

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL SEPTEMBER 26, 2017 7:30 p.m.
MEETING MINUTES**

Members Present:

*Mark Ford
Lynne Fidler
Francis Hubbard
Heidi Conway
Richard Murphy
Mark Stiles
Brian Murphy*

Also Present:

Edward Pesce, Consulting Engineer

MARSHFIELD TOWN CLERK
RECEIVED
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Mr. Ford called the meeting to order and advised that the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were being recorded. Mr. Ford stated that he would be the Hearing Officer and that other members were signified by their nameplates.

Mr. Ford stated that there was one (1) new matter and then the Board would resume the Modera deliberations.

#17-57: Brian and Elizabeth O'Donnell: The Petitioners are seeking a Variance in accordance with §305-10.11 for relief from §305-6.01 Applicability of Dimensional and Density Regulations, §305-6.02 and §305-Attachment 2 Table of Dimensional and Density Regulations, §305-6.08 Other General Dimensional and Density Provisions to construct an L-shaped single family dwelling with dimensions of 19.5 feet width parallel to Island Street, 24 feet depth on the northerly side, 17 feet northerly, 20 feet easterly, 36.5 feet southerly and 44 feet returning westerly to the front of the structure, containing a 6' x 12' screened porch in the rear, a 160 square foot deck in the rear and a six (6) foot wide deck across the front, house and porch containing approximately 1,200 square feet of the footprint area, structures to be elevated above the AE16 Flood Zone on the property located at **52 Island Street**, which is further identified on the Assessors' Map as parcel N06-06-56 and the property located on **Marsh Street**, which is further identified as N06-06-57 and are located in an R-3 zoning district.

#17-45: Brian and Elizabeth O'Donnell: The Petitioners are seeking a Special Permit in accordance with Article X, Section 10.12 and Article IX, Section 9.02.3 to demolish an existing single family dwelling, deck and shed constructed in approximately 1910 and construct a new single family dwelling with dimensions of 22' x 32' x 17' x 20' x 33' x 12' x 6' x 32' and containing approximately 1,260 sq. ft. of footprint area and elevate the proposed structure above the designated Base Flood Elevation on the property located at **52 Island Street**, which is further identified on the Assessors' Map as parcel N06-06-56 and the property located on **Marsh Street**, which is further identified as N06-06-57 and are located in an R-3 zoning district.

Mr. Ford read the petitions into the record. Attorney Steven Guard and Terry McGovern were present with the applicants, Mr. and Mrs. O'Donnell and their daughter. Mr. Guard said that this was a simple raze and reconstruction of an existing nonconforming home. Mr. McGovern said that there was a slight encroachment of the deck to an abutter on the north side, the rear setback, less than a foot. He said that they will respect the setbacks but are asking the Board to consider allowing the applicant to shift the house and accept a six foot (6') setback on the side. The house

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will be elevated and the applicants will be able to drive underneath; parking will be contained in the front yard. Mr. Guard said that this is a rare case where they need both a Variance and a Special Permit.

Ms. Fidler asked if there were wetlands on the property and Mr. McGovern said that there were not. Mr. Ford asked if there were any questions from the Board of the public and there were not. He moved to close the hearing; this was seconded and all were in favor. He made a motion to grant the Variance and incorporate by reference the arguments in the applicant's submission. He said that in particular, due to the unique shape of the land and the soil, strict adherence to the dimensional setbacks would cause substantial detriment and hardship. Mr. Ford stated that this does not grant the applicant special privilege and that this will bring the structure into greater conformity. He said that this is not substantially more detrimental to the neighborhood but is favorable. The motion was seconded and all were in favor. Mr. Ford made a motion to grant the Special Permit for the same reasons that were articulated. This was seconded and all were in favor.

#16-69: Marshfield Mews, LLC: The Petitioner is seeking a Comprehensive Permit in accordance with M.G.L. Chapter 40B for the construction of eleven (11) townhouse buildings, three (3) four-story buildings and one (1) clubhouse building; this development will consist of eighty-four (84) one-bedroom units, one hundred and forty-eight (148) two-bedroom units and thirty-eight (38) three-bedroom units, which will total 270 units in all, sixty-eight (68) of which will be considered affordable according to the Boston Metropolitan Statistical Area Index, as determined by HUD, on the property located on an approximately 22.2 acre site off of **Commerce Way** which is further identified on the Assessors' Maps as 08-01-06, 08-01-07, 08-01-08, 08-01-10A and is located in an I-1 zoning district and within a PMUD – Planned Mixed Use Overlay District.

Mr. B. Murphy arrived at the meeting. Mr. Ford stated that this was a continued hearing and would turn it over to Attorney Horwitz to respond to comments from the last hearing and then to Mr. Pesce. He said that Mr. Hubbard would give an update on the discussions he has had with Town Counsel and there would be questions from the public. Ms. Horwitz said that at the last meeting there was a lot of discussion about Building B and the number of units so they agreed to go back and take a look at it. She said that the biggest change is the two (2) three (3) story buildings and that the units were reduced from 270 to 248; some were taken from Building B and one each from the townhouses on Commerce Way. They also reduced the number of parking spaces to correspond with the reduction. Ms. Horwitz said that they spent a lot of time on traffic and agreed to \$60,000 for mitigation. They have paid for a study for traffic at Furnace Street and Route 139 and agreed to pay approximately \$2,000 for their fair share of the increase in their traffic which they estimate at 2%. They have paid \$11,800; have agreed to \$60,000 and will agree to another \$23,000. Mr. Dirk said that he and Mr. Pesce had worked on a plan; that there were ten (10) items in the study which they boiled down to seven (7). He said that the \$23,000 has two (2) pieces to it; they have committed to a design plan that has a value of \$10,000 and \$13,000 would be for the rest of the work. He said this way the Town gets the design plan rather

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than turning the check over to the Town. The plan will go to Massachusetts DOT for approval and then the Town has the money to do the work.

Mr. Dirk said that the first issue is signal retiming and re-phasing on the left turn at the intersection of Furnace and Proprietors. They've looked at the timing of the yellow light and said that the pedestrian crossing times need to be updated because there is not enough time now. On the left turn, there should be a dotted lane line extension with no crossover to other lanes. On Furnace Street approach, the stop line is too far back and cars creep up; the detectors are not picking up the vehicles. They recommend moving the stop line closer to the intersection and moving the sensors which will result in being able to see pedestrians on the corner. There should be no turn on red. The left turn signals are really not visible on Route 139; LED would be highly visible. Also on the Furnace Street approach there is misalignment and signs should be replaced. There should also be advanced school crossing signs on 139 and Furnace. Mr. Dirk said that those seven (7) things represent approximately ten (10) items.

Mr. Pesce said that Mr. Dirk outlined a list of things that they had agreed to for safety improvement. He said that it was important to get the designs completed now so that the Town Engineer won't have to put them out to bid. Mr. Pesce said that they will coordinate this with the DPW and Town Engineer and will probably be done in the next calendar year. Ms. Fidler asked what the timeframe would be with plans in hand. Mr. Pesce said three (3) months, plus or minus, to go back and forth with Mass. DOT, three (3) months to actually contract with someone and two (2) weeks to do the work. Mr. Dirk said that when they priced out the work to be done, they did it individually. He said that there will be some savings to have one company do all of the work. Mr. Ford asked the Board if they had any questions on the design plans or traffic and there were none.

Mr. Hubbard said that the applicant addressed the concerns that were raised. He thinks that the redesign of Building B into two (2) buildings was good and he thinks that the reduction from 270 unites to 248 was good. Mr. Hubbard said that the draft of the Comprehensive Permit was still good because of how it was drafted at the last hearing. He said that partnership with Marshfield Housing and preference for Marshfield residents had been raised.

Mr. Ford said that he knew that Town Counsel had reviewed and edited the decision draft and asked the applicant if there were any items that they were not comfortable with. Ms. Horwitz replied, No. Mr. Ford said that they added the most recent references from Vanesse. Mr. Hubbard said that it was important for people to understand that the applicant is putting forth \$94,000 for traffic improvements. Ms. Fidler said that Mr. Mather from Marshfield Housing Partnership was here and asked if there were any questions about local preference. Mr. Mather said that this was a chance for the Town to work with the developer as they prepare their occupancy policies and submit them to the state for review. They should incorporate a preference for Marshfield residents and the state will determine what that percentage will be; what they have been working with is about 70%; it gives Marshfield residents first consideration.

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Ms. Horwitz said that this is fairly typical and was built into the decision draft in the marketing section on page 8 of the draft. The way that the law works is that there is a Safe Harbor that is done by case law which is why they use the 70% level; if you do more than that then it looks like you are trying to keep the town homogeneous. Up to 70% of the affordable units is the standard number and the state lists specific categories for preference so they have exactly what the state allows in their guidelines in the draft; current Marshfield residents, Marshfield employees, employees of businesses located in Marshfield and households with children attending Marshfield public schools. What Mr. Hubbard was referencing for approval is the state guidelines require approval of the Town if they want the preference, to identify reasons why a preference should be implemented, why it's necessary, to allow for a different mix of people to live there. Ms. Horwitz said that she saw what the Town drafted for the last 40B that was approved and they would submit something similar to the state for approval. Mr. Hubbard said that they don't put that in the Comprehensive Permit now because it needs to be approved by the state.

Mr. Ford said opened discussion up to the public and stated that they have had a number of substantive meetings with comments. The Board has heard a lot of concerns about density and traffic. He advised that everyone would get one chance to speak with efficiency and that after these comments they would close the hearing and begin deliberations. Ms. Glavin from Ferry Street said that she appreciated the downsizing but it is still bigger than what she would prefer; she would have preferred under 200 units. She said that she sees a Pandora's Box opening and more of these developments will come in. Mr. Allen from Old Woodlot Lane asked who would be clearing the sidewalks in the winter because it is a long walk for kids going to school; it hasn't been maintained in the past. Ms. Horwitz said that they would take care of it in front of their property and Verocchi, owns the rest of the development and they would take care of it. Mr. Wiley of Weathervane Lane asked the approximate cost of the project and the amount of tax revenue the Town can expect. Mr. Ford said that he didn't think they had to give the cost of the development because they have not objected to a condition on the grounds that it would make the project uneconomic. He does not think that tax assessment is known yet. Ms. Horwitz said that the project has changed and construction costs have gone up. Mr. Ford stated that there are restrictions on the Board's ability to ask that question. Mr. Dupuis from Weathervane Lane read a statement that said the size of the buildings have been mentioned over and over again at every meeting. He said that at previous meetings when the developer was asked about why the density was not addressed, the reply was that in order to be profitable it needed to be that size. He said that when certain things were asked, the applicant replied that those things were not in the Board's purview and said it looked like they were trying to intimidate the Board. Mr. Ford thanked Mr. Dupuis for his comments but said that they did not view what the applicant did/said as intimidation. He said that there are state laws that restrict the Board's discretion and that it was perfectly appropriate for them to remind the Board about the laws. Mr. Ford said that they will always do what is best for the Town of Marshfield.

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Mr. Ford made a motion to close the hearing which was seconded; all were in favor.

The Board took a five (5) minute break.

After the break, Mr. Ford said that it was an open meeting which means the public was entitled to watch them deliberate. As they deliberate they are not allowed to take any testimony or comments. Mr. Dupuis had a procedural question. He said that at the last meeting there were five (5) issues that were brought up that were going to be addressed and that Fire Department review was not addressed. Mr. Ford said that was substantive but they have taken notes on everything that needed to be addressed; because the meeting was closed he could not engage. Mr. Hubbard said that the Fire Chief did review the new plans and he had no problem with them. Mr. Ford said that they could discuss it now and vote on it at the October 10, 2017 meeting. Mr. Hubbard said that the working group went through the draft many times; the group consisted of Mr. Galvin, Mr. Pesce, himself, Ms. Horwitz and her colleagues. He said that the first draft was what they used for Ferry Street. They went through that draft and removed references to earth removal because any earth removal will be much smaller; there is no plan to remove any earth. Mr. Pesce said that it would be approximately 4,500 cubic yards but with the latest designs, it could be a different number.

Mr. Hubbard said that there are additional conditions as to how they will operate the property - landscaping, trash removal, etc. He said that they have the draft of the Comprehensive Permit. Mr. Hubbard said that Exhibit A has two (2) documents – the traffic improvement mitigation (the original \$71,800) and the letter received today that includes the \$23,000 will both be part of Exhibit A. Exhibit B will have the Waiver List, the requested waivers from Zoning and Town Bylaws and one from the Board of Health regulations; these have not changed in their working group since July.

Ms. Fidler had a question on Ms. Horwitz' letter dated September 21, 2017 addressed to the Zoning Board. In paragraph two (2) it says "this design is only acceptable to the applicant on the conditions as listed"; item #3 in particular, how is that a feasible request? Mr. Ford read from the letter, "no additional changes are required to the project". Ms. Fidler doesn't see how that is feasible during the waiver process. Mr. Ford believes they meant that the Board would not demand additional things; Ms. Fidler said that it doesn't specifically say that. Mr. Hubbard said that this letter is not part of the Comprehensive Permit; what is in the Comprehensive Permit is what they negotiated and reached agreement on in the working group. Mr. Pesce said that the intention here is that no substantive design highlights or changes were required such as further reduction in units, change in buildings, change in architecture, etc. He said that there will be some minor edits to the Site Plans when he gets it; the final plans will have some minor engineering design changes. This was intended to be a basis of negotiation with the Board. Ms. Fidler said they weren't there (for the meetings) so they don't understand the flavor or the letter. Mr. Hubbard said the Comprehensive Permit was drafted in such a way to give that flexibility so Mr. Pesce will still get approval on the final plans. Mr. Pesce and the Building Department will

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have the final authority; if there are any disagreements they come back to the ZBA. Mr. Hubbard advised the Board that if they had any concerns to bring them to Mr. Galvin or Mr. Pesce. Mr. Ford moved to adjoin the meeting which was seconded; all were in favor.

Meeting adjourned at 9:10 P.M.

Respectfully submitted,

Nanci M. Porreca
Zoning Administrator

I attest the foregoing minutes were approved by the Zoning Board of Appeals at their

March 27, 2018 meeting by a 3-0 vote.

Signed:  Date: 3/27/2018