



TOWN SEAL
tel: 781-631-1529

fax: 781-631-2617
Revision Date: 12-02-20

Town of Marblehead ZONING BOARD OF APPEALS

Mary A. Alley Municipal Building
7 Widger Road, Marblehead, MA 01945

ZBA APPLICATION

PAGE 1 of 3

RECEIVED
MARBLEHEAD
TOWN CLERK

2022 MAY 25 PM 4:24
Town Clerk

Project Address 49 Pleasant Street, Marblehead, MA 01945

Assessor Map(s) 134 Parcel Number(s) 64 - 0

OWNER INFORMATION

Signature [Signature] date May 25, 2022

Name (printed) 45 - 49 Pleasant Street LLC

Address 96 Swampscott Road, Suite 6, Salem, MA 01970

Phone Numbers: home - - work 617-212-8510

E-mail tgroom@groomco.com fax - -

APPLICANT or REPRESENTATIVE INFORMATION (if different from owner)

Signature [Signature] date May 25, 2022

Name (printed) Robert C. McCann McCann & McCann, P.C.

Address 89 Newbury Street, Suite 302, Danvers, MA 01923

Phone Numbers: home - - work 978-739-8484

E-mail rmccann@mccannlaw.com fax 978-739-8455

PROJECT DESCRIPTION & RELIEF REQUESTED (attach additional page if necessary)

SEE ATTACHED DESCRIPTION

- Please schedule a Zoning / Application review with the Building Department by calling 781-631-2220.
- Obtain the Town Clerk's stamp and submit 12 copies of each of the following to the Town Engineer's Office:
 - The signed and stamped application (3 pages);
 - Current survey plan (not older than 90 days) as prepared by a Registered Professional Land Surveyor;
 - The project design plans as required;
 - Check for the applicable fee payable to the Town of Marblehead.
- Any relevant permit(s) that were previously issued must be available for review by the Board of Appeals at the scheduled hearing. (Section 3 (D), Board of Zoning Appeals Rules & Regulations).

REQUIRED SIGNATURES

1. Building Commissioner (pages 1, 2 and 3) [Signature] 5-25-22

2. Town Clerk's stamp (upper right corner)

Reviewed by
Building Department
For Zoning Board
Of Appeals

View Bylaws - (Chapter 200, zoning - online at: www.marblehead.org/)

PROJECT DESCRIPTION & RELIEF REQUESTED

49 Pleasant Street, Marblehead, MA 01945

Owner: 45 – 49 Pleasant Street LLC

The Applicant requests that the Zoning Board of Appeals modify a previously issued Special Permit for Use and a Dimension approving the construction of a dimensionally conforming, 93 square foot deck on the rear of the approved structure which will be more than five (5) feet above the ground with no other changes to the proposed structure as previously approved on the property at **49 PLEASANT STREET** in a **CENTRAL RESIDENCE DISTRICT**.

DETAILS OF REQUESTS

The Board of Appeals approved a Special Permit for Use and Dimension for the property by its vote on July 27, 2021 granting relief for a Two Family Dwelling which would exceed the maximum allowed Height on a conforming Lot. The Decision was filed with the Town Clerk on September 13, 2021 and after the appeal period expired with no appeals filed was recorded in the Registry of Deeds on October 8, 2021 in Book 40362, Page 145. Simultaneously with the approval the Board approved a Special Permit for the property at 45 Pleasant Street at a combined hearing, and that Decision was recorded simultaneously at Book 40362, Page 136. As there are common provisions in the two Decisions, copies of both Decisions are attached to this Application. The 29 Pleasant Street dwelling is presently under construction and will, except for the requested modification, conform to the existing Special Permit.

The Applicant requests that the Board modify the Decision by allowing an uncovered deck on the second floor on the rear of the approved dwelling. The changes are shown on sheets A1.2, A2.3, and A2.4 on the Architectural Plans. The other pages are not changed from those approved by the Board. The Open Space Ratio is being changed from 1.03 to 1.01 and still exceeds the minimum Open Space Ratio.

This modification is required because of the prohibition against alterations, changes and additions contained as a condition to the Decision.

The Marblehead Old & Historic District Commission has approved the change requested.

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Building Department
For Zoning Board
Of Appeals

Town of Marblehead
ZBA-APPLICATION

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Project Address 49 Pleasant Street, Marblehead, MA 01945 Map(s)/Parcel(s) 134 / 64 - 0

ZONING DISTRICT (circle all that apply)

B B1 BR CR SCR ECR GR SGR SR SSR ESR SESR HBR U SU

CURRENT USE (explain) Vacant Lot – with partially constructed two-family dwelling

CURRENT USE CONFORMS TO ZONING (Article IV, Table 1)

Yes X No (explain) The use was approved by previously issued Special Permits

PROPOSED CHANGE OF USE

No X Yes (explain) Two-Family dwelling under construction approved by Special Permit

PROPOSED CONSTRUCTION QUALIFIES AS "Building New" (§200-7) Yes X No

EXISTING DIMENSIONAL NON-CONFORMITIES (check all that apply)

- Lot Area – Less than required (§200-7 and Table 2)
 Lot Width – Less than required (§200-7)
 Frontage – Less than required (§200-7 and Table 2)
 Front Yard Setback – Less than required (Table 2)
 Rear Yard Setback – Less than required (Table 2)
 Side Yard Setback – Less than required (Table 2)
 Height – Exceeds maximum allowed (§200-7 and Table 2)
 Open Area – Less than required (§200-7, §200-15.B(2) and Table 2)
 Parking – Less than required; undersized; tandem (§200-17 to §200-21) (circle all that apply)
 Other Non-conformities (explain)

X No Existing Dimensional Non-Conformities

NEW DIMENSIONAL NON-CONFORMITIES (check all that apply)

- Lot Area – Less than required (§200-7 and Table 2)
 Lot Width – Less than required (§200-7)
 Frontage – Less than required (§200-7 and Table 2)
 Front Yard Setback – Less than required (Table 2)
 Rear Yard Setback – Less than required (Table 2)
 Side Yard Setback – Less than required (Table 2)
X Height – Exceeds maximum allowed (§200-7 and Table 2) – Previously approved by Special Permit
 Open Area – Less than required (§200-7, §200-15.B(2) and Table 2)
 Parking – Less than required; undersized; tandem (§200-17 to §200-21) (circle all that apply)
 Exceeds 10% Expansion Limits for Nonconforming Building (§200-30.D)
 Other Non-conformities (explain)

 No New Dimensional Non-Conformities

ADDITIONAL HEARINGS REQUIRED

Conservation Commission Yes No X
Historic District Commission Yes X No
Planning Board Yes No X

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For Zoning Board
Appeals

DESIGN & SURVEY PLANS MEET –ZBA- RULES & REGULATIONS (Sections 3(A) and 3(C))

Yes X No (explain)

Building Official 

Date 5-25-2022

ZBA-APPLICATION

Page 3 of 3

Revision Date: 12-02-2020

Project Address 49 Pleasant Street, MA 01945 Map(s)/Parcel(s) 134 / 64 - 0**NET OPEN AREA (NOA)****APPROVED****PROPOSED**

Lot area = A

1169511695**Area of features**

footprint of accessory building(s)

00

footprint of building

26472647

footprint of deck(s), porch(es), step(s), bulkhead(s)

210210number of required parking spaces 2 x (9'x18' per space)648648

area of pond(s), or tidal area(s) below MHW

00

other areas (explain) _____

00**Sum of features = B**35053505**Net Open Area (NOA) = (A - B)**81908190**GROSS FLOOR AREA (GFA)**

accessory structure(s)

00

basement or cellar (area >5' in height)

26472647

1st floor (12' or less in height) NOTE:[for heights exceeding

24602460

2nd floor (12' or less in height) 12' see definition

24602460

3rd floor (12' or less in height) of STORY §200-7]

00

4th floor (12' or less in height)

00

attic (area >5' in height)

250250

area under deck (if >5' in height)

093

roofed porch(es)

170170**Gross Floor Area (GFA) = sum of the above areas**79878080**Proposed total change in GFA** = (proposed GFA - existing GFA) - from approved = 93**Percent change in GFA** = (proposed total change in GFA ÷ existing GFA) x 100 = 1.16 %**Existing Open Area Ratio** = (existing NOA ÷ existing GFA) = 1.03**Proposed Open Area Ratio** = (proposed NOA ÷ proposed GFA) = 1.01Reviewed by
Building Department
For Zoning Board
Of AppealsThis worksheet applies
to the following plan(s):1. plan by/dated North Shore Survey dated May 6, 20222. plan by/dated Pitman & Wardley and BF Design dated June 1, 2021 rev.

May 16, 2022

3. plan by/dated

Building Official

Date 5-25-2022

9.1
86
Return to:

McCann & McCann, P.C.
89 Newbury Street
Suite 302
Danvers, MA 01923



SO. ESSEX #236 Bk:40362 Pg:145
10/08/2021 10:59 PERMIT Pg 1/8

This space reserved for the Registry of Deeds

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

**on
Application of
45 - 49 Pleasant Street LLC
For a Special Permit
45 Pleasant Street and 11R Harris Street
Marblehead, MA**

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

**45 - 49 Pleasant Street LLC
(the "Petitioner")**

TITLE REFERENCE

Essex South District Registry of Deeds, Book 38809 Page 481

requesting that the Zoning Board of Appeals issue Use Special Permit and a Dimensional Special Permit under the Zoning By-Laws allowing the construction of a Two-Family Dwelling which will exceed the maximum allowed Height on a conforming Lot on the property at 49 PLEASANT STREET in a CENTRAL RESIDENCE DISTRICT.

All statutory requirements relating to publication and notice were duly complied with including timely publication in the Marblehead Reporter, a local newspaper in compliance with the statutory requirements. 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 duly given. The Petitioner who was present was represented by counsel, Robert C. McCann, McCann & McCann, P.C., 89 Newbury Street, Suite 302, Danvers, MA 01923 and by Architect Peter Pitman, Pitman and Wardley Associates, LLC, 32 Church Street, Salem, MA 01970.

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The Public Hearing was called to order at or after 7:45 PM on Tuesday, July 27, 2021, with the hearing being held via Zoom Conferencing pursuant to the Executive Order of Governor Baker of the Commonwealth of Massachusetts. Sitting at the hearing were:

Acting Chairman: Alan Lipkind
Members: William Barlow
Leon Drachman
Benjamin LaBrecque
William Rudolph

Submitted with the Application and made a part of the record were:

A Survey entitled "ZONING BOARD OF APPEALS PLAN – 45 Pleasant Street and 11R Harris Street – MARBLEHEAD", Property of 45-49 Pleasant Street LLC, having a Scale: 1" = 20', dated June 1, 2021, drawn by North Shore Survey Corporation, 14 Brown Street, Salem, MA 01970.

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Architectural Plans for the single-family dwelling to be constructed on Lot 2, 11R Harris Street by Architect Peter Pitman, Pitman and Wardley Associates, LLC, 32 Church Street, Salem, MA 01970 and Brigitte Fortin, AIA of Brigitte Fortin Design, inc., 32 Church Street, Salem, MA, dated June 2, 2021 consisting of a Cover Page and 9 additional separate sheets.

Architectural Plans for the two-family dwelling to be constructed on 49 Pleasant Street by Architect Peter Pitman, Pitman and Wardley Associates, LLC, 32 Church Street, Salem, MA 01970 and Brigitte Fortin, AIA of Brigitte Fortin Design, inc., 32 Church Street, Salem, MA, dated June 2, 2021 consisting of a Cover Page and 10 additional separate sheets.

Certificate of Appropriateness issued by the Marblehead Old and Historic Commission No.OHDC0001212 covering the new two-family dwelling to be constructed on the property known as 49 Pleasant Street and the single-family dwelling to be constructed on the property known as 11R Harris Street, with both approvals being contained on one Certificate.

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Certificate of Appropriateness issued by the Marblehead Old and Historic Commission No.OHDC0001191 covering the renovations to the single-family Existing Dwelling on the property at 45 Pleasant Street.

A copy of the Marblehead GIS Map showing the comparative properties in the neighborhood and their classification by the Assessor's Office as either single-family dwellings, two family or more dwellings, church properties and a recreational building known as "Gut N' Feathers Club.

A copy of the Marblehead GIS Map showing the neighboring properties which supported or did not oppose the Application.

A sign off sheet by the abutters.

The Town also submitted a peer review from Bobrek Engineering and Construction dated July 23, 2021 regarding the drain pipe on the property and recommendations.

NOTE: It should be noted that while this Application was scheduled for 7:45 PM, there was a corresponding and associated Application for the property at 45 Pleasant Street and 11R Harris Street, also owned by the Petitioner which had a scheduled hearing at 7:30 PM. Therefore, the Board asked if the Applications could be heard together and the Petitioner agreed that they should be. Both hearings therefore commenced at or after 7:45 PM and were heard together. While the above listed submissions applied in part to the separate Applications, except for the submission that applied to both, for the purpose of this Application and the Application for 45 Pleasant Street and 11R Harris Street they were presented together for consideration by the Board. This Decision and the conditions contained below apply to 49 Pleasant Street, only, and a separate Decision which applies to 45 Pleasant Street and 11R Harris Street is being issued simultaneously by the Board.

The Petitioner explained the two Applications as follows:

45 Pleasant Street presently comprises one fully conforming Lot with a single-family dwelling which was a former funeral home. Parking for the funeral home was both on Pleasant Street and behind the Existing Dwelling. The Existing Dwelling has received approval from the Old and Historic Districts Commission allowing complete renovations and the removal of the newer rear section of the Existing Dwelling. While the Assessors have this property listed as a three family, the apartments that previously existed were not legally created and the Petitioner proposes to use the Existing Dwelling, after renovations are completed, as a single-family dwelling. During the course of renovations, the additional apartments have been removed and the rear portion of the Existing Dwelling has been removed. Bobrek Engineering and Construction requested confirmation that the rear section of the Existing Dwelling had in fact been removed and the Petitioner confirmed that the Survey, showing the Existing Dwelling with the rear section removed, is accurate and that the work had been completed.

The Petitioner explained to the Board that while the Old and Historic Districts Commission issued a Certificate of Appropriateness for this dwelling, there have been two issues that have not

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been fully resolved with the Commission: (1) the roof lines at the southwestern end of the structure; and (2) the location of the two required parking spaces. The Petitioner explained that the Commission, while not taking a vote on the parking, voiced a preference that the parking be located at the rear of the Existing Building rather than on Pleasant Street. The Petitioner explained that there were two significant issues with that location: (1) that there is a 20% grade from Pleasant Street to the rear of the Existing Dwelling which would create a hazard when exiting the driveway; and (2) the additional paving for parking at the rear of the Existing Dwelling would create additional impervious areas which could possibly raise an additional concerns under the Bobrek Engineering and Construction peer review. In addition, access to the Existing Building would be difficult as it would be through the basement and would not provide direct access to the upstairs and to the living areas and kitchen. The Board entered a condition subjecting the property at 45 Pleasant Street and specifically limited to the Existing Building that final approval by the Commission would be required prior to the issuance of a Certificate of Occupancy. This condition is limited to the Existing Building and not to the new single-family dwelling at 11R Harris Street or the new two-family dwelling at 49 Pleasant Street, as they both have final Certificates of Appropriateness from the Commission.

In further explaining the Application, the Petitioner focused the Board on the Compiled Plan as it displayed the overall project and all proposed construction. As a preliminary matter, the Petitioner explained that the property known as 49 Pleasant Street is a fully conforming vacant Lot and as it has no dimensional nonconformities. The requested relief for the combined properties is;

- 45 Pleasant Street and 11R Harris Street – A Special Permit allowing the subdivision of the property into two separate Lots with the 45 Pleasant Street to be fully conforming the dimensional regulations and the 11R Harris Street Lot to have less than the required Lot Frontage (26.50 feet provided and 35 feet required); and
- 49 Pleasant Street – A Special Permit for use as a two-family dwelling under Table 1-Land Use Regulations and a Special Permit for Dimensional Relief as the proposed dwelling is designed to exceed the maximum allowed Height (37'5" requested and 35 feet allowed).

No zoning relief is required for the Existing Dwelling at 45 Pleasant Street.

The Petitioner requested relief for Lot Width and while both the Petitioner as well as the Building Inspector did not believe that was necessary permission for Lot Width, if needed, is part of this Decision.

The Petitioner explained that the access to 45 Pleasant Street would be directly off of Pleasant Street. The access to 11R Harris Street as well as 49 Pleasant Street will be off of Harris Street and the property at 49 Pleasant Street will be over a permanent driveway easement that will be twenty (20') feet in width. The Board discussed the access and agreed with the Petitioner that it would be adequate for vehicular access to 49 Pleasant Street. While the property at 49 Pleasant Street could have access directly off of Pleasant Street, for the reasons of topography and the grade of a potential driveway, as with 45 Pleasant Street, it was determined that such access

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would not be desirable and unlike 45 Pleasant Street there is not sufficient room for the required parking spaces adjacent to Pleasant Street.

There was extensive discussion regarding the Bobrek Engineering and Construction peer review and the existing drain pipe. The Bobrek Engineering and Construction report recommended relocation of the existing drain pipe so that it was no closer than fifteen (15') feet to the foundation of the dwelling on 11R Harris Street. The Petitioner explained that the dwelling was designed and located so that the drain pipe would be nine (9') feet from the foundation, consistent with the location of other drain pipes throughout the Town which have easements that are typically ten (10') or fifteen (15') feet in width with the pipe in middle of the easement. The Petitioner requested permission to discuss the relocation of the drain pipe with the Town Department of Public Works ("DPW") to determine if the drain pipe had to be relocated or if it could remain where it presently is, and the Board agreed with a condition that if DPW determined that it had to be moved that the relocation work had to be completed prior to the issuance of a Certificate of Occupancy for the single-family dwelling on 11R Harris Street.

The remainder of the Bobrek Engineering and Construction report was discussed, including the requirement that updated plans and reports from the Petitioner's consultants be filed verifying completion of the work on the relocated drain pipe, if needed, stormwater management, erosion control and other related requirements as contained in the Bobrek Engineering and Construction report. The Petitioner agreed to provide the same and submit the documentation for approval to the Town Manager.

The Architect, Peter Pitman, explained in detail the Architectural Plans for both the single-family at 11R Harris Street and the two family at 49 Pleasant Street. The Board members had no comments relating to the 11R Harris Street property. Board member William Barlow discussed the pitch of the roof on the two-family dwelling to be constructed at 49 Pleasant Street, suggesting that the pitch be changed and the roof raised. Peter Pitman explained that the proposed dwelling was submitted with a greater pitch than shown on the plans to the Old and Historic Districts Commission and while he did not necessarily agree with the Commission's position, Mr. Barlow acquiesced to the determination of the Commission.

Peter Pitman also discussed the topography of the property at 49 Pleasant Street and described, with renderings, the Height of the Existing Building and the Gut N' Feathers Club, showing that they were both significantly higher than the proposed two-family dwelling at 49 Pleasant Street which would be located between the two other structures.

As an aside, and as additional information but not to be included as conditions, the Petitioner explained that there would be two (2) easements granted to abutters as follows: (1) to the Gut N' Feathers Club an easement which would run with the land to maintain and use the existing deck attached to the Gut N' Feathers Club building; and (2) an easement which would run with the land to provide a parking space area on the 11R Harris Street property as may be required to supplement the existing parking area on that property, owned by one Rita March, so that the combined parking area, considering both properties, would have two parking spaces that would comply with the dimensional requirements of the By-Laws.

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After the presentation, the Board asked if anyone present wished to speak in favor of the Application. The President of the Gut N' Feathers Club explained to the Board that the Club had sent a letter which was on file with the Board indicating that while not in support the Club had no opposition to the application. The Board then asked if anyone wished to speak in opposition, and a neighbor across Pleasant Street, after first verifying that the GIS map copy did not show him as in support, indicated opposition to the two-family dwelling requesting that it be located further back from the street. This position was not adopted by the Board. No one else spoke in opposition.

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 and granting the requested Special Permit, 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 plans and specifications, and the information presented to the Board, the criteria set forth in ARTICLE IX, § 200-36B 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: *As to the properties at 45 Pleasant Street and 11R Harris Street, as a single-family dwelling use is allowed as a matter of right in the District, the Board acknowledged that the proposed use was acceptable. In addition, as to the Dimensional Relief sought reducing the Lot Frontage is permitted by a Special Permit issued by the Zoning Board of Appeals under §200-37, and as the Lot and single-family dwelling at 11R Harris Street otherwise confirmed to the Dimensional Regulations, the Board acknowledged that the reduction of the Lot Frontage from the required 35 feet to the requested 26.5 feet was appropriate; and, as to the property at 49 Pleasant Street, given that the neighborhood comprised a significantly mixed use of single-family dwellings, two-family dwellings, multi-family dwellings, churches and other uses, that the proposed use of the property at 49 Pleasant Street for a two-family dwelling was appropriate and that a Special Permit for that use would be appropriate. Likewise, given the topography and the adjacent buildings, relief for the Height of 37.5 feet by Special Permit was also appropriate.*

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For Zoning Board
Of Appeals

- b. The specific site is an appropriate location for such use or building. *The property is adjacent to other similar uses and structures in a neighborhood with several of the adjacent and nearby dwellings having similar Dimensional and Use Nonconformities consistent with the requests of the Petitioner; and*
- c. The use as developed will not adversely affect the neighborhood. *While use and dimensional relief is being sought, it is done so in order to allow for the construction and project that is consistent with the use and dimensional nonconformities throughout the neighborhood on a ; and,*
- d. There will be no nuisance or serious hazard to vehicles or pedestrians. *The access and egress for the Existing Dwelling will be maintained off of Pleasant Street and compliant parking is provided. Whether the parking will remain as shown on the Survey remains where it is located or whether it is moved will be determined by the Old and Historic District Commission, if the Commission legally requires a change after considering the impact and concerns of the Bobrek Engineering and Construction report and the documentation submitted in connection therewith; and*
- e. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. *There are facilities to support the ordinary residential use of the two single-family dwellings and the proposed two-family dwelling.*

Decision

Whereupon the Board, after adopting the standard conditions listed below and including the specific condition regarding hours of construction, voted to grant a Special Permit with the following standard conditions:

- 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 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 Special Permit is issued on basis that there will be a so-called "delay of permit" condition imposed and that work may not be commenced until all appeal periods have expired and a copy of this eight (8) 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.


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For Zoning Board
Of Appeals

- This Special Permit 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.
- If the Petitioner shall exercise any rights of construction under a duly appealed Special Permit, such rights shall be at the Petitioner's sole risk that a court will reverse the Special Permit and that any construction performed under the Special Permit may be ordered undone.
- 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 granted by the Board of Appeals.
- Prior to the issuance of a Building Permit for 11R Harris Street and 49 Pleasant Street, the Applicant will provide the documentation required in the letter of Bobrek Engineering & Construction, LLC under the "Stormwater Management section, such documentation to be provided to the Town Planner and the Town Building Department. This condition does not apply to the Existing Dwelling as a Building Permit has already issued and renovation work is underway.

The votes by the Board Members granting the Special Permit were:

Acting Chairman:	Alan Lipkind	-	YES
Members:	William Barlow	-	YES
	Leon Drachman	-	YES
	Benjamin LaBrecque	-	YES
	William Rudolph	-	YES

The hearing then adjourned.
BOARD OF APPEALS
TOWN OF MARBLEHEAD

By: 
Alan Lipkind, Acting Chairman


Reviewed by
Building Department
For Zoning Board
Of Appeals

Decision filed with Town Clerk _____

4840-6730-2650.1

61:11 PM 01 SEP 2021

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
Town Clerk-Marblehead

OCT - 4 2021

5/9
Return to:

McCann & McCann, P.C.
89 Newbury Street
Suite 302
Danvers, MA 01923


SO. ESSEX #235 Bk:40362 Pg:136
10/08/2021 10:59 PERMIT Pg 1/9

This space reserved for the Registry of Deeds

**TOWN OF MARBLEHEAD
DECISION OF
THE ZONING BOARD OF APPEALS
on
Application of
45 - 49 Pleasant Street LLC
For a Special Permit
45 Pleasant Street and 11R Harris Street
Marblehead, MA**

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

**45 - 49 Pleasant Street LLC
(the "Petitioner")**

TITLE REFERENCE

Essex South District Registry of Deeds, Book 38809 Page 481

requesting that the Zoning Board of Appeals issue a Special Permit under the Zoning By-Laws allowing the subdivision of the property containing an existing non-conforming Single-Family Dwelling which exceeds the maximum allowed Height on a conforming Lot whereby the subdivision will create two (2) lots: (a) LOT 1 - 45 Pleasant Street which will contain the existing Single-Family Dwelling ("Existing Dwelling") with no new non-conformities to be created and which needs no zoning relief; and (b) Lot 2 - shown on the Survey referenced below as 11R Harris Street (or such other address as may be assigned by the Town Engineer) which will contain a new fully conforming Single-Family Dwelling but will require a Special Permit for less than the required Lot Frontage but will otherwise conform to the Dimensional Regulations. The property is currently known as **45 PLEASANT STREET** in a **CENTRAL RESIDENCE DISTRICT**.

All statutory requirements relating to publication and notice were duly complied with including timely publication in the Marblehead Reporter, a local newspaper in compliance with the

Reviewed and
Building Department
For Zoning Board
Of Appeals

statutory requirements. 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 duly given. The Petitioner who was present was represented by counsel, Robert C. McCann, McCann & McCann, P.C., 89 Newbury Street, Suite 302, Danvers, MA 01923 and by Architect Peter Pitman, Pitman and Wardley Associates, LLC, 32 Church Street, Salem, MA 01970.

The Public Hearing was called to order at or after 7:45 PM on Tuesday, July 27, 2021, with the hearing being held via Zoom Conferencing pursuant to the Executive Order of Governor Baker of the Commonwealth of Massachusetts. Sitting at the hearing were:

Acting Chairman:	Alan Lipkind
Members:	William Barlow
	Leon Drachman
	Benjamin LaBrecque
	William Rudolph

Submitted with the Application and made a part of the record were:

A Survey entitled "ZONING BOARD OF APPEALS PLAN - 45 Pleasant Street and 11R Harris Street - MARBLEHEAD", Property of 45-49 Pleasant Street LLC, having a Scale: 1" = 20', dated June 1, 2021, drawn by North Shore Survey Corporation, 14 Brown Street, Salem, MA 01970.

A Survey entitled "ZONING BOARD OF APPEALS PLAN - 49 Pleasant Street - MARBLEHEAD", Property of 45-49 Pleasant Street LLC, having a Scale: 1" = 20', dated June 1, 2021, drawn by North Shore Survey Corporation, 14 Brown Street, Salem, MA 01970.

A Survey entitled "ZONING BOARD OF APPEALS PLAN - 45-49 Pleasant Street and 11R Harris Street - MARBLEHEAD", Property of 45-49 Pleasant Street LLC, having a Scale: 1" = 20', dated June 2, 2021, drawn by North Shore Survey Corporation, 14 Brown Street, Salem, MA 01970 and being a compiled plan showing both properties before the Board (the "Compiled Plan")

Architectural Plans for the single-family dwelling to be constructed on Lot 2, 11R Harris Street by Architect Peter Pitman, Pitman and Wardley Associates, LLC, 32 Church Street, Salem, MA 01970 and Brigitte Fortin, AIA of Brigitte Fortin Design, inc., 32 Church Street, Salem, MA, dated June 2, 2021 consisting of a Cover Page and 9 additional separate sheets.

Architectural Plans for the two-family dwelling to be constructed on 49 Pleasant Street by Architect Peter Pitman, Pitman and Wardley Associates, LLC, 32 Church Street, Salem, MA 01970 and Brigitte Fortin, AIA of Brigitte Fortin Design, inc., 32 Church Street, Salem, MA, dated June 2, 2021 consisting of a Cover Page and 10 additional separate sheets.

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Certificate of Appropriateness issued by the Marblehead Old and Historic Commission No.OHDC0001212 covering the new two-family dwelling to be constructed on the property known as 49 Pleasant Street and the single-family dwelling to be constructed on the property known as 11R Harris Street, with both approvals being contained on one Certificate.

Certificate of Appropriateness issued by the Marblehead Old and Historic Commission No.OHDC0001191 covering the renovations to the single-family Existing Dwelling on the property at 45 Pleasant Street.

A copy of the Marblehead GIS Map showing the comparative properties in the neighborhood and their classification by the Assessor's Office as either single-family dwellings, two family or more dwellings, church properties and a recreational building known as "Gut N' Feathers Club.

A copy of the Marblehead GIS Map showing the neighboring properties which supported or did not oppose the Application.

A sign off sheet by the abutters.

The Town also submitted a peer review from Bobrek Engineering and Construction dated July 23, 2021 regarding the drain pipe on the property and recommendations.

NOTE: It should be noted that while this Application was scheduled for 7:30 PM, there was a corresponding and associated Application for the property at 49 Pleasant Street also owned by the Petitioner which had a scheduled hearing at 7:45 PM. Therefore, the Board asked if the Applications could be heard together and the Petitioner agreed that they should be. Both hearings therefore commenced at or after 7:45 PM and were heard together. While the above listed submissions applied in part to the separate Applications, except for the submission that applied to both, for the purpose of this Application and the Application for 49 Pleasant Street they were presented together for consideration by the Board. This Decision and the conditions contained below apply to 45 Pleasant Street and 11R Harris Street, only, and a separate Decision which applies to 49 Pleasant Street is being issued simultaneously by the Board.

The Petitioner explained the two Applications as follows:

45 Pleasant Street presently comprises one fully conforming Lot with a single-family dwelling which was a former funeral home. Parking for the funeral home was both on Pleasant Street and behind the Existing Dwelling. The Existing Dwelling has received approval from the Old and Historic Districts Commission allowing complete renovations and the removal of the newer rear section of the Existing Dwelling. While the Assessors have this property listed as a three family, the apartments that previously existed were not legally created and the Petitioner proposes to use the Existing Dwelling, after renovations are completed, as a single-family dwelling. During the course of renovations, the additional apartments have been removed and the rear portion of the Existing Dwelling has been removed. Bobrek Engineering and Construction requested

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confirmation that the rear section of the Existing Dwelling had in fact been removed and the Petitioner confirmed that the Survey, showing the Existing Dwelling with the rear section removed, is accurate and that the work had been completed.

The Petitioner explained to the Board that while the Old and Historic Districts Commission issued a Certificate of Appropriateness for this dwelling, there have been two issues that have not been fully resolved with the Commission: (1) the roof lines at the southwestern end of the structure; and (2) the location of the two required parking spaces. The Petitioner explained that the Commission, while not taking a vote on the parking, voiced a preference that the parking be located at the rear of the Existing Building rather than on Pleasant Street. The Petitioner explained that there were two significant issues with that location: (1) that there is a 20% grade from Pleasant Street to the rear of the Existing Dwelling which would create a hazard when exiting the driveway; and (2) the additional paving for parking at the rear of the Existing Dwelling would create additional impervious areas which could possibly raise an additional concern under the Bobrek Engineering and Construction peer review. In addition, access to the Existing Building would be difficult as it would be through the basement and would not provide direct access to the upstairs and to the living areas and kitchen. The Board entered a condition subjecting the property at 45 Pleasant Street and specifically limited to the Existing Building that final approval by the Commission would be required prior to the issuance of a Certificate of Occupancy. This condition is limited to the Existing Building and not to the new single-family dwelling at 11R Harris Street or the new two-family dwelling at 49 Pleasant Street, as they both have final Certificates of Appropriateness from the Commission.

In further explaining the Application, the Petitioner focused the Board on the Compiled Plan as it displayed the overall project and all proposed construction. As a preliminary matter, the Petitioner explained that the property known as 49 Pleasant Street is a fully conforming vacant Lot and as it has no dimensional nonconformities. The requested relief for the combined properties is;

- 45 Pleasant Street and 11R Harris Street – A Special Permit allowing the subdivision of the property into two separate Lots with the 45 Pleasant Street to be fully conforming the dimensional regulations and the 11R Harris Street Lot to have less than the required Lot Frontage (26.50 feet provided and 35 feet required); and
- 49 Pleasant Street – A Special Permit for use as a two-family dwelling under Table 1-Land Use Regulations and a Special Permit for Dimensional Relief as the proposed dwelling is designed to exceed the maximum allowed Height (37'5" requested and 35 feet allowed).

No zoning relief is required for the Existing Dwelling at 45 Pleasant Street.

The Petitioner requested relief for Lot Width and while both the Petitioner as well as the Building Inspector did not believe that was necessary permission for Lot Width, if needed, is part of this Decision.

The Petitioner explained that the access to 45 Pleasant Street would be directly off of Pleasant Street. The access to 11R Harris Street as well as 49 Pleasant Street will be off of Harris Street

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and the property at 49 Pleasant Street will be over a permanent driveway easement that will be twenty (20') feet in width. The Board discussed the access and agreed with the Petitioner that it would be adequate for vehicular access to 49 Pleasant Street. While the property at 49 Pleasant Street could have access directly off of Pleasant Street, for the reasons of topography and the grade of a potential driveway, as with 45 Pleasant Street, it was determined that such access would not be desirable and unlike 45 Pleasant Street there is not sufficient room for the required parking spaces adjacent to Pleasant Street.

There was extensive discussion regarding the Bobrek Engineering and Construction peer review and the existing drain pipe. The Bobrek Engineering and Construction report recommended relocation of the existing drain pipe so that it was no closer than fifteen (15') feet to the foundation of the dwelling on 11R Harris Street. The Petitioner explained that the dwelling was designed and located so that the drain pipe would be nine (9') feet from the foundation, consistent with the location of other drain pipes throughout the Town which have easements that are typically ten (10') or fifteen (15') feet in width with the pipe in middle of the easement. The Petitioner requested permission to discuss the relocation of the drain pipe with the Town Department of Public Works ("DPW") to determine if the drain pipe had to be relocated or if it could remain where it presently is, and the Board agreed with a condition that if DPW determined that it had to be moved that the relocation work had to be completed prior to the issuance of a Certificate of Occupancy for the single-family dwelling on 11R Harris Street.

The remainder of the Bobrek Engineering and Construction report was discussed, including the requirement that updated plans and reports from the Petitioner's consultants be filed verifying completion of the work on the relocated drain pipe, if needed, stormwater management, erosion control and other related requirements as contained in the Bobrek Engineering and Construction report. The Petitioner agreed to provide the same and submit the documentation for approval to the Town Manager.

The Architect, Peter Pitman, explained in detail the Architectural Plans for both the single-family at 11R Harris Street and the two family at 49 Pleasant Street. The Board members had no comments relating to the 11R Harris Street property. Board member William Barlow discussed the pitch of the roof on the two-family dwelling to be constructed at 49 Pleasant Street, suggesting that the pitch be changed and the roof raised. Peter Pitman explained that the proposed dwelling was submitted with a greater pitch than shown on the plans to the Old and Historic Districts Commission and while he did not necessarily agree with the Commission's position, Mr. Barlow acquiesced to the determination of the Commission.

Peter Pitman also discussed the topography of the property at 49 Pleasant Street and described, with renderings, the Height of the Existing Building and the Gut N' Feathers Club, showing that they were both significantly higher than the proposed two-family dwelling at 49 Pleasant Street which would be located between the two other structures.

As an aside, and as additional information but not to be included as conditions, the Petitioner explained that there would be two (2) easements granted to abutters as follows: (1) to the Gut N' Feathers Club an easement which would run with the land to maintain and use the existing deck attached to the Gut N' Feathers Club building; and (2) an easement which would run with the

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land to provide a parking space area on the 11R Harris Street property as may be required to supplement the existing parking area on that property, owned by one Rita March, so that the combined parking area, considering both properties, would have two parking spaces that would comply with the dimensional requirements of the By-Laws.

After the presentation, the Board asked if anyone present wished to speak in favor of the Application. The President of the Gut N' Feathers Club explained to the Board that the Club had sent a letter which was on file with the Board indicating that while not in support the Club had no opposition to the application. The Board then asked if anyone wished to speak in opposition, and a neighbor across Pleasant Street, after first verifying that the GIS map copy did not show him as in support, indicated opposition to the two-family dwelling requesting that it be located further back from the street. This position was not adopted by the Board. No one else spoke in opposition.

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 and granting the requested Special Permit, 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 plans and specifications, and the information presented to the Board, the criteria set forth in ARTICLE IX, § 200-36B 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: *As to the properties at 45 Pleasant Street and 11R Harris Street, as a single-family dwelling use is allowed as a matter of right in the District, the Board acknowledged that the proposed use was acceptable. In addition, as to the Dimensional Relief sought reducing the Lot Frontage is permitted by a Special Permit issued by the Zoning Board of Appeals under §200-37, and as the Lot and single-family dwelling at 11R Harris Street otherwise confirmed to the Dimensional Regulations, the Board acknowledged that the reduction of the Lot Frontage from the required 35 feet to the requested 26.5 feet was appropriate; and, as to the property at 49 Pleasant Street, given that the neighborhood comprised a significantly mixed use of single-family dwellings, two-family dwellings, multi-family dwellings, churches and other uses, that the proposed use of the property at 49 Pleasant Street for a two-family dwelling was appropriate and*

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that a Special Permit for that use would be appropriate. Likewise, given the topography and the adjacent buildings, relief for the Height of 37.5 feet by Special Permit was also appropriate.

- b. The specific site is an appropriate location for such use or building. The property is adjacent to other similar uses and structures in a neighborhood with several of the adjacent and nearby dwellings having similar Dimensional and Use Nonconformities consistent with the requests of the Petitioner; and*
- c. The use as developed will not adversely affect the neighborhood. While use and dimensional relief is being sought, it is done so in order to allow for the construction and project that is consistent with the use and dimensional nonconformities throughout the neighborhood on a ; and,*
- d. There will be no nuisance or serious hazard to vehicles or pedestrians. The access and egress for the Existing Dwelling will be maintained off of Pleasant Street and compliant parking is provided. Whether the parking will remain as shown on the Survey remains where it is located or whether it is moved will be determined by the Old and Historic District Commission, if the Commission legally requires a change after considering the impact and concerns of the Bobrek Engineering and Construction report and the documentation submitted in connection therewith; and*
- e. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. There are facilities to support the ordinary residential use of the two single-family dwellings and the proposed two-family dwelling.*

Decision

Whereupon the Board, after adopting the standard conditions listed below and including the specific condition regarding hours of construction, voted to grant a Special Permit with the following standard conditions:

- 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 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 Special Permit is issued on basis that there will be a so-called "delay of permit" condition imposed and that work may not be commenced until all appeal periods have expired and 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

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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.

- This Special Permit 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.
- If the Petitioner shall exercise any rights of construction under a duly appealed Special Permit, such rights shall be at the Petitioner's sole risk that a court will reverse the Special Permit and that any construction performed under the Special Permit may be ordered undone.
- 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 granted by the Board of Appeals.
- This permit is contingent upon the successful issuance of an amended certificate of compliance from the Districts Commission for 45 Pleasant Street addressing and approving: (1) revised plans for the westerly end of the Existing Building and; (2) if addressed, parking on the property relating to 45 Pleasant Street, only. This condition shall not apply to the proposed structures on 11R Harris Street or 49 Pleasant Street which do not need further approval from the Old and Historic District Commission.
- If there is a final determination by the Town Department of Public Works that a portion of the drain pipe has to be relocated, in order to allow for the work to be completed while excavation is underway, the drain pipe shall be moved after the issuance of a Building Permit but during the excavation work to be completed on the property with such relocation to be completed prior to or simultaneously with the pouring of the foundations for the new dwelling at 11 Harris Street and before any certificate of occupancy is issued. This condition applies to 11R Harris Street, only.
- Prior to the issuance of a Building Permit for 11R Harris Street and 49 Pleasant Street, the Applicant will provide the documentation required in the letter of Bobrek Engineering & Construction, LLC under the "Stormwater Management" section, such documentation to be provided to the Town Planner and the Town Building Department. This condition does not apply to the Existing Dwelling as a Building Permit has already issued and renovation work is underway.

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The votes by the Board Members granting the Special Permit were:

Acting Chairman:	Alan Lipkind	-	YES
Members:	William Barlow	-	YES
	Leon Drachman	-	YES
	Benjamin LaBrecque	-	YES
	William Rudolph	-	YES

The hearing then adjourned.

BOARD OF APPEALS

TOWN OF MARBLEHEAD

By: *Alan Lipkind*
Alan Lipkind, Acting Chairman

Decision filed with Town Clerk _____, on _____ at _____

4813-9789-0298.1

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**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

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