



# City of Marlborough Zoning Board of Appeals

140 Main Street  
Marlborough, Massachusetts 01752  
Tel. (508) 460-3768 Facsimile (508) 460-3747

*original*

**ZBA Case # 1484-2021**  
**Location: 47 Old Charter Rd.**

**Date: February 14, 2022**

## WITHDRAW WITHOUT PREJUDICE

To: Joseph Chaves  
Address: 47 Old Charter Rd.  
City: Marlborough, MA 01752

affecting the rights of the owner with respect to land or buildings at:

**47 Old Charter Rd. Map 44, Parcel 72**

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision and of all plans referred to in the decision, have been filed with the City Clerk.

*Ralph Loftin*  
Ralph Loftin – Chairman  
Zoning Board of Appeals

*Susan Brown*  
Susan Brown - secretary

Submitted to the City Clerks' office on February 14, 2022.



**City of Marlborough  
Zoning Board of Appeals**

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*File copy - original*

**Request to Withdraw Without Prejudice**

**Name of Applicant:** Joseph Chaves

ZBA Case # 1484-2022

**Address & Telephone Number:** 47 Old Charter Rd.

**Type of Zoning Board Application:** Variance request

**Describe said application:** To construct an addition to the rear of the property. Rear yard setback for Zoning District A-3 requires a minimum of 30 ft. vs. the proposed 26.4 ft. Map 44 Parcel 72

Petitioner/Representative of said application: Joseph Chaves

I hereby request to Withdraw the above-referenced petition Without Prejudice

Signature: *Joseph Chaves*

Date: 2-8-22

**Do not write below this line**

**Certificate to Vote**

This is to certify that at the Zoning Board meeting of FEB. 8, 2022 a majority vote passed **GRANTING** the request to Withdraw Without Prejudice.

This is to certify that at the Zoning Board meeting of \_\_\_\_\_ a majority vote passed **DENYING** the request to Withdraw Without Prejudice.

Paul Giunta	<i>Paul Giunta</i>
Ralph Loftin	<i>Ralph Loftin</i>
Robert Levine	<i>Robert Levine</i>
Thomas Pope	<i>Thomas Pope</i>
Thomas Golden	<i>Thomas Golden</i>



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## Record and Decision

**Zoning Board of Appeals Case # 1484-2021**

**Applicant:** Joseph Chaves

**Date of Appeal:** 12/21/2021

**Subject Property:** 47 Old Charter Rd. (Map 44, Parcel 72)

**Petition:** To construct an addition to the rear of the property. Chapter 650-41 Table of Lot Area, Yards, and Height of Structures. Rear yard setback for Zoning District A-3 requires a minimum of 30 ft. vs. the proposed 26.4 ft. The property is located at 47 Old Charter Rd. Map 44 Parcel 72.

**Meeting date:** February 8, 2022

Roll call of members present: Ralph Loftin-Chairman, Paul Giunta, Thomas Pope, Thomas Golden and Robert Levine. Also present were:

- Susan Brown – secretary
- Tin Htway – Building Commissioner
- William Paynton – Building Inspector
- Jeffrey Klofft – 279 Bay Dr. Sudbury, MA – applicant's representative
  - Lynn Chaves – Mr. Klofft's sister – who did not speak
  - Joseph Chaves, the applicant, and Mr. Klofft's brother in-law – who did not speak

Notice of the hearing was given by Certificate of Mailing to all persons to be affected, as shown on the most recent tax list and by publication in the Community Advocate newspaper, a newspaper of general circulation in Marlborough, MA on January 21<sup>st</sup> and 28<sup>th</sup>, 2022.

**Documents** submitted by applicant in support of this appeal:

- Application with filing fee.
- Denial letter from the Building Department dated December 20, 2021.
- Plan showing existing and proposed conditions – Plans entitled: Addition Plan-47 Old Charter Rd. Marlborough, MA Prepared for: Joseph E. and Lynn K. Chaves. Prepared by: Bruce Saluk & Assoc., Inc. Dated: August 17, 2021.

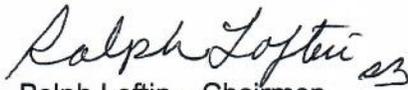
- A packet of drawings entitled: The “Residence At 47 Old Charter Rd. Marlborough, MA” Prepared by: Luna/Design Group, stamped by Joseph Luna. Dated July 30, 2021 Rev. 7/30/2021.

It was noted to the audience that the Board is hearing a Variance request. The audience was made aware that the public meeting was being recorded.

1. The applicants Joseph and Lynn Chaves were represented by Jeffrey Klofft.
2. Mr. Klofft stated the following:
  - 47 Old Charter Rd. was his family home.
  - The lot slopes and bends towards Kings Grant Rd.
  - The rear of the lot abuts city owned land (Map 57 Parcel 361)
  - The proposed addition is a redesign of the kitchen and dining room area.
  - The home will remain as a single family after the renovations.
  - There is a considerable amount of space between houses; the proposed addition would not overcrowd the lot or area.
  - The rear setback for the existing house is 34.9 ft. vs. the 30 ft. minimum required rear setback for Zoning District A-3.
  - The proposed addition will reduce the rear setback to 26.4 ft. vs. the 30 ft. minimum required rear setback, a deviation of 3.6 ft.
3. The Board asked if anyone in the audience would like to speak in favor:
  - Tin Htway, Building Commissioner, stated he had no problems with the petition. He also stated that the existing shed at the top of the driveway needs to be moved if a variance was granted. Sheds should be 10 ft. from the house.
4. Mr. Klofft addressed the applicant’s hardship:
  - They do not want to reposition the existing driveway because sight line distance from the driveway to the street is already difficult.
  - Financially, it would be better to place the addition as proposed. There are limited locations to construct the addition. The right side of the house is where bedrooms are located. The proposal is to redesign the kitchen and dining room area which is located on the left side of the house.
  - The lot is oddly shaped.
5. Chairman Ralph Loftin stated the following:
  - If a variance is not granted, the lot and structure will remain as a single-family home.
  - The hardship as stated is of the applicant’s own making to develop according to the proposed plan.
  - The courts have repeatedly held that variances should be granted rarely. An inconvenience is not a hardship.

- The Chairman asked the applicant to restate their hardship based on the criteria of the definition of "hardship" (i.e. soil conditions, shape of the lot and topography of the lot).
  - The applicant has options to redesign the proposed addition to conform to zoning requirements.
  - The lot in question is similar to other lots in the neighborhood as to area, topography, and shape. The need for a variance is because of what is being planned. The problem is the plan, not the lot.
6. Thomas Golden, Board Member, stated he thought the shape of the lot is an issue and having no opposition present, he would be in favor of granting a variance.
  7. The Board thought this is a large lot containing 13,466 sq. ft. and there are options to redesign, so a variance should not be needed.
  8. There was no other member of the public present to speak in favor or in opposition to the petition.
  9. A motion was made by Robert Levine and seconded by Paul Giunta to close the public portion of the hearing. By a vote of 5-0 the public portion of the hearing was closed.
  10. After further discussion, the applicant requested to "Withdraw Without Prejudice" their petition.
  11. A motion was made by Robert Levine and seconded by Paul Giunta to allow the applicant to "Withdraw Without Prejudice". By a vote of 5-0 the Board allowed the applicant to "Withdraw Without Prejudice".
  12. A motion was made and seconded to close the public meeting. By a vote of 5-0, the public meeting was closed.
  13. A motion was made and seconded to adjourned. By a vote of 5-0 the meeting was adjourned.

Respectfully submitted,

  
Ralph Loftin – Chairman  
Zoning Board of Appeals