

ZONING BOARD OF APPEALS MEETING

PLACE: HEARING ROOM 2, MARSHFIELD TOWN HALL

FEBRUARY 23, 2016 at 7:30 p.m.

MEETING MINUTES

Members Present:

*Joe Kelleher
Mark Ford
Heidi Conway
Francis Hubbard
Brian Murphy
Richard Murphy*

Members Absent:

Lynne Fidler

Also Present:

*Jerry O'Neill, Bldg. Commissioner
& Code Enforcement Officer
Robert w. Galvin,
Town Counsel*

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Chairman Kelleher called the meeting to order at 7:35p.m. He noted Ms. Fidler would not be at the meeting this evening. He asked if there was anyone recording the meeting. No one answered.

CONTINUED HEARINGS:

#16-07: Michael Landry: The Petitioner is seeking a Special Permit in accordance with Article XI, Section 11.09 of the Marshfield Zoning Bylaws to satisfy 11.09(5), Transfer of Ownership of a Dwelling with an Accessory Apartment, for which, as the new owner, the petitioner is required to apply for approval of the existing accessory apartment on the property located at 321 Moraine Street, which is further identified on the Assessors' Maps as parcel H04-01-04 and is located in an R-1 zone

Mr. Kelleher opened the continued hearing by reading the petition into the record. He noted there was no testimony given.

Present before the Board: Jillian Landry

Ms. Landry apologized to the Board for not being present at the previous meeting. She explained her husband was away on business and she forgot the date. Mr. Kelleher assured her it was not a problem. He asked if there were any changes they were planning on making to the property. She stated no, they just bought it; they will be living in the main home and her mother is living in the accessory apartment and they just want to make sure the transfer is all legal.

Mr. Kelleher asked the Board if they had any questions: None. He asked if there were any questions or comments from the audience: None. Mr. Kelleher moved to close the hearing; seconded by Mr. Hubbard: VOTE: Unanimous. Mr. Kelleher moved to grant approval of the accessory apartment transfer; seconded by Mr. Hubbard: VOTE: unanimous.

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DISCUSSION WITH DICK ROCKWOOD RE: KAUFMAN, 221 OCEAN St.: Dormer Calculations; applicant wants determination if dormer additions are de minimus or does an application for a minor modification need to be filed.

Mr. Kelleher asked if Mr. Rockwood submitted a plan. Mr. Rockwood stated he had, it showed the area of the dormers. He dropped the roofline a little bit, then he calculated the area of the dormers based on his discussions with the Building Commissioner. Mr. Rockwood reminded the Board of the discussion the previous week regarding the height of the building. He stated it all stemmed from Mr. Kaufman's desire to put dormers on the dwelling. He calculated the area of the house, which was always on his plans, and he came up with 25% of the area. He doesn't necessarily agree with taking this approach for a dormer, but that is a whole other discussion to get into, but he was told to come back with this, but he doesn't think the issue is totally resolved by taking the definition of height and then turning around and saying these other things apply because in each one there are holes, and they are each there for other reasons, which he printed and is prepared to talk about, but he would like to walk out of here and do his dormers.

Mr. B. Murphy and Mr. Kelleher stated they agreed. Mr. Kelleher asked Mr. O'Neill if he had a chance to look at this submission. Mr. O'Neill stated he had not; Mr. O'Neill stated he thought this was a discussion of whether this is a de minimus change or not; Mr. Kelleher stated that was correct. Mr. Rockwood stated because they had gone to zoning to make adjustments on the house, that is why he asked if he could add the dormers, because he had already been to zoning, as a de minimus change. Mr. Hubbard stated he had a question that the answer may help him and may help others to determine this: he asked if the area under the dormers less than 25% of the building area on the property. Mr. Rockwood stated yes.

Mr. Hubbard stated the previous discussion ended with if the dormers were less than 25% of the building area, then they weren't calculated in the building height. To him, as long as it meets that at 25%, he sees it as de minimus. There are many buildings that have dormers in attics where there is living space, but they don't reach the 25%; but as long as the dormers are less than 25%, he doesn't see a problem with that. He doesn't believe they need to bring another application. Mr. O'Neill stated just to be clear, the two dormers are 25%, that does not include the covered porches, or do they include the covered porches. Mr. Rockwood stated they are part of his footprint, there are upstairs balconies, so if you go to the first floor plan. Mr. B. Murphy read the building area, then Mr. Hubbard read roof line. Mr. Rockwood stated that these items just got brought in because first, no one accepted the sentence that explained the height of a roof; it doesn't talk about dormers; Mr. Hubbard stated as long as it hits 25% he's okay with it. Mr. B. Murphy stated he doesn't think they need to get into it again.

Mr. O'Neill stated it is 25% of the building area, as defined in the bylaw. He asked if the two dormers less than 25%, not including the unenclosed porches? Mr. Rockwood stated his answer is he included the porches he could enclose. Mr. Ford stated so it would be over 25% if you didn't include them. Mr. Rockwood stated there is a reason why some of these definitions are in here. He gave an example building area – when you get to the chart of Appendix 6, it discusses

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it refers to building area and discusses sheds on the property. If he put a shed on the property, he increases the building area, and then would decrease the % of the dormer. The other contradiction by using that is he can have a covered porch with a room on top of it, but he can't use it in determining building area although it is used for setback determination.

Mr. B. Murphy stated he didn't want to get into this discussion again tonight; he prepared some things regarding this too because he is frustrated because he believes it comes down to one thing – what is the tallest part of the house. Mr. Kelleher asked how does the Board get back to whether this is deminimus. Mr. Ford stated he is trying to get Mr. Hubbard's point, in trying to determine some benchmark as to whether this is deminimus; he's saying hey, you wouldn't look at this when measuring building height. So therefore by definition it is deminimus. Mr. Hubbard is using this as some benchmark; that is what he struggles with, he doesn't know what is the standard. He looks at it and it is a pure judgment call, and he appreciates Mr. Hubbard's attempt to try to find some benchmark.

Ms. Conway asked Mr. O'Neill for his thoughts. He stated he doesn't think it is if it is over the 25% because it changes the building height. Mr. Kelleher asked what would happen if the Board made him come back for a modification; he believes it would be approved with a 5 minute hearing. Mr. Hubbard agreed. Mr. O'Neill disagreed if it over 25%, it's a change in the building height and it would be over 35 feet. Mr. Rockwood stated he would not necessarily be over 35 feet. Mr. B. Murphy stated he begs to differ; there is no way one could draw a line across the top of this building, or even draw a line from next door, the dormers are lower. Mr. Murphy states the main roof is higher than the dormers.

Mr. Rockwood stated his long history of being in front of the Board doing these. He stated everything he turned in is the same – the ridge to the eave to the midpoint. He sees this as a change – this is a change in the motive operandum. Mr. Kelleher stated this is a discussion for another day – the Board needs to decide if this is deminimus – in his opinion it is; Mr. Hubbard, Mr. B. Murphy and Mr. Ford all vocally agreed. Mr. Kaufman stated he was glad he didn't ask for a widow's walk. Mr. Kelleher asked for all who believe it is deminimus signify by saying "aye." All agreed, none opposed.

CLOSED HEARINGS / Decisions to be made:

Mr. Kelleher asked the gentleman in the audience what hearing was he waiting for. The gentleman said he was Mr. Grimes. Mr. Kelleher stated the Board would take that up next.

#16-02: Richard Grimes, 67 Quincy Ave., J11-01-15. R-2: SP (10.12) and V (10.11) for relief from 6.10 to add an 8' x 36' farmer's porch.

Mr. Kelleher asked if the Board was waiting for anything else for this. Mr. Hubbard stated that there was no evidence in the Building Department that he has chosen another front for zoning purposes; the Planning Board sent a letter stating Arlington was fine. Mr. Kelleher asked what

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the Board thinks. Mr. Hubbard stated there is nothing in the building file that says they made an election before, and Greg Guimond's letter stated the road is a town accepted road, so he gets to choose; he can't change it once he makes it, but he gets to make an election of what will be his front. Mr. Hubbard stated Mr. Guimond had no concerns with the road. Ms. Conway stated Mr. Guimond was just giving the fact, not expressing an opinion. Mr. Hubbard stated that he stated a fact that allowed them to choose Arlington or Quincy as their front, if they want to. Mr. B. Murphy stated those are the rules of play, you're allowed to do that. Ms. Conway stated she has never heard of that. Mr. O'Neill stated he has never declared one as the front; on this he believes there are three fronts. Mr. Hubbard stated that he gets to declare which is his front; Mr. O'Neill asked "who;" Mr. Hubbard stated the property owner; they have done this on corners. Mr. Kelleher asked if it was for identification purposes; Mr. Hubbard stated for setback and all that. Mr. Kelleher stated they did one on Jefferson Ave., if he recalls, but it was a corner, they didn't have three.

It was asked if he was going to change his address. Mr. Hubbard stated he doesn't need to; Mr. Kelleher stated it doesn't sound right, but...Mr. Hubbard stated what you get to do for zoning bylaw and zoning purposes, is declare which of your lot lines, when you are dealing with a corner, which gets to be declared as the front. Ms. Conway stated she understands that, but wouldn't the frontage been determined when they built the property; when the house was built they declared the front. Mr. Hubbard agreed, but then asked if the Building Department had anything that says they declared it? Mr. O'Neill stated they would never declare one as a front, because they are all fronts. Mr. Ford agreed and added they are all subject to front setbacks. Mr. Hubbard stated this is not how the Board addressed this 6 months ago with Jefferson, on a corner lot. Mr. O'Neill stated it would be two fronts, one side, one rear – that was the rule even when Mike Clancy was here.

Mr. Hubbard stated he distinctly remembers that one, and he is willing to go through his files at home to find the property they dealt with it. Attorney Galvin read from the Zoning bylaws: "On a corner lot, the owner shall designate one street line as the front line for the purposes in determining what line will be designated as the rear line." Mr. Hubbard stated "exactly," that's the bylaw. Mr. Ford clarified that the bylaw states for the purpose of determining the rear line, that is not inconsistent with what Mr. O'Neill said. Mr. Hubbard stated he is sorry, but it is; the owner gets to determine the front line. Mr. B. Murphy stated so if he declares Arlington, then his rear is Charlestown, and he wouldn't need a variance or anything; Mr. Hubbard agreed.

Ms. Conway asked how it is assured that it will always be Arlington. Mr. B. Murphy stated it would be in the Board's decision. She asked what happens in 1 year, 2 years, 10 years – Mr. Hubbard stated with all due respect, he believes the files are maintained for a while. Mr. Kelleher stated that they would put it in the decision that they declared Arlington. Staff stated that someone comes in and wants to see a building permit for 67 Quincy and there will be nothing. Ms. Conway asked if there will be a number on Arlington. Mr. Kelleher asked Attorney Galvin what bylaw was that. Attorney Galvin stated it was in definitions, Article 2 - lot, frontage.

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Mr. B. Murphy stated he doesn't understand the concern, the address will still be 67 Quincy; when he fills out the permit, he will write front setback, Arlington. Mr. Kelleher stated we've done this before – Ms. Conway stated she hears that, but doesn't recall; Mr. B. Murphy stated he has done it himself in construction; Mr. Hubbard stated they have done it on Jefferson; Mr. Kelleher stated he doesn't know how recently, but they have done it before. Mr. Hubbard stated one you declare your front, you determine your rear, and now you have your sides. Mr. B. Murphy asked Mr. O'Neill that if he is saying that he has 3 fronts, then declaring Arlington as the front, he meets all the setbacks. Mr. O'Neill stated he doesn't if he is adding a farmer's porch on the front of the house. Mr. Hubbard stated yes he does because that is a side setback; Mr. B. Murphy said Mr. O'Neill said they are all front setbacks. Mr. O'Neill stated Quincy is a front, so it is 40 feet. Mr. Hubbard interjected, "Excuse me," then proceeded to read from the bylaws, "lot line side: any lot line not a front or rear lot line or street line."

Mr. B. Murphy stated Mr. O'Neill stated its 3 fronts. Mr. Hubbard stated you can't have 3 fronts. Attorney Galvin stated a corner lot has 2 fronts. Mr. B. Murphy stated a lot can only have one front and one rear and everything else is a side; they had this discussion when discussing side lot lines. Ms. Conway asked if they declare Arlington, does Quincy become a side? Mr. Kelleher stated yes; Mr. O'Neill said no, it is a front. Mr. B. Murphy stated that Mr. O'Neill stated there are 3 fronts - Ms. Conway stated that makes sense. Mr. Hubbard stated that makes no sense. Ms. Conway stated they are all along streets; Mr. Murphy paraphrased the bylaws saying it says there is only one front and one rear and everything is a side lot line. Mr. Ford asked where does it say that. Mr. B. Murphy stated they had this discussion when they discussed side lot lines. Mr. Ford read the definition, lot frontage, on a corner lot, frontage on either street; so he thinks it could be 2 fronts. Mr. B. Murphy stated this was part of the previous discussion. Mr. O'Neill clarified that the side lot discussion was you had a front lot line, against a street, the rear lot line was the furthest, most opposite and the discussion was whether there was only one side lot line on either side or could there be several side lot lines. Mr. B. Murphy stated it could have several side lot lines due to the definition that there is one front and one rear, everything else could be considered side lot lines – the word "lines" he believed it meant right and left, but it could be ten on each side, depending on how the angles of the lines were.

Mr. Ford asked Mr. B. Murphy if he could direct him to the definition that says a lot can only have one front. Mr. B. Murphy stated he didn't have it in front of him. Mr. Kelleher and Mr. Ford read several definitions. Mr. Ford determined that in his opinion, a front lot line was declared to determine a rear lot line, but that doesn't mean that you can only have one. Mr. Hubbard stated that one of the things that the Board should be doing is it should be consistent with their decisions. He knows that since he has been on the Board that they allowed someone to declare their front to determine the side. Ms. Conway asked if that was undeveloped. Mr. Hubbard stated no; in fact, it was a tear down and build a new house in a different location. Ms. Conway stated she remembers doing that, but doesn't remember the frontage issue. Mr. Murphy started instructing Mr. Ford through the definitions – lot line front, lot line rear, lot line side.

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Mr. Ford stated that the definition that says the owner may determine the frontage on a corner lot for the purpose of determining the rear, doesn't mean the other is a side. Mr. Hubbard asked what else does he have? Attorney Galvin stated that he remembers the previous building commissioner would look at lot depth, and often the lots didn't meet the requirement. Mr. Hubbard stated that if you use Arlington, it does, as Quincy it is too shallow. Attorney Galvin asked if Charlestown is undeveloped at all? Mr. B. Murphy stated no; he thinks it can't be used as a front. Attorney Galvin asked if it was developed; it is not. Is it on an approved subdivision plan? Mr. B. Murphy stated that that is a problem because it is, but the dates may predate subdivision.

Mr. Hubbard stated the bottom line is they are allowed to make a choice, as far as applying the bylaw. Attorney Galvin stated here is a solution that the Board can consider. Charlestown Street doesn't exist, and the Board doesn't know if it was shown on an endorsed subdivision plan after 1955. So if it doesn't have proper construction for a street approved by the Planning Board, then it's not a street and there is no frontage; then it is a corner lot and he can pick one, Arlington or Quincy. Mr. Hubbard agreed. Mr. Ford asked Mr. O'Neill if that is the way he has interpreted it. Mr. O'Neill stated no; regardless of what they are using for their front, they have 2 fronts and they have to satisfy the setbacks for each front that is what he has always maintained. They pick which front ONLY to determine what is the rear lot line. Mr. Ford stated he would defer to custom and practice especially in the absence of evidence. Mr. Hubbard stated, "Well, you know what? I can go into my files because I save everything" and will find pull the property out when we gave them an option to choose which they wanted as their front. Mr. B. Murphy stated he just can't understand how the Board can't see this road is not built. Mr. B. Murphy asked if anyone had the deed with them, he believes the deed will show if it was subdivided prior to 1955, it is not endorsed by the Town.

Mr. Hubbard and Mr. B. Murphy chatted with each other as to how Charlestown can't be considered a road because it doesn't meet any of the standards; Mr. Hubbard stated that Jerry was involved in the discussion. Ms. Conway asked Mr. O'Neill if he recalled that because she doesn't know what he is talking about. Mr. Hubbard interjected that he remembers because it was a horrible road to drive over. Mr. Kelleher stated he think she remembers it was a corner lot, it was a tear down, they were going to do another building right behind it; he remembers if that is the one Mr. Hubbard is talking about.

Mr. Hubbard stated he agrees with Attorney Galvin in that it is not a private road, it doesn't meet the construction criteria of street, so by definition it is not a street. Mr. Ford agreed. Ms. Conway stated now they are back to a corner; Mr. Hubbard agreed. Ms. Conway stated she thought she would have recalled his example. Ms. Conway asked where are we going then if we have determined this is a corner lot. Mr. B. Murphy stated that it's a corner to and he has chosen Arlington, so that's the end of it. R. Kelleher stated then he needs to make sure he satisfied the setbacks; this is for zoning purposes – not police, or mail, just zoning. Ms. Conway asked if it will be clear somewhere – on the property field card, jacket in Building Department, in Zoning, somewhere. Mr. B. Murphy stated it will be on file – it'll be on the deed, it will be identified.

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Ms. Conway asked how do we do this in the future. Mr. O'Neill stated he understands the Board wants to help the gentleman out, but eight years of practice, this is not how it's handled. Ms. Conway agreed: this is not what we do. Mr. Ford stated he believes that Mr. O'Neill is saying that in custom and practice, on a corner lot, you designate one as the front in order to determine what the rear is, so in that case you would have 2 fronts, a rear and a side. Mr. O'Neill agreed. Mr. Ford went on to say Mr. Hubbard recalls one instance that was different, and Mr. Kelleher recalls several different; he is looking at the zoning bylaws which are silent on the question, and may even favor Mr. O'Neill's opinion, in Mr. Ford's view, but he would defer to consistency, but he doesn't know what that is. Mr. Hubbard stated there is nothing in the bylaw that says both have to be considered fronts. It says the owner shall designate one street line as the front line. Mr. Ford asked for what purpose; Mr. Hubbard stated to determine the rear lot line. Attorney Galvin stated that is so lot depth can be determined. Mr. Hubbard stated but it doesn't say you have to have 2 front lines. Mr. Ford stated no, but the definition of front line is the property line between the lot and the street. Attorney Galvin stated Arlington is a street, and Quincy is a street, so they are two front lines. Mr. Ford stated when he reads the definitions, it is consistent with what Mr. O'Neill is saying.

Mr. B. Murphy asked if he can read the definition of lot line rear. Mr. Ford read it – the lot line most nearly parallel to the front line. He sees no confusion – the front line, which you selected, if on a corner lot. Mr. Hubbard and Mr. B. Murphy continued to read definitions; Ms. Conway stated there is nothing inconsistent with what Mr. O'Neill is saying. Mr. Ford stated that not only is it consistent with the language, but it is reasonable because we want certain depths from the road, so you have two fronts, and each must abide by the setbacks for fronts. He thinks there is a policy behind it and is consistent with the plain language. He is bothered by the fact that this Board seems to have done it one way on other occasions, but if he were voting, he wouldn't just give the back of the hand to the way Mr. O'Neill interpreted it, because he thinks it is fair.

Mr. Kelleher told Mr. Hubbard that if he saves his decisions, and Mr. Kelleher can think of the ones that he brought up, one he wants to say is Jefferson, and we can look at them. Mr. Hubbard stated he would get it. Attorney Galvin asked if it was recent; Mr. Hubbard stated there was one since he was on the Board. Attorney Galvin stated he thinks it's two fronts here. The Board went over it again. Mr. R. Murphy stated that he agrees, he sees two lot fronts – Quincy and Arlington. So Mr. B. Murphy asked if he needed a variance? Mr. Kelleher asked for the opportunity to try and find the two that he is thinking of and Mr. Hubbard stated he would like to find his. Mr. Ford stated they have until the 22nd to make a decision, so he has no objection to letting them find them. Mr. Hubbard apologized to Mr. Grimes and asked him if he understood what was going on. Mr. Grimes stated, "somewhat."

Mr. Hubbard began to explain it, but Mr. Kelleher stopped him and stated the matter is closed, they cannot discuss it. He continued and stated he understands Mr. O'Neill's view, but he is concerned with what they may have done in the past, so he would like to hold off on it. Mr. Hubbard stated he would like to hold off too, give him a chance to go through his files and bring

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that back; he will let staff know and they can pull the decision. Mr. Kelleher moved to continue this discussion on March 8th; seconded by Mr. Ford: VOTE: Unanimous.

#15-59: Don McNeill, 11 Hancock Street, M08-47-03, R-3: SP (10.12) to construct an 18' x 28' two-story addition with associated deck and balcony to the rear of the existing dwelling (5' x 18" balcony over an 11.3" x 18' deck which will be less than 4' above grade) and enlarge a balcony, or open deck over the existing first floor, on the existing second-story on the front of the dwelling and to construct a detached 12' x 24' garage in a different location to replace an existing non-conforming detached garage (3/22/16)

Mr. Kelleher stated that he believes what they are trying to do is substantially detrimental. It reminds him of a case that Town Counsel was involved in years ago, Bransford, the Bjorkland case. Mr. Kelleher stated his major concerns are relating to the rear lot line where there is currently no structure, now there is going to be a structure that is extremely close to the neighbors' house. Mr. B. Murphy stated they have the issue of whether there are multiple lot lines on this house. Mr. Kelleher stated he hasn't even gotten to that; he is concerned with the encroachment towards the neighbor. Mr. Hubbard stated that he had a problem with this. Mr. R. Murphy stated he thinks everyone did. Mr. Hubbard stated he has issues with the rear deck; again, Mr. Kelleher stated before he even gets to that. Ms. Conway stated this is the one they kept asking us to continue because they were waiting for Wallace's decision. Mr. B. Murphy asked if Ms. Conway has the site plan.

Mr. Kelleher again stated before they try to get to the rear lot line; Mr. B. Murphy stated they are building too far back – he asked to see the site plan that shows the neighbors' homes. Attorney Galvin stated this is a through lot – frontage on two streets. Mr. Kelleher stated that looking at the houses next door – he thinks it is substantially more detrimental. He stated they delayed it because they thought it would be analogous to the other one. Mr. B. Murphy asked about the lot lines. The easterly side of the property a lot line travels 50 feet in the southerly direction from Hancock Street, then abruptly is met by a line that runs 90 degrees west for a line of 15 feet then again is met by a line that runs 90 degrees headed south for another 50 feet to Franklin Street. The westerly lot line is made up of one lot line that runs at an angle which cuts easterly to westerly the length of the plot plan. Mr. Hubbard thinks all the stuff that replaces the existing deck - the two-story addition with a covered porch and proposed deck and second-story balcony are substantially more detrimental. The idea of using constructing the new garage not using the current footprint is substantially more detrimental to the neighborhood than what currently exists.

Mr. Kelleher agrees and sees this as it is an intensification of the pre-existing non-conformity than what currently exists. He believes when you move the garage from where it is currently non-conforming and is move it 25 feet to another location, it intensifies the non-conformity. He thinks this is a new non-conformity, not merely an extension of a pre-existing one. The proposed addition is only five feet away from the new garage; zoning requires a ten foot buffer between structures. Again, this is a new non-conformity, not a pre-existing one.

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Mr. B. Murphy asked what was the lot coverage; Mr. Hubbard stated 33% but it doesn't include the large deck and garage expansion.

Mr. Kelleher moved to grant the Special Permit; second by Mr. Hubbard: VOTE: 0 – 5 – 0; motion fails.

#16-06: Collette & Gary Christensen, 55 Island St., N06-03-18, R-3: SP (10.12), V (10.11) to elevate dwelling onto a concrete foundation to comply w/ FEMA regs., extend 2nd floor over the remaining one-story portions, expand the existing room on the left side with a 10' x 3' addition, and extend the existing 25' x 10' rear deck to 25' x 14' (3/22/16) 4-9-16

Mr. O'Neill reminded the Board they had discussed this the previous week, but they decided not to make a decision. Mr. Hubbard asked if someone could remind him of this one. Mr. O'Neill stated the Board had them change the downstairs so it was clearly not living space and they were changing the size of the deck. Mr. Kelleher asked if the variance was for the deck; Mr. O'Neill stated yes; not only are they elevating about the 4' and still want the 50% of the setback, but he is also actually changing the dimension size and actually bringing it closer.

Ms. Conway asked if this is the one they changed the doorway; Mr. O'Neill stated that is part of the Special Permit. Mr. Hubbard stated he believes the easier thing is the variance. Mr. Ford asked what the stated reasons for the variance were; Mr. Hubbard summarized the application statements that said to bring the house into FEMA compliance, it makes it so far off the land elevation, it would make it a much more enjoyable space to use.

The Board discussed others that they required lower decks despite the houses being lifted (ie: Monitor Road). Mr. Hubbard asked Mr. O'Neill despite the elevations, wasn't this an R-3 district; Mr. O'Neill concurred. Mr. Hubbard stated the required rear setback is only 30 feet, so other than the height, he does not see an issue before the Board except the height because the plan says 37 feet. Mr. Hubbard quickly corrected himself and stated he was measuring it wrong, he was wrong and he apologized. The others members chuckled and Mr. Hubbard noted his admission would probably end up in the minutes. Mr. Hubbard stated the rear setback will be approximately 19 feet. Mr. Kelleher stated the existing deck is smaller; if they want it larger, they can do a landing and then have stairs that go down to a bigger deck. Mr. O'Neill stated if the house had to be lifted, the Board has consistently allowed the same size deck to be lifted as well. Mr. O'Neill asked if the Board would allow them to maintain the size of the existing deck to go up; Mr. Kelleher stated they would, but that is not in front of them. Mr. Kelleher stated this is not the same size. Mr. Hubbard stated he thinks they can just do it by right; but the other members believe a variance stills needs to be granted. Mr. Kelleher asked if they decided on the Special Permit; Ms. Conway stated they had, but then they withdrew the motion and second so they could take it all under advisement and discuss it more with the deck.

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Attorney Galvin suggested they could deny it as proposed, but if the Board limited it to the current size; Mr. Kelleher stated he doesn't have a problem with that. Attorney Galvin stated they wanted to draw that out in the decision, and make it really clear in the decision. Mr. Kelleher stated the Board has done it previously. Mr. Kelleher moved to deny the variance as requested, but grant them a variance to build to the size the deck currently is, citing reasons in the discussion; seconded by Mr. Hubbard; VOTE: Unanimous. Mr. Kelleher moved to grant the Special Permit as requested, noting the conditioned space that Mr. O'Neill stated; seconded by Mr. Hubbard; VOTE: Unanimous.

Mr. Kelleher stated that he saw Mr. Rockwood in the hallway and the other ones are his, so he wanted to see if there was anything they could take out of order. He asked staff if the office received anything on the CONTINUED HEARINGS of Scott Junior or Dana Junior. He was told nothing was submitted as of yet, however, they were continued until March 8th, so nothing was anticipated for this week.

Mr. Murphy asked if there were any MEETING MINUTES to approve; he was told Ms. Fidler was not present, so no minutes were distributed.

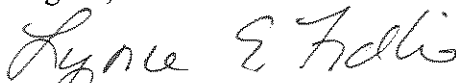
Mr. Kelleher moved to adjourn – the next meeting will be March 8, 2016.

Respectfully submitted,


Brenda Eckstrom
Zoning Aide

These minutes were approved by the Board on May 3rd, 2016 by a
unanimous vote.

Signed,


Clerk