Marguerite Bailey of 169 Jersey Street expressed some concern with that the arborvitae on the 169 Jersey Street side of the premises be kept trimmed to 9 feet. Nobody appeared in opposition to the application.

Based on the above factors, the Board made the necessary findings as set forth in Section 200-36.B of the By-Laws as most recently amended, to wit: That the granting of the application will be consistent with the general purpose and intent of the Bylaw; that the specific site is an appropriate location for the construction; that neither the new building nor the use of the building will adversely affect the neighborhood; that there will be no nuisance or serious hazard to vehicles or pedestrians resulting from the construction of the building; and that adequate and appropriate facilities will be provided for the proper operation of the building .

The Board voted unanimously as follows:

Mr. Bennet—Yes
Ms. Papanek—Yes
Ms. Tenenbaum—Yes
Mr. Lipkind—Yes
Mr. Moriarty—Yes

The Special Permit is granted, with the following conditions:

1. There shall be no future reduction of open space, except pursuant to a Special Permit from the Board.
2. There shall be no additions to the building or any other structures or buildings placed on the lot except pursuant to a Special Permit from the Board.
3. This special permit 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 drawings approved and stamped by the Board of Appeals by that vote, or which is inconsistent with this decision and these conditions, without the applicant obtaining prior written approval from the Board of Appeals for such construction. Additionally, no demolition, building or occupancy permit, whether temporary, conditional or permanent, shall issue for any work on the premises unless and until a copy of this 4 page decision in its entirety, and not merely the conditions,

Page 3 of 3

Filed with Town Clerk _____ on _____ at _____

bearing the certification of the town clerk that 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 the appeal has been filed within such time, has been recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. The 19 arborvitae shown on the attached plan and located at the southeast corner of the property shall be maintained at a height not to exceed nine (9) feet.

BOARD OF APPEALS
TOWN OF MARBLEHEAD

By: _____

Andrea Papanek

Filed with the Marblehead Town Clerk on _____, 2007.

**I hereby certify that twenty days
have elapsed since this decision has
been filed in the office of the
Town Clerk and no appeal has been
filed.**

Robin A. Michaud

**Robin A. Michaud
Town Clerk-Marblehead**

2008 FEB 9 - 6 PM 4: 27

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Filed with Town Clerk _____

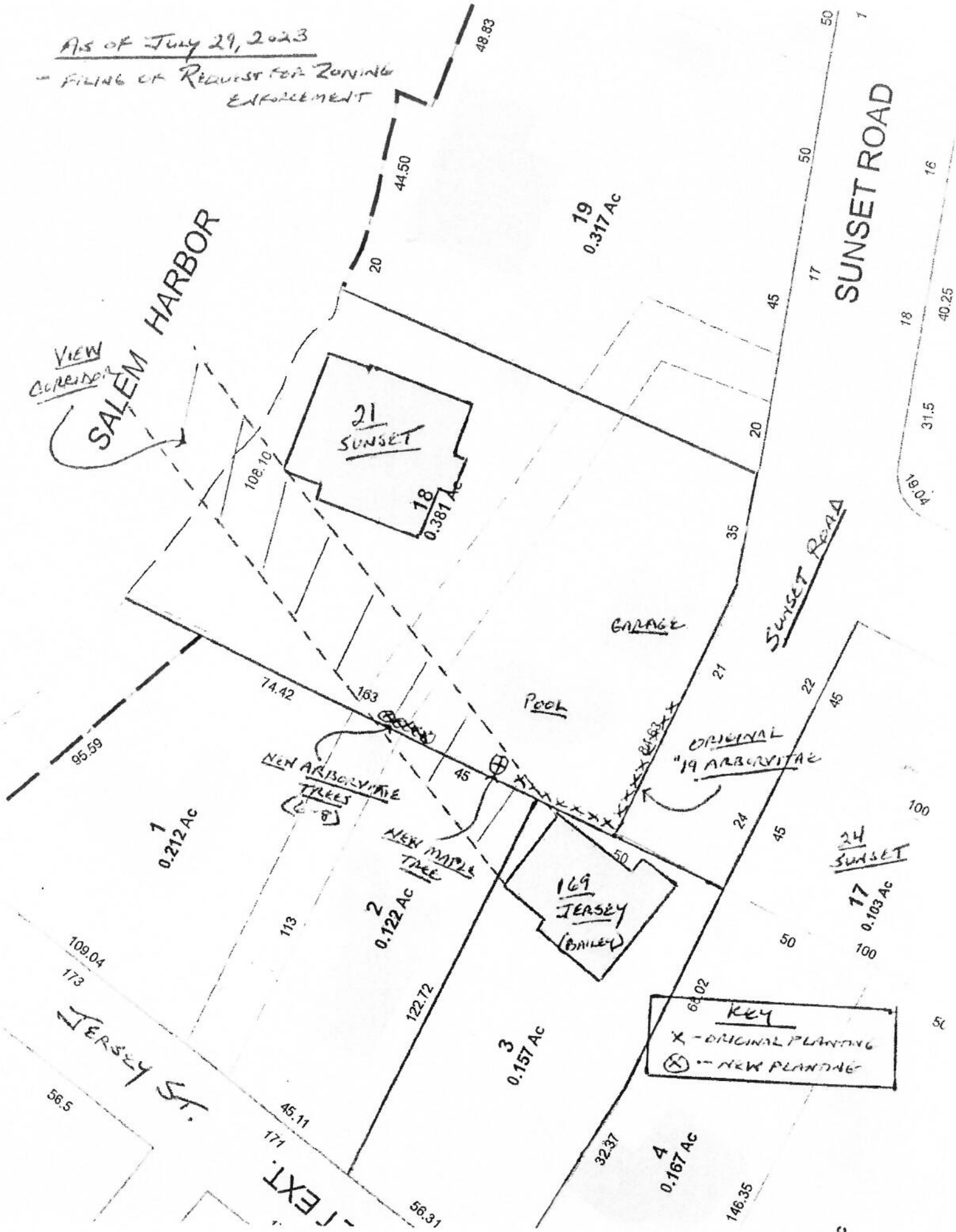
RECEIVED
MARBLEHEAD
TOWN CLERK

on _____

at _____

As of July 29, 2023

- FILING OF REQUEST FOR ZONING
ENFORCEMENT



DATE OF BUILDING COMMISSIONER
LETTER INDICATING NON-ENFORCEMENT
WITH REGARD TO NEW PLANTS.

- VIEW
CORNER
- SALEM HARBOR

