



# City of Marlborough Zoning Board of Appeals

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

**ZBA Case # 1447-2018**  
**Location: 114 Kosmas Street**

**Date: May 25, 2018**

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

To: Christopher King  
Address: 114 Kosmas Street  
City: Marlborough, MA 01752

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

**114 Kosmas St. Map 32, Parcel 189**

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 May 25, 2018.



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**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 May 22, 2018.

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

**Vote:** Paul Giunta-Chairman, Thomas Golden, Robert Levine and Thomas Pope – voting in the affirmative. Ralph Loftin – voting in the negative. Vote: 4-1 to grant a variance.

**Proposal:** The applicant proposes to construct a 25' x 25'4" attached 2 story addition consisting of a 2-car garage with living space above. The zoning code states that in an A-1 Zoning District the required side yard setback is 20 ft. vs. the proposed 16/17 ft. side yard setback. With a deviation of 2-3 ft. Map 32, Parcel 189.

After due consideration to the subject matter of the petition, the Board voted 4-1 to (GRANT) a variance for a side yard setback of 17 ft., thus a deviation of 3 ft. If the deviation is greater than 3 ft. the applicant will re-file with the Zoning Board of Appeals.

The Board finds that a literal enforcement of the Ordinance would involve substantial hardship to the petitioner due to ledge on his lot which limits him the ability to place the addition without added cost of removing the ledge. Also, the placement of the addition will be more aesthetically pleasing to the house and the neighborhood. Relief may be granted without substantially derogating from the intent or purpose of the Zoning Ordinance because the deviation is minor.

Therefore, the Board **voted** 4-1 voting in the affirmative to grant a variance with the following restrictions:

1. The proposed addition will not be any closer than 17 ft. to the side lot line. If the applicant is any closer than 17 ft., the applicant will re-file with the Zoning Board of Appeals.
2. No Building Permits can be issued until such time as the applicant presents to the Building Inspector evidence that said variance with its restrictions and has been filed with the Registry of Deeds or Land Court as applicable.

**End**

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 May 25, 2018



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Name: Christopher King

Location: 114 Kosmas Street

## 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 May 22, 2018.

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

### Proceedings:

1. **Date of Appeal:** April 17, 2018.
2. **Name and Address of Applicant:** Christopher King, 114 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 25' x 25' 4" attached 2 story addition consisting of a 2-car garage with living space above. The required minimum
6. **Section of the Zoning Ordinance involved:** Table 650-41 of the Marlborough General Code.
7. Notice was sent by Certified Mail 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/Record:**
  - a. The property is located in Zoning District A-1. The lot contains 27,718 sq. ft. of area.
  - b. The shape and topography of the lot - The lot is rectangular in shape.



- c. Lots in the area are of similar in size and shape.
  - d. **Proposal:** The applicant proposes to construct a 25' x 25'4" attached 2 story addition consisting of a 2-car garage with living space above. According to the denial letter from the Building Dept. dated April 13, 2018 "it does not comply with Chapter 650 Article 41 "Table of Lot Area, Yards and Height of Structures" of the City Code of Marlborough. The zoning code states that in the A-1 zoning district the required side yard setback is 20 ft. vs. the proposed 16/17 ft. side yard setback. With a deviation of 2-3 ft.
10. The proposed addition will provide an additional bedroom for their third child, a private office and a garage in which both vehicles can fit. (currently only one car barely fits in the existing garage)
  11. The stated **hardship** by the applicants were the following:
    - Unable to move the proposed addition further back on the property to meet the setback requirements without considerable added financial hardship due to ledge removal, compromising the fluidity of the interior layout and negatively impacting the aesthetic exterior appearance of the home as it is compared to the neighborhood.
    - The lot is predominantly ledge.
    - The proposed addition will be located on the driveway, which would facilitate the construction of a two-car garage without the added cost of having to remove ledge for a foundation.
    - Moving the proposed addition back on the lot to conform to the current setback would make for a very irregular interior layout.
  12. The proposed addition will not have a negative impact on the appearance of the neighborhood and no substantial detriment to the public good. And would not substantially derogate from the intent and purpose of the zoning ordinance as there still will be significant open space between their house and their abutting neighbor's house.
  13. The applicants stated they did a remodeling a few years back, and it was very expensive to cut away the ledge.
  14. They also stated they brought in a lot of fill to bury some of the ledge that was on their property, in order to create a yard.
  15. The applicants showed the Board a couple of pictures of existing ledge on their property.
  16. Board member, Ralph Loftin, asked the applicant if ledge is the norm for most lots on Kosmas St. Answer – yes. Mr. Loftin felt that if this is true, then this lot is not unique and ledge is shared by the surrounding lots, thus there is no hardship. And, this may be a personal financial hardship to the applicants due

to the added expense of cutting away the ledge to conform to the zoning set back.

17. The applicant presented 2 letters of support. One from 133 Kosmas St. and one from 104 Kosmas St. (letters are placed on file)
18. Speaking in Favor: No one appeared.
19. Speaking in Opposition: No one appeared.
20. A motion was made by Thomas Golden, seconded by Thomas Pope to grant a variance according to the shape, soil condition and topography of the lot. After some discussion, the Board voted 4-1 to grant a variance.
21. The Board finds that due to the amount of ledge on the property, the only feasible location for the addition is where it is proposed.
22. With no other testimony taken or given, the public hearing was closed.

**Plans:** Proposed Additions, 114 Kosmas St. Prepared by Bruce Saluk & Associates, Inc. dated: June 23, 2017. Scale 1"= 20'

*See 5/22/2018*

Marlboro City Council  
140 Main St.  
Marlboro, MA 01752

5/07/2018

City Counselors:

I'm not able to attend the hearing for Mr. & Mrs. King as I'll be away on that date. I know the Kings as decent people who everyone would want as neighbors. I don't know their first names but really don't need to. They are family people and spend much time with not only their children but other children in the neighborhood. Many mornings I see one of them heading to the local school with a parade children, theirs and other neighbor kids, in tow.

Their home is immaculate and any improvements would not only benefit them but all neighbors and the city of Marlboro also. I therefore am 100% in favor of whatever they wish to do at their property.

Sincerely,

Bob & Joanne Duplessis  
133 Kosmas Street  
Marlboro, MA 01752  
774-249-8558

*Bob Duplessis  
Joanne Duplessis*



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

**In Favor**

Paul Giunta

Ralph Loftin

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Thomas Golden

Thomas Pope

Robert Levine

**In Opposition**

Paul Giunta

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Ralph Loftin

Thomas Golden

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Thomas Pope

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Robert Levine

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