



**City of Marlborough  
Zoning Board of Appeals**

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

**ZBA Case # 1451-2019**  
**Location: 107 Kosmas St.**

**Date: February 28, 2019**

**(General Laws Chapter 40A, Section 16)  
Grant of a Variance**

To: Timothy LaFrankie  
Address: 107 Kosmas St.  
City: Marlborough, MA 01752

affecting the rights of the owner with respect to land or buildings at: 107 Kosmas St.  
being Map 32, Parcel 185.

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.

  
Paul Giunta - Chairman

  
Susan Brown - Secretary

Submitted to the City Clerks' office on February 28, 2019.



# City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1451-2019

Date: February 28, 2019

Name: Timothy LaFrankie

Location: 107 Kosmas St.

## Zoning Board of Appeals Notice of Decision

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 a public hearing held at the Marlborough City Hall, 140 Main St. on February 19, 2019.

**Members Present:** Paul Giunta-Chairman, Thomas Golden, Thomas Pope and Robert Levine.

**Vote:** Paul Giunta, Thomas Golden, Thomas Pope and Robert Levine voting in the affirmative. The Board voted 4-0 to grant a variance.

**Proposal:** To construct a 22 ft. x 27 ft. addition to the existing house at 107 Kosmas St. (Map 32, Parcel 185) The proposed addition will be 16 ft. vs. the required 20 ft. to the side lot line, thus a deviation of 4 ft. Located in Zoning District A-1, Chapter 650, Article 41 "Table of Lot Area, Yards and Height of Structure of the City Code of Marlborough. The applicant is also proposing a 22 ft. x 10 ft. open deck off the proposed addition which does not need relief.

After due consideration to the subject matter of the petition the Board **finds:**

- 1, Circumstances relating to the shape of the lot as being odd shape with its widest portion at the frontage being 187 ft and narrowing as you proceed to the rear lot line being 89 ft. wide. Thus, preventing the applicant to meet the required 20 ft. side setback requirement, with a deviation at the narrowest point of 0.5 ft. to at the widest point of 4 ft.
2. The soil condition of the lot is basically ledge, thus preventing the applicant to construct at the rear of the property. The only location for the addition where ledge is not in abundance is where the applicant is proposing it at the right side of the existing house.
3. The soil condition of the lot causes the following hardship because it prevents the applicant from constructing an addition to the rear of his house due to ledge. Financially, it would be costly for him to remove the ledge to construct at the rear of the lot. Ledge is dominant in this neighborhood. The applicant has less area to the right of the house to construct the proposed addition.

4. Relief may be granted without substantial detriment to the public good because the proposed addition will be an extension of the existing house which will be used as it is zoned for, residential.

5. Relief may be granted without substantially derogating from the intent and purpose of the zoning bylaw because, the lot is located in Zoning District A-1, being residential in which the use will remain as residential.

Therefore, the Board **voted** 4-0 to grant a variance with the following **RESTRICTIONS**:

1. The proposed addition will be constructed according to the plan entitled: Certified Plot Plan, 107 Kosmas St. Timothy LaFrankie, prepared by: Odone Survey & mapping, stamped by Glenn Odone, Jr. Dated Dec. 4, 2018
2. Add to the line of existing arborvitaes at the side lot line. The additional 12 ft. of arborvitaes are to be in line with the end of new proposed open deck (this is about 3 or 4 arborvitaes) in order to shield the addition and deck from the view of the neighbor at 97 Kosmas St. The new arborvitaes are to be of equal or greater in size as the existing arborvitaes. (Applicant agrees)
3. The applicant will maintain and trim back the arborvitaes as needed, so they will not encroach onto the neighboring property at 97 Kosmas St. The neighbor at 97 Kosmas St. must give the applicant permission to access the lot to achieve this maintenance. (Applicant agrees)
4. If the first and second arborvitaes at street level becomes a problem concerning sight distance for the owner of 97 Kosmas St as they are backing out of their driveway, the applicant will trim back these arborvitaes. (Applicant agrees)
5. The applicant will ensure that no additional water run-off will go onto neighboring properties. (Applicant agrees)
6. Prior to the issuance of any building permits, the applicant shall present to the Building Inspector evidence that said variance with its restrictions has been filed with the Registry of Deeds or Land Court as applicable.

#### **END OF RESTRICTIONS**

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section II (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city clerk that twenty days have elapsed after the decision has been filed

in the office of the city clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is 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 fee for such recording or registering shall be paid by the owner or applicant.

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, such rights shall lapse; provided however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

Respectfully submitted,

  
Zoning Board of Appeals  
Paul Giunta – Chairman

Submitted to the City Clerk's office on February 28, 2019.



# City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1451-2019

Date: February 28, 2019

Name: Timothy LaFrankie

Location: 107 Kosmas St.

## 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 February 19, 2019.

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

Proceedings:

- 1. Date of Appeal: January 11, 2019**
- 2. Name and Address of Applicant:** Timothy LaFrankie, 107 Kosmas St. 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:** To construct a 22 ft. x 27 ft. addition to the existing house at 107 Kosmas St. (Map 32, Parcel 185) The proposed addition will be 16 ft. vs. the required 20 ft. to the side lot line, thus a deviation of 4 ft. Located in Zoning District A-1, Chapter 650, Article 41 "Table of Lot Area, Yards and Height of Structure of the City Code of Marlborough. The applicant is also proposing a 22 ft. x 10 ft. open deck off the proposed addition which does not need relief.
- 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.

9. **Findings of Fact/record:**

1. The property is located in Zoning District A-1.
2. This is a single-family home with a driveway at the front left of the house. At the rear of the house there is a shed, a patio and deck.
3. The lot contains some 28,205 sq. ft. in lot area.
4. The shape of the lot is wider at the front (187 ft. frontage) with a gradual narrowing as it approaches the rear lot line (89 ft. wide for the rear lot line). As you face the lot, the right-side lot line gradually angles in towards the rear.
5. The surrounding lots are similar in lot shape and area. The location of the lot in question may be at the highest elevation in the neighborhood.
6. The topography of the lot in question slopes slightly from front to rear. And it slopes slightly from side to side.
7. The **applicant**, Timothy LaFrankie was present.
8. In the applicant's filing packet are the following:
  - The denial letter from the Building Dept. dated Jan. 9, 2019.
  - **Plan:** The applicant provided a plan entitled: Certified Plot Plan, 107 Kosmas St. Timothy LaFrankie, prepared by: Odone Survey & mapping, stamped by Glenn Odone, Jr. Dated Dec. 4, 2018
  - Letter dated Jan. 9, 2019 written by the applicant
  - Application form
9. The Board chairman stated how the hearing will proceed. The Board chairman also informed the audience that this is a 5-member board and there are only 4 Board Members present this evening. The applicant must receive a 4-0 vote in order to receive the variance. The applicant agreed to go forward with the 4 members this evening.

**Record:**

10. The applicant stated the following:
- He is proposing a 22 ft. x 27 ft. addition which will be at its closest point 16 ft. to the side lot line. (vs. the 20 ft. required for side yard setback). Thus, a deviation of 4 ft.
  - He is also proposing an attached 22 ft. x 10 ft. open deck at the rear of the propose addition. An open deck can be 5 ft. from the lot line, so a variance will not be needed.
  - According to his letter dated January 9, 2019 which is attached to his application, he stated he is unable to move the addition to the back of the house due to the irregular shape of the lot and ledge that was determined to be there which in turn would add financial hardship to have the ledge removed. Costing some \$15,000 - \$22,000 to remove.
  - According to his letter dated January 9, 2019, the addition is to provide a larger family living area. (adding 2 additional bedrooms)
  - The proposed addition will be an improvement to the house and will add value to the house. Also, the addition will be esthetically pleasing to the neighborhood.
  - At the meeting, the applicant brought in some design layout plans for viewing. Not in Board's file.
  - He stated his son will be graduating from college soon and will be moving back to the house thus needing more living space. The applicant works from the house and the additional living space will give him a room for his office. He will be getting married in the future and this addition will give him more living space.
  - He stated he has a row of young arborvitaes, which are currently 8-10 ft. high and still growing on his property abutting the side lot line. These serve as a buffer between his neighbor's driveway at 97 Kosmas St.
  - These arborvitaes are also 8-10 ft.  $\pm$  from the proposed addition.
  - He stated that his proposal is similar to his neighbor's across the street at 114 Kosmas St. who received a variance last year.
11. Board member asked if the proposed addition can be scaled down to an 18 ft. x. 27 ft. then a variance will not be required. Applicant stated – No.

12. **HARDSHIP:** The hardship as stated by the applicant:
- Because of the soil condition, being the amount of ledge located on his property, restricts him on where to place the proposed addition.
  - The high cost of ledge removal prevents him from constructing at the rear of the house.
  - The shape of the lot is preventing him to conform with the side yard setback, because of the slight angle of the right lot line which narrows the lot as you proceed towards the rear of the lot.
  - He stated there is less room on the left side of the house to do the proposed addition.
  - He stated when he dug for his patio at the rear of the house, there was evidence of ledge at the back of his house.
  - Needing additional living space for his family.
13. Speaking in **Favor** of the petition – None
14. The Board read into the file a letter from the abutting neighbor, Renate Insani, 97 Kosmas St. Marlborough, MA - dated February 13, 2019. Stating her **opposition** to the petition. (Letter in Board's file)
15. Speaking in **Opposition** of the petition:
- Renate Insani – 97 Kosmas St. Marlborough, MA – She is the abutting neighbor to the right of the lot in question. She made the following comments:
    - She feels that the distance between the house in question and her house is less than most houses in the area. She stated that the applicant uses 114 Kosmas St. as an example of receiving a variance last year for a similar proposal as his. But, Ms. Insani stated you cannot compare that example to his proposal, because there is considerably more distance between those houses.
    - The applicant has a considerable amount of land to the rear of his house in which he can construct the proposed addition.
    - Her existing driveway is about 5-6 ft. lower than the applicant's lot, fearing water run-off into her garage from his addition.

- The existing arborvitaes are baby in size being some 6 ft. high and 12 ft. wide which are already encroaching onto her property. When they are fully grown they will encroach onto her property more and they may pose a danger to her lot and home.
  - As the applicant stated, the addition will probably add to the value to his house, but it may not add value to her house. She feels it is not fair that the value of her house may depreciate, because of the proposed addition.
  - She asked the applicant what the loud noise from his house was. The applicant stated it may be the power vent on top of the water heater. He stated he planned to install a waterless tank.
  - She felt even if there was a restriction for the applicant to trim the arborvitaes, so they do not become a nuisance on her property. She felt the applicant will not comply.
  - The proposed addition should be placed on the other side of the existing house. She does not want to look at his addition from her bedroom windows.
- Robert Insani – 6 Andrews Way, Southborough, MA
    - Feels the applicant has no hardship and has not proven hardship thru his testimony.
  - Deborah Insani – 6 Andrews Way, Southborough, MA – was present.
  - Mary Insani – 74 Thomas Dr., Marlborough, MA – She stated the following:
    - The existing arborvitaes will grow larger causing more of a nuisance.
    - Water run-off from the proposed addition onto 97 Kosmas St. driveway, will freeze and cause a hazard.
    - Her mother will take a financial hit, while the applicant takes a financial gain by creating a larger house. Does not seem to be fair.
  - Steve Delorey - 74 Thomas Dr., Marlborough, MA 01752. He stated the following:
    - Feels the applicant has no hardship.
    - The applicant seems to be financially sound as evidence thru the work he has done throughout his

yard. So, he should be financially capable of placing his addition at the rear of his lot.

- If a variance is granted, it will be a hardship on his mother-in-law.

16. Board member Robert Levine stated he supported the petition. He felt the applicant met the requirements for a variance, with ledge on the lot and the shape of the lot. The addition will improve the applicant's lot. The proposed addition will be ethically pleasing to the neighborhood, water run-off should not be an issue because water will shed as it currently does, the existing arborvitaes and the added arborvitaes will serve as a noise buffer to the neighbor at 97 Kosmas St.

17. With no other testimony taken or given, the public hearing was closed.

18. On a motion by Robert Levine and seconded by Thomas Pope to grant a variance with restrictions. The Board voted 4-0 to grant a variance with restrictions.

# Renate Insani

FEB 13 2019

97 Kosmas Street, Marlborough MA 01752 508-485-9542

February 13, 2019

Chairman Paul Giunta: City of Marlborough

Zoning Board of Appeals: Case # 1451-2019

140 Main Street Marlborough, MA 01752

Dear Chairman Paul Giunta: City of Marlborough

Zoning Board of Appeals: Case # 1451-2019:

I am in receipt of your notice of public hearing scheduled for February 19, 2019 at 7:00pm. While I intend to be present; my family thought it would be helpful to formally state my concerns with this request. My late husband Robert retired after 32 years active duty in the Airforce and wanted to return to his hometown. We bought our home in 1983 in that particular neighborhood because we were specifically looking for a modest home with a large wooded back yard. We also liked the location of the bedrooms on the left side of the house. While our home is one of the closest to the abutting neighbors in comparison to the other houses in the neighborhood. We still thought because of the back wooded area; we would be happy with the privacy.

The neighbors at 107 Kosmas Street cut down a significant number of trees in the back wooded area that affected many homes. I never once complained. I do however have significant issues with the request to build the addition abutting our property line. The houses are already very close together and the request to encroach on my property line will not only depreciate the value of my home but also cause possible water run off down the hill to my driveway. Aesthetically the addition would be overcrowding very close to my driveway. Making the houses look unappealing for resale since they would be so close together. No one wants to buy a house with the neighbor literally on top of the property line. Not to mention that my bedroom would be adjacent to the large addition. I am aware that one of our neighbors was seeking a variance last year for another addition, but that request made since it did not impact the visual appearance of the surrounding neighbors since their lot lines are much larger. I will not agree to any variance which abuts my property line. At my age, it would cause me significant financial hardship to have to get a full property survey, appraisal and full title search done.

I do not support any variance that abuts my property line due to potential property value depreciation and resale value in the future. I hope that you understand my situation and I respectfully ask that you consider to deny the request for the variance at 107 Kosmas Street.

Sincerely,

**Renate Insani**



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

**ZBA Case #** 1451-2019  
**Location:** 107 Kosmas St.

**Applicant:** Timothy LaFrankie

VOTE OF THE BOARD  
Signature Sheet

**In Favor**

**In Opposition**

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

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

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

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

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

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

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

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

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

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