



**City of Marlborough**  
Zoning Board of Appeals  
**140 Main Street**  
**Marlborough, Massachusetts 01752**  
**Tel. (508) 460-3768**

### **Meeting Minutes**

**For Meeting Held:** October 19, 2023, 7:00 PM, at 1<sup>st</sup> Floor, Committee Room, City Hall, 140 Main Street, Marlborough.

**Members Present:** Ralph Loftin-Chairman, Robert Levine, Thomas Pope, and Thomas Golden.

**Members Absent:** None.

#### **Items Discussed:**

##### **1. Zoning Board of Appeals Case # 1498**

**Applicant:** Joseph Barton

**Date of Appeal:** October 3, 2023

Location of Subject Property – 67 Simmons St.

**Petition:** The applicant requested an opinion of the Building Commissioner as to whether the premises as zoned would permit a single story addition at the rear of the existing structure. Located in Zoning District RR the proposed project does not comply with Chapter 650, Article 28E(3), “Table of Lot Area and Yard Requirements for Open Space Development,” & “Minimum rear yard setback requirements” of the City Code of Marlborough. The applicant is seeking relief in the form of a variance in order to construct an additional room which would exceed maximum lot coverage and minimum rear yard setback requirements.

Also present were:

Alex Grigorov – Senior Clerk,  
Joseph Barton - Owner,  
Tin Htway – Building Commissioner  
William Paynton – Assistant Building Commissioner  
Mr. & Mrs. Lombardi - Abutters with questions

Board member, Ralph Loftin called the meeting to order and asked board member Levine to read the petition.

Joseph Barton made his presentation as follows:

- He is requesting a Variance for a setback of nine feet on one side, three feet on another.
- The proposed single story addition would serve as an in-law apartment.
- The pie shape of the property makes it difficult to meet setback requirements.
- Property behind his is green space. He had Priscilla Ryder come out on a site visit to confirm this project would not cause any issues with the green space.
- His grievance is that if he were to build according to the zoning regulations, the addition would not be of a size or shape that would be usable.

Chairman Loftin noted that:

- A variance is difficult to receive.
- In order to be granted a variance you need to present a case for a hardship which is something more than an inconvenience. The hardship must arise from the soil conditions, shape or topography of the property.

Joseph Barton:

- The grievance is that with current zoning requirements, the single story addition cannot be built in a way which is usable.

Chairman Loftin:

- In the most literal case, a hardship means that if the variance were not granted, the property could not be used as zoned.

Joseph Barton:

- I am not infringing on other's properties.
- I cannot build an addition on the property as it is currently zoned.
- I understand the purposes of the setbacks.

Board Member Levine:

- The issue is not what you would like to do with the property, the issue is the setback.
- You are free to use your land as it is zoned, however you want to change that. You want an exception to be made specifically for you.

Chairman Loftin:

- A variance is supposed to be difficult to receive, and is rarely granted.
- You need a strong case which explains why you couldn't use the property as zoned without a variance.
- Perhaps members of the Building Department could elaborate.

Tin Htway:

- One part of your argument was use, and your use is not an issue.
- We have an issue with the setback requirement of your lot. You are allowed to build to the setbacks, not to your property line.
- It would have been beneficial to have brought a floor plan to show why specifically you need that extra space.

Chairman Loftin:

- I'm not certain the layout of the house is helpful.
- The outside boundaries of the proposed addition are clearly not in compliance with the setback.

Board member Golden:

- I'm not certain that we can have a hearing based off an opinion.

Chairman Loftin:

- The determination letter is sufficient in order to hold a hearing.

Chairman Loftin opened the meeting to any members of the public who wish to speak.

Mr. Lombardi:

- We are abutters to the property and in attendance due to the notice to abutters.

Mrs. Lombardi:

- I don't see anything wrong with your reason for wanting an addition, but it seems you need to find a better reason in order to be granted a variance.
- We are neutral and only in attendance to watch the proceeding.

Chairman Loftin closed public portion of the hearing.

Board member Golden:

- This is not just one foot, this is substantial encroachment.

Chairman Loftin:

- If we deny the variance, the option to apply again will not occur for two years.
- To Mr. Lombardi, "You have the right to withdraw without prejudice." This will allow you to apply as soon as a better plan or valid hardship is found.

Board member Levine:

- If you Withdraw Without Prejudice, you can return with a more detailed plan and better argument.

- A variance denial means you cannot return for two years.

Joseph Barton:

- Requests to Withdraw Without Prejudice.

A motion was made by Robert Levine to Withdraw Without Prejudice, Seconded by Ralph Loftin. By a vote of 4-0, the Withdrawal Without Prejudice was approved.

Alex Grigorov noted that another Zoning Board of Appeals case was pending and a hearing needs to be scheduled. Due to public notice requirements and holidays Tuesday, November 28<sup>th</sup> 2023 was the nearest best time.

A motion was made by Ralph Loftin to hold a hearing on Tuesday November 28<sup>th</sup> 2023, Seconded by Robert Levine. By a vote of 4-0 the hearing date was approved.

## **2. Adjournment**

A motion was made by Ralph Loftin and seconded by Robert Levine to adjourn the public meeting. By a vote of 4-0, the public meeting was adjourned.

### **Documents Used by ZBA:**

- October 19, 2023 Meeting Agenda Posting
- Zoning Determination letter from the Assistant Building Commissioner William Paynton dated August 19<sup>th</sup>, 2023.
- Certified Plot Plan for 67 Simmons St. Marlborough, MA 01752 Last Revised 8/2/2023.
- Request to Withdraw Without Prejudice sheet.

Minutes prepared by  
Alex Grigorov, Secretary  
Zoning Board of Appeals

Respectfully submitted:

Ralph Loftin, Chairman  
Zoning Board of Appeals