



# City of Marlborough Zoning Board of Appeals

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

**ZBA Case**     1455-2019  
**Location:**   26 Frye Street

**Date:** July 17, 2019

## **DENIAL of Variance or Special Permit or Extension Permit (General Laws Chapter 40A, Section 11)**

The Board of Appeals of the City of Marlborough, MA hereby certifies that a Variance or Special Permit or Extension Permit has been DENIED:


**To:**             Michael Crane  
  
**Address:**     26 Frye Street  
  
**City:**           Marlborough, MA 01752

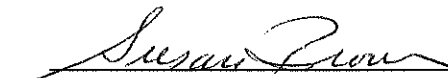
affecting the rights of the owner with respect to land or buildings at:

26 Frye Street Map 68 Parcel 403

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision has been filed with the City Clerk.

Any person aggrieved by a decision of the Board of Appeals or any special permit granting authority or by the failure of the Board of Appeals to take final action concerning any appeal, application or petition within the required time or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the superior court department in which the land concerned is situated.....by bringing an action within twenty (20) days after the decision has been filed in the Office of the City or Town Clerk. (Reference: Mass General Law Chapter 40A, Section 17)

  
\_\_\_\_\_  
Paul Giunta - Chairman

  
\_\_\_\_\_  
Susan Brown - Secretary

Submitted to the City Clerks' Office on **July 17, 2019.**



*City of Marlborough*  
*Zoning Board of Appeals*

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

ZBA Case #1455-2016  
Name: Michael Crane  
Location: 26 Frye Street

Date: July 17, 2019

**Zoning Board of Appeals**  
**Notice of Decision**  
**DENIAL**

The Zoning Board of Appeals, acting under the Zoning Ordinance of the City of Marlborough and the Zoning Enabling Act of the Commonwealth of Massachusetts, after public hearings held at the Marlborough City Hall, 140 Main St. Memorial Hall, 3<sup>rd</sup> Floor, on July 9, 2019 **DENIES** the following petition:

**Petition:** Proposes to create a second driveway connection from Jonas Ct. According to Subsection 650-49(2) "not more than one driveway opening with less than 200 ft. of frontage is allowed." Subsection 650-49(4) All driveways shall have a durable dustless, all-weather surface suitable for year-round use. Property is located in Zoning District A3 being Map 68 Parcel 403 of the Assessor's Maps.

Therefore, the Board voted 5-0 with Paul Giunta-Chairman, Ralph Loftin, Thomas Pope, Thomas Golden and Robert Levine voting **NOT** to grant a variance.

The Board finds there is no legitimate hardship according to Mass General Law, Chapter 40A §10. The hardship is personal in nature in not being able to access his existing garage from the rear of his property via Jonas Court which is a dead-end street as shown on the city's assessors maps. Therefore, the Board denies the petition to create a second driveway connection to Jonas Ct.

Any person aggrieved by a decision of the Board of Appeals or any special permit granting authority or by the failure of the Board of Appeals to take final action concerning any appeal, application or petition within the required time or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the superior court department in which the land concerned is situated.....by bringing an action within twenty (20) days after the decision has been filed in the Office of the City or Town Clerk. (Reference: Mass General Law Chapter 40A, Section 17)

Respectfully submitted,

*Paul Giunta*  
Paul Giunta - Chairman

Submitted to the City Clerks' office on July 17, 2019.



*City of Marlborough*  
*Zoning Board of Appeals*

140 Main Street  
Marlborough, Massachusetts 01752  
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ZBA Case # 1455-2019  
Name: Michael Crane  
Location: 26 Frye Street

Date: July 17, 2019

**Zoning Board of Appeals  
Record**

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended, a meeting was held on July 9, 2019.

**Board Members present were:** Paul Giunta-Chairman, Ralph Loftin, Thomas Pope, Thomas Golden and Robert Levine.

**Proceedings:**

1. **Date of Appeal:** May 16, 2019
2. **Name and Address of Applicant:** Michael Crane, 26 Frye Street, Marlborough, MA 01752
3. Administrative body from whose decision or order of appeal was taken: Building Dept.
4. Appeal filed with: Zoning Board of Appeals and City Clerks' Office.
5. **Nature & Basis of Appeal:** Michael Crane of 26 Frye Street, proposes to create a second driveway connection to Jonas Ct. According to Subsection 650-49(2) "(not more than one driveway opening with less than 200 ft. of frontage is allowed)" Subsection 650-49(4) All driveways shall have a durable dustless, all-weather surface suitable for year-round use. Property is located in Zoning District A3 being Map 68 Parcel 403 of the Assessor's Maps.
6. Section of the Zoning Ordinance involved: See above #5.
7. Notice was sent by Certificate of Mailing to parties in interest, including the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property lines, including owners of land in another municipality, all as they appear on the most recent applicable tax lists.

8. Original documents are on file with the Board of Appeals and the City Clerks' Office.

**Findings of Fact:**

- 1F. The property is located in Zoning District A3, being Map 68 Parcel 403 of the Assessors' Maps. Also known as 26 Frye Street.
- 2F. The lot contains some 12,500 sq. ft. in area according to the certified plot plan presented.
- 3F. The shape of the lot is a "pork chop" shaped lot. It is narrow in the front and opens up towards the rear. According to the Certified Plot Plan presented.
- 4F. The lots in the area are similar in size and in frontage width. According to the GIS maps of the City of Marlborough.
- 5F. The topography of the lot in question is fairly flat. According to the GIS maps of the City of Marlborough.
- 6F. In attendance at the hearing:
- Michael Crane – applicant – represented himself
  - Ethan Lippitt – City's Code enforcement officer
- 7F. **Proposal:** To create a second driveway connection from Jonas Ct. According to Subsection 650-49(2) "(not more than one driveway opening with less than 200 ft. of frontage is allowed)". Subsection 650-49(4) All driveways shall have a durable dustless, all-weather surface suitable for year-round use.
- 8F. **Plan:** The applicant provided a plan entitled: A Certified Plot Plan, 26 Frye St., Prepared by: Odone Survey & Mapping, Signed by: Glenn D. Odone, Jr. Dated: June 25, 2019. Plan in Board's file.
- 9F. **Exhibits:**
- Letter from abutter Nancy Sawtelle, 10 Jonas Court, dated June 5, 2019 with photos of 26 Frye St. (Letter in Board's file)
  - Denial letter from the Building Dept. Ethan Lippitt, dated April 18, 2019 RE: Property issue – Illegal driveway on Jonas Court.
10. The applicant stated the following:
- He purchased the house in 2009 with the understanding that the structure (garage) at the rear was accessible via Jonas Court. The existing garage cannot be accessible from Frye Street.
  - Currently there is a stockade fence at the rear of 26 Frye St. and the applicant stated he removed a portion of the stockade fence (the swing gate) at the rear to gain access to Jonas Court as a travel way from the rear of his property.

- Being a fireman, using Jonas Court as an access travel way is good for quick access in and out of his lot.
  - Have used Jonas Ct. for almost 10 yrs. without incidents, i.e. regarding safety and violations.
  - It would be an advantage to the city and surrounding home owners to keep the access opened in case of fire.
  - The lot is oddly shaped. He feels his lot borders 2 public streets, Frye St. and Jonas Ct.
  - Board member, Paul Giunta asked if he did any research before he purchased the house? Applicant stated he had a lawyer who told him everything was in order.
  - **Hardship** - A denial by the Zoning Board of Appeals would bring his property value down. He would not be able to access the garage at the rear of his lot from Frye Street, because the lot is narrow at the front and opens out at the rear of the property.
11. It was explained to him by the Board, that according to his certified plot plan, his rear lot line abuts a public way. According to a legal term "fee simple", all abutters own the rights to the middle of a public way. The applicant does not have legal rights to Jonas Court, so he does not have rights to the middle of Jonas Court.
12. Speaking in **favor** – none.
13. Speaking in **opposition**:
- Nancy Sawtelle – 10 Jonas Court, Marlborough, MA - She stated she has submitted a letter to the Board, dated June 5, 2019 (letter in Board's file) - The Board members received a copy of the letter. Ms. Sawtelle stated she also owns the empty lot across the street from her house (10 Jonas Court).
14. Questions from the audience – none
15. With no other testimony taken or given, the public portion of the hearing was closed.
16. The Board discussed that there is no viable hardship according Mass. General Law Chapter 40A, §10. Thru the applicant's testimony his stated hardship is personal in nature in not being able to access the rear of his property via a dead-end street as shown on the city's assessors maps. The current layout of his property is narrow in the front and contains a driveway, but there is not enough area on either side of the house for vehicle access to the rear of the property.
17. The Board briefly discussed the blight condition at the rear of his property thru photos provided by the abutter, Nancy Sawtelle. The Board will have the applicant work with the code enforcement officer to rectify the condition. (photos in Board's file)

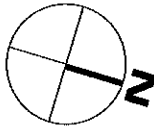
18. A motion was made by Robert Levine to deny the petitioner's request for a second driveway to access Jonas Court from the rear of his lot, because there is no substantial hardship according to Mass General Laws Chapter 40A, Section 10. Ralph Loftin seconded the motion. The Board voted 5-0 to deny the applicant zoning relief.
19. The public hearing was closed.

# CERTIFIED PLOT PLAN

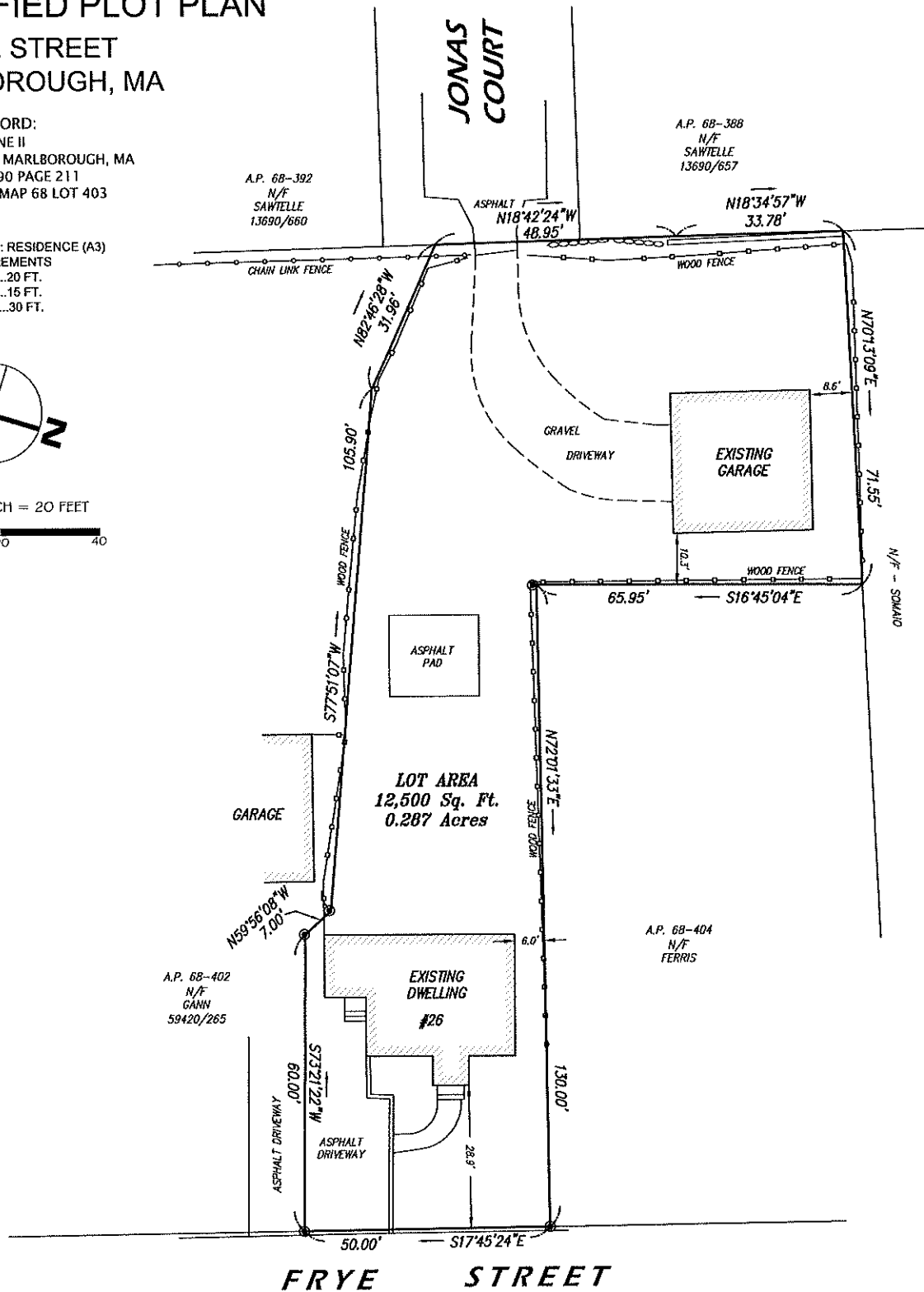
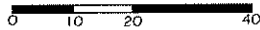
26 FRYE STREET  
MARLBOROUGH, MA

OWNER OF RECORD:  
MICHAEL T. CRANE II  
26 FRYE STREET, MARLBOROUGH, MA  
DEED BOOK 52390 PAGE 211  
ASSESSORS I.D.: MAP 68 LOT 403

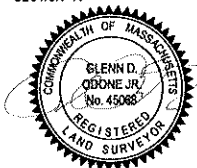
ZONING DISTRICT: RESIDENCE (A3)  
SETBACK REQUIREMENTS  
FRONT YARD.....20 FT.  
SIDE YARD.....15 FT.  
REAR YARD.....30 FT.



SCALE: 1 INCH = 20 FEET



I HEREBY CERTIFY THAT THIS PLAN WAS MADE FROM AN INSTRUMENT SURVEY AND THAT THE BUILDING AND IMPROVEMENTS SHOWN ON THIS PLAN ARE LOCATED ON THE GROUND AS SHOWN AND CONFORMED TO THE DIMENSIONAL REQUIREMENTS OF THE ZONING BY-LAWS OF THE CITY OF MARLBOROUGH WHEN CONSTRUCTED OR ARE EXEMPT FROM VIOLATION ENFORCEMENT ACTION UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 40A SECTION 7.



GLENN D. ODONE JR.  
MA REG. P.L.S. NO. 45068

JUNE 25, 2019  
DATE

PREPARED BY:



**ODONE  
SURVEY &  
MAPPING**

SURVEYING ~ MAPPING ~ PLANNING & CONSULTING

291 Main Street, Suite 5  
Northborough, MA 01532  
Tel.: 508-351-6022 Fax: 508-351-6633  
web: www.osm-pc.com

JOB NO.: 20191199

TO: Zoning Board of Appeals

FROM: Nancy Sawtelle   
10 Jonas Court

*Rec*  
JUN - 7 2019

SUBJECT: Use of dead end street as additional driveway

Date: June 5, 2019

It has come to my attention that the occupant of 26 Frye Street has asked for relief from the zoning ordinance regarding the use of a second driveway as he is unable to access the back of his property from his legal driveway at 26 Frye Street.

I am aware that the previous owner of the property built a large accessory building at the rear of 26 Frye Street several years ago. The project was started without a permit and once a permit was received no inspections were ever called for according to the historical records of the building department files.

The previous owner rarely opened the gate for vehicles so it didn't appear to be a problem.

The new owner, however, is much more active and is utilizing the opening on a continual basis. I have specific concerns:

- Both the owner and his friends are driving much too fast down the street for the area.
- During plowing operations in the winter the owner has been upset that the City has plowed snow to the end of the street (as it's a legal dead end) and then places the snow on my property.
- I am unsure what type of work is taking place in the accessory building but a garden hose is constantly placed over the fence to drain into my yard and the adjacent man-hole.
- The owner has been inappropriate when speaking to my children and grandchildren by yelling and swearing about blocking his driveway.
- He originally had his large RV parked on Jonas Court and was asked to move it by the police as a result of the new ordinance disallowing parking this type of vehicle on public streets. The RV is now in his back yard and is used as a base for his friends to party and have fires. His friends are also driving excessively fast as well.
- I have provided pictures of his property and also his attempt to block in people parked at the end of the street because he feels that they are too close to his driveway.
- His wife often brings his son over to Jonas Court to play as she feels it is safer than having him on Frye Street. I agree but I would like the same consideration for my children.

*5-14-19*



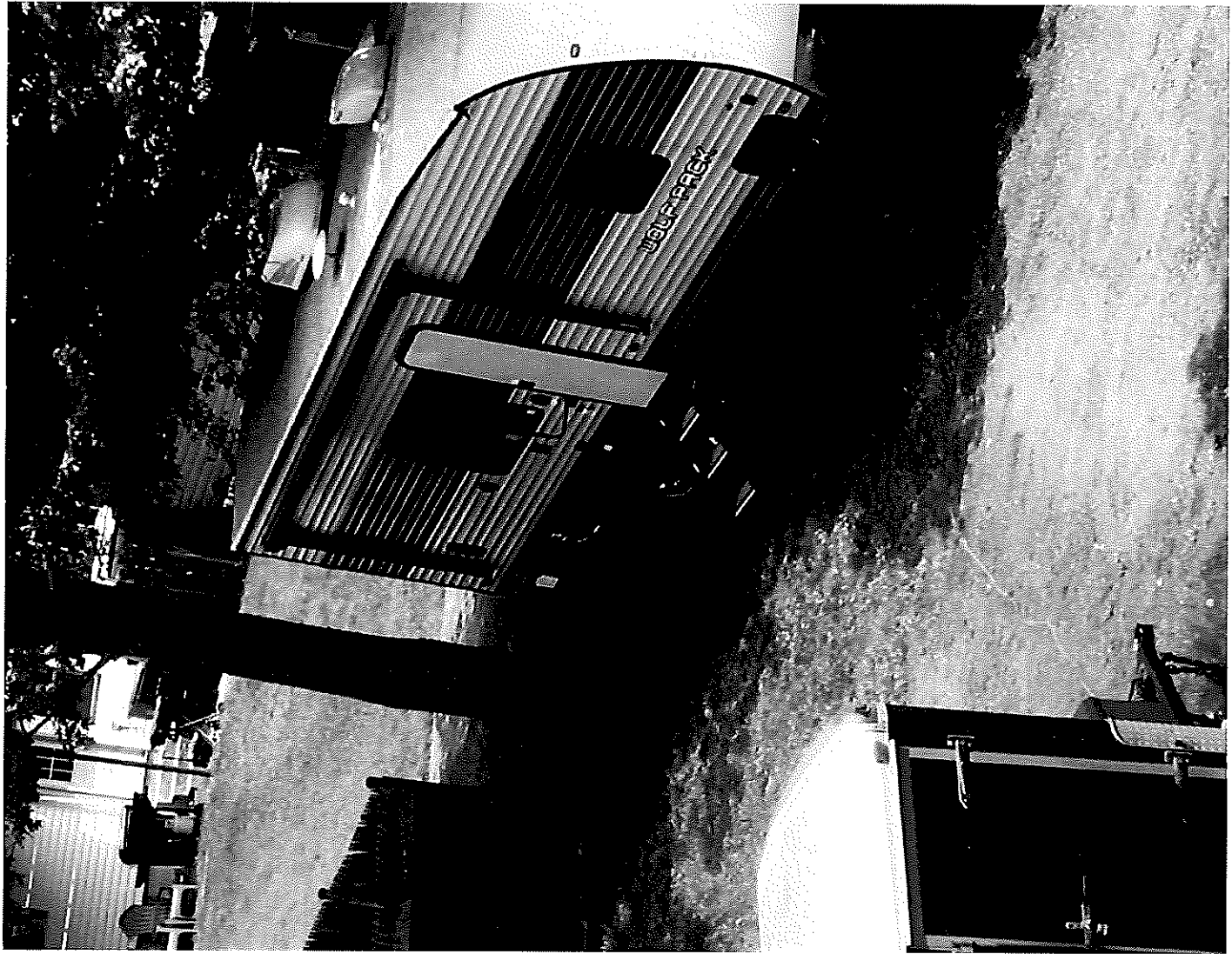
- On the map you will see that not only do I own the house at the end of Jonas Court but the empty lot across the street as well. That property has been in my family since 1923. It has been a dead end since that time as well. I grew up there as did my children and my grandchildren. I believe that the granting of any relief or variance to allow the use of Jonas Court as a private driveway would first of all grant authority to a structure that was never legally constructed and secondly, jeopardize the safety of my family and anyone who has children either living or visiting on that street.

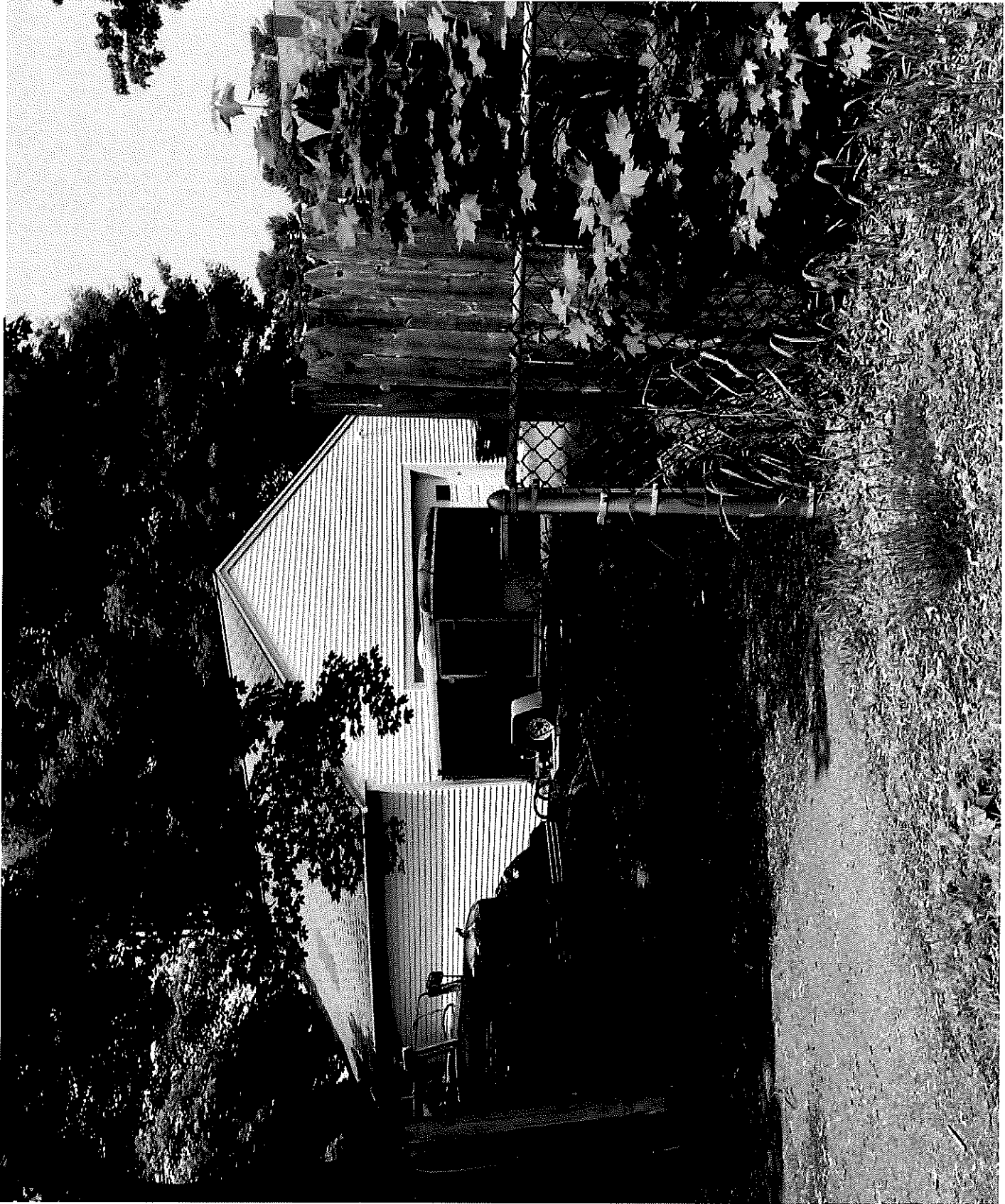


















**City of Marlborough  
Zoning Board of Appeals**

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

**ZBA Case # 1455-2019**  
**Location: 26 Frye Street**

**Applicant: Michael Crane**

**VOTE OF THE BOARD**  
**Signature Sheet**

**In Favor**

Paul Giunta  
\_\_\_\_\_

Ralph Loftin  
\_\_\_\_\_

Thomas Golden  
\_\_\_\_\_

Thomas Pope  
\_\_\_\_\_

Robert Levine  
\_\_\_\_\_

**In Opposition**

Paul Giunta  
\_\_\_\_\_

Ralph Loftin  
\_\_\_\_\_

Thomas Golden  
\_\_\_\_\_

Thomas Pope  
\_\_\_\_\_

Robert Levine  
\_\_\_\_\_