

**TOWN OF MARLOW
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
HEARING FOR APPLICATION FOR VARIANCE
THURSDAY, NOVEMBER 16, 2023**

(Unapproved minutes are written by the Secretary or volunteer Secretary, posted for the public benefit, and are reviewed and accepted by the Board at the next regular meeting.)

REGULAR ZBA MEETING

CALL TO ORDER: 7PM

ROLL CALL: Bob Boivin, Chair, Tom Fuschetto, Jen Brown, Bucky White. Sandy Pierre absent.
Quorum established.

ATTENDEES: Bob Sharp, Diane Luke, John Luke, Sharon Davis, David Davis, Joanne Kelly, Gary Cohen, Tracy Cohen, Samantha Cohen, Marcia Levesque.

At this time Tom Fuschetto recused himself as an abutter to the property under consideration. He joined the audience.

CALL TO ORDER FOR PUBLIC HEARING: 7:03

QUORUM ESTABLISHED: Three voting members out of five: Bob Boivin, Chair, Jen Brown and Bucky White.

RULES OF THE PUBLIC HEARING WERE REVIEWED:

Presentation by applicant.

Board members questions.

Public Questions and comments. State name and address. All questions and comments are addressed through the Chair.

Chair read the Hearing Notice:

Hearing Notice: Town of Marlow Zoning Board of Adjustment will hold a Public Hearing on a request for a variance for a four apartment building permit to be constructed in an existing single family structure located at 20 Church Street, Village District (R-1), MAP 203 LOT 008. Under Section 403.3 Village District Permitted Uses (Land Use Regulations, Ordinances, & Procedures, the Town of Marlow, NH), only one and two family dwellings are permitted. The applicant, Ray Britton, is seeking a variance to build four apartments in the existing structure. The Public Hearing will be held at the Town Offices on Thursday, November 16th at 7pm. The Hearing and ZBA meeting are open to the Public. There will be a designated time for questions, concerns and input. When recognized by the ZBA Chair, any member of the public, after identifying himself/herself, may question, address, or comment on the proposal.

Signed by the Chair.

Hearing noticed posted on Town website, Town bulletin board and Post Office bulletin board.

Chair read registered letter sent to abutters re: Hearing which reflected the info on the Public Notice.

Abutters: Dave and Sharon Davis, Tom Fuschetto and Joanne Kelly, Gary and Tracy Cohen, Town of Marlow, Joe Marcotte.

Chair also noted three letters sent to applicant by certified mail as reminders of Hearing, time and date and additional information requested by the ZBA in order to make an informed decision. This last included the following:

Question of integrity/safety of building, notation on tax card of bow in foundation.

Drawings to scale, at least with dimensions for rooms and lot.

Proof that the residence was previously a two unit apartment house.

Proof of commercial septic system plan, certified by state.

Detailed proposal of parking lot and driveway.
Review of NH requirements for rental apartments.
Second means of egress on second floor, apartment A.

CHAIR CALLED FOR APPLICANT TO PRESENT THE INFORMATION REGARDING THE PROPOSAL FOR THE VARIANCE. A SECOND CALL WAS MADE. CHAIR CALLED FOR ANY REPRESENTATIVE APPEARING FOR THE APPLICANT TO COME FORWARD. NO RESPONSE.

Chair declared Applicant/Representative not in attendance.
Chair moved on to review the information that was available to the Board regarding the application.

Hand drawn diagrams, not to scale, of the two apartments on the first floor and the two on the second floor. The Fire Chief, although twice requested, did not do a safety inspection nor was the question of only one exit in the front apartment second floor addressed.

The tax cards show that from initial entries in 1995, the structure was a single family dwelling. No notation of any apartment on the second floor, then or since.

Letter sent to applicant requesting additional information was never addressed by applicant.

Chair asked if abutters had any questions or input:

Dave Davis: Owner told Dave that both apartments had two entrances.

Sharon Davis asked how two apartments would be OK on 2'd floor. Why not one on each floor?

Barry Corriveau responded to S. Davis saying that two apartments were allowed under the zoning. Response to that allowance is up to the Code Enforcement Officer or Building Inspector.

Tracy Cohen: Questioned whether or not there has been an environmental study of this area behind the building in question and the impact on evaluation.

Chair responded that the Conservation Commission was approached and the member spoke of doing an assessment of the wetland area abutting the properties of concern. Did not hear back.

Marcia Levesque: Would this area ever be a wetland?

Chair responded that historically it is wet at times but not consistently. Also noted was that most of this wet area is part of Cohen's land. Bucky noted that years ago, it was used for growing corn. Culvert placed by the state changed the flow of water.

Sharon Davis asked if there was a map to show where the septic tank and dry well are. Answer was no. Chair noted that an inspection was done by Septic Pro and although a written report was requested from Building Inspector, it was not received.

Barry Corriveau noted that State will step in.

Chair added that with four units, the State will have to do an inspection.

Tracy Cohen: Considering the historic nature of the village, has a study been done on light and air pollution? She also asked why we are entertaining a four apartment building in our village?

Chair noted that the underlying zoning allows two apartments. The applicant is seeking a variance to increase that to four apartments.

John Luke noted that one could put in two two bedroom apartments.

Chair noted that septic loading would be different with the number of bedrooms and the number of kitchens. Each kitchen adds 1/2 bedroom load to an apartment.

Joanne Kelly asked if residents of Marlow have to cover expenses if septic system fails.

Answer was that it is the owner's responsibility to maintain services.

Barry Corriveau felt that applicant was totally unaware that he could not have four apartments.

Sharon Davis: Has applicant submitted surveyed maps of the property?

Chair: No. Although Board requested detailed drawings with measurements of the rooms and the lot.

Marcia Levesque: Can owner just build system on other land if not enough room? And who reports failed system?

Chair replied not without a State waiver.

Discussion over who reports failed system.

Health Officer reports failed system to DES.

Sharon Davis: Will he just re-drill well in same place?

Chair: possibly.

Sharon Davis: Has he submitted surveyed maps.

Chair: No.

Barry Corriveau: Spoke of personal experience and learning that the owner of any effected land needs to read his deed to determine what is specified.

Barry Corriveau: Spoke of concerns that he had, that an individual would request this change but would not provide adequate information or show up at the meeting.

Bucky White : In conversation the applicant said that "It isn't going through."

Marcia Levesque; Does the Building Inspector go in and say: " Stop it."?

Chair: The Building Inspector is the Enforcement Officer for construction.

John Luke: (If turned down) What's to stop him from coming back to try again?

Chair: ZBA has three options for a decision: (1) Approval. (2) Denial

Without Prejudice: Applicant can return with same request. (3) Denial with Prejudice: Applicant has to appeal to the Board to be able to return with same request.

Barry Corriveau: Can ZBA make decision today?

Chair: It can make decision today.

Marcia Levesque What is different in the process of decision between "with" and "without" prejudice ?

Chair: Without prejudice the ZBA accepts the same application to start the process again. With Prejudice the applicant has to appeal to the Board that there is proper grounds for starting the process over.

Joanne Kelly: How can you stop him from just continuing?

Chair: Building Inspector would have determination.

Chair declared hearing closed, Public input concluded.

CLOSED HEARING: 8pm

REOPENED REGULAR MEETING

Chair reviewed the three motions: to approve, to deny, to deny with prejudice.

Chair reviewed the criteria to be considered for making a decision:

1. Granting the variance would not be contrary to the public interest.
2. The spirit of the Marlow Ordinance would be observed.
3. Granting the variance would so substantial justice.
4. Hardship caused by special circumstances or conditions applying

to the land.

State Update on #4.

1. Consideration should be given to the character of the neighborhood surrounding the parcel.

2. Does the regulation interfere with the owner's rights to use his property as he/she sees fit as long as it does not injure the public or private rights of others.

Each member considered every item and gave his/her opinion, on every item. All members voted NO on the four criteria.

Jen Brown Moved to Deny With Prejudice the Ray Britton application for a variance for four apartments. The Applicant has the right to appeal the decision and to provide more information and answers to Board concerns and requested information, noting that the application was never formally withdrawn. Bucky seconded. Jen, Bucky and Bob voted in favor of the motion to Deny with Prejudice.

Tracy Cohen asked how to get in touch with the Building Inspector. Answer was to contact him or the Town Office or attend a Selectmen's meeting. She also requested that if a determination of the wetland under discussion is made, would she please receive a copy.

Chair asked for any further comments. None

Adjournment: 8:40

Respectfully submitted,
Jud Ryner, Substituting Secretary