

2021 MAY 23 RECEIVED
MARSHFIELD TOWN CLERK
ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL DECEMBER 6, 2016, 7:30 p.m.
MEETING MINUTES

Members Present:

Mark Ford
Lynne Fidler
Brian Murphy
Richard Murphy
Joseph Kelleher

Also Present:

Jerry O'Neill, Bldg. Commissioner
& Code Enforcement Officer

Mr. Ford called the meeting to order and noted that not all members were present; Mr. Kelleher would be available later and Heidi Conway and Francis Hubbard were unavailable. He noted that they could proceed with at least the first couple of hearings with four (4) in attendance because it was a sufficient quorum. He announced that the meeting was being recorded on MCTV. He stated that he would be the hearing officer and the other members present are signified by their name plates.

NEW HEARINGS:

#16-59: St. Leonard Hunt: The Petitioner is seeking a Special Permit in accordance with Article X, Section 10.12 of the Marshfield Zoning Bylaws to construct a covered porch on the front of an existing non-conforming dwelling, which will not encroach into the required front setback and maintain the non-conforming side setback on the westerly side of the property located at 6 Breakwater Court, which is further identified on the Assessors' Maps as parcel K10-16-27 and is located in an R-3 zoning district.

Mr. Ford opened the hearing by reading the petition into the record.

Present before the Board: Tom Rigo, brother of the Petitioner.

Mr. Ford asked Mr. Rigo to summarize the petition. Mr. Rigo went to the the screen and explained where the existing house is and where the porch would go. Mr. Ford asked what the dimensions of the porch would be and Mr. Rigo replied 40' by 7'. Mr. Ford asked if it would be 7' out and Mr. Rigo said 7 feet out and 40' long. Mr. Ford stated that for the record it comes to within 21.2' of the front setback which is better than the 15' required. Mr. Ford said that the existing nonconformity on the westerly setback is 7.3' and is coming no closer; Mr. Rigo replied, Yes. Mr. Ford asked if there were any questions from the Board or if anyone from the public wished to be heard. There were no questions. Mr. Ford said that it seemed pretty straightforward and asked if there was any reason that he should not close the hearing now. Mr. O'Neill said that just prior to the final inspection when it is with zero tolerance for setbacks, the applicant should ask for a Final As Built. Mr. Ford asked at what point they should do that and Mr. O'Neill replied just prior to the final inspection because there is no occupancy involved in this. Mr. Ford said that the proposed porch comes no closer to the infringing setback than the existing structure and is as designed, does not encroach into the front 15' setback; it was consistent with the properties in the neighborhood and not detrimental to the neighbors at all and that no objections were noted. The only condition the Board would impose is that an as built be provided to the Building

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Commissioner prior to final inspection. Mr. Ford made a motion to close and Ms. Fidler gave the second. A motion was made to grant the Special Permit, Ms. Fidler gave the second, nobody was opposed, all were in favor with a vote of 4-0. Mr. Ford asked Mr. Rigo if he knew the process we had, that there are two (2) weeks to file; Mr. Rigo replied that he did.

REQUEST FOR CLARIFICATION:

#16-53: STEPHEN J. LENTINE, TRUSTEE, 44 MONITOR ROAD REALTY TRUST:

The Petitioner is seeking Special Permits in accordance with Article X, Section 10.12 of the Marshfield Zoning Bylaws, as required by Article XIII and 13.01.3(a), to raze the existing single family dwelling and reconstruct a single family dwelling above the base flood elevation within an Inland Wetlands District, and identified in Article IX, Section 9.02(3) using the pre-existing, non-conforming front and right side property line setbacks as identified in Section 6.10; the petitioner is also seeking a Variance in accordance with Article X, Section 10.11 of the Marshfield Zoning Bylaws, for a reduction in the required setbacks, as identified in Article VI, Sections 6.08.5(c) and 6.10, 30' setback to 28', and a reduction in the side setback 13 feet for open decks over four (4) feet in height, proposed 12.3 feet, on the property located at **44 Monitor Road**, which is identified on the Assessors' Maps as parcel K11-21-02 and is located in an R-3 zoning district.

Mr. Ford stated that the Board was going to take things out of order and deal with Mr. Lentine's request for a modification. He said that the Board had issued a decision on November 1, 2016 granting in part and denying in part the requested relief and providing some variances and some conditions. Mr. Lentine noticed in the decision some things that were improperly phrased and we need to clarify. Mr. Ford asked Mr. Lentine to walk the Board through the corrections one by one and that they can vote on the amended verbiage. Mr. Lentine said that when he received the decision he noticed that there were some typographical errors, one area in particular and the most concerning to him was a condition that wasn't discussed with the Board and he believes Town Counsel may have jotted his notes down wrong when he wrote the decision. Mr. Lentine discussed the changes with Mr. O'Neill and said that the first change should be on Page 2 where it says "steps should be 48" wide. Mr. Lentine said the steps are not 48" wide and that this should read "steps shall be no more than 48" wide. Mr. Lentine said that Mr. O'Neill had been talking about the four (4) foot height requirement but he is not going over that so for clarification he believes it should read "steps shall be no more than 48" wide. Ms. Fidler apologized for interrupting and asked which paragraph Mr. Lentine was referencing; Mr. Lentine replied, Page 2, Conditions 1 and 2. Mr. Ford said that for the record, the Board was looking at Exhibit 1 which is the applicant's markup, Page 2 of the November 1st decision, Conditions 1 and 2. Mr. O'Neill then put the plot plan on the screen. Mr. Lentine believes that the easiest way to correct it would be to put "no more than 48' wide". Mr. Ford confirmed that the stairs should not be more than 48" wide and asked Mr. Lentine if that were correct. Mr. Lentine replied that the steps on the westerly side of the property and the steps at the rear of the eastern side of the property. Mr. O'Neill said that the Board can look at the plot plan on screen and asked Mr.

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Lentine to point out the areas. Mr. Lentine said that the stairs would come straight out which was on the MonTech plan as opposed to the engineer's plan. Mr. O'Neill stated that he typically says 42" wide into the setback but since this site plan doesn't clearly show 15', he would be comfortable saying 15' or actually 15' minus 42"; Mr. Lentine replied that he and Mr. O'Neill were on the same page. Mr. Ford said that he was not on the same page and said that what Mr. Lentine described and what Mr. O'Neill articulated seem like two (2) different things and asked them to connect the two (2). Mr. Ford said that Mr. Lentine said that it could be reversed to say steps shall be no more than 48" wide but Mr. O'Neill has a different formula. Mr. O'Neill said that this is unique because Mr. Lentine is not totally into the setback and that the stairs on the right side of house shall be...Mr. Ford said no more than 48". Mr. O'Neill said that this would not affect the Zoning stuff; that it would be fine. Mr. Ford said that we would insert no more than 48" for Conditions 1 and 2. Ms. Fidler asked if the Board just proceeded to make these edits and Mr. Ford said that he thought the Board should call out the decision and list these for the record.

Mr. Lentine said that Town Counsel talks about a deck but he is really talking about a porch and asked for the plot plan to be displayed again. He stated that he had talked at the end of the meeting about how he would be moving this part of house forward and making it flush with the porch. The way the decision was written says that it will be flush with the deck, but it should be flush with the porch. Mr. O'Neill displayed the plot plan so that the Board would be comfortable with that clarification.

Mr. Lentine said that he was most concerned about Condition 4 on Page 4, that the Board decided not to give a Variance for a second floor deck. He said that there was no discussion that said he couldn't have a second floor deck, it's just that the second floor deck would have to comply with the setback requirements. Mr. Ford said the Decision indicates it as a Condition that there should be no second story deck and this should be stricken; that we could write any second story deck above the first floor deck shall not encroach into the 15' setback.

Mr. Lentine asked if the Board wanted to jump ahead to the Variance Denial on Page 5 which is where there is another error, where you denied 2' rear setback and said that he couldn't extend the proposed home into the rear yard setback. But instead of saying he couldn't "construct" a second story deck it should say that he can't "extend" a second story deck. Mr. Lentine doesn't think that Condition is necessary because he is just going to build a second story deck. Mr. Ford asked if Mr. Lentine would have an objection if the Board articulated it like that just to be clear. Mr. Lentine said that he didn't think it was necessary but if the Board wanted to articulate it. Mr. Ford started to say, any second story and Mr. Lentine finished by saying, deck shall comply with the zoning setback. Mr. Ford and Mr. B. Murphy asked what half way into the setback would be, 7'6"? Mr. Lentine replied, yes. Mr. B. Murphy said, shouldn't he be able to go 7'6"? Mr. O'Neill said that it was showing 12.3' and asked if that was correct. Mr. Lentine said that he was allowed 13' and Mr. O'Neill asked if that were pre-existing. Mr. Lentine replied, no but the way the Zoning Bylaws are written, if the deck is above 4' you can encroach 2' into the setback. Mr. B. Murphy said that he thought it was 8' and said that it was 7' something that Mr. Lentine ended

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up with. Mr. O'Neill said that it was Section 6.08, 5c: open decks, steps over 4' in height, windowsills, chimneys, roof eaves, fire escapes, fire towers, storm enclosures or similar architectural features not more than 2'. Mr. Ford said that would make the setback 13'; what if we say "any second story deck above the first floor deck shall encroach no more than 2' into the side setback pursuant to Section 6.08, Section 5c". Mr. Lentine said, or we could just say "comply with Zoning Bylaws". Mr. Ford lightheartedly said that he just put all that effort into writing it out; Ms. Fidler said that fifteen (15) years from now they won't have any question about what we actually did. Mr. Lentine said on Denial, "construct" is being changed to "extend" and on Page 6 where it says "deck" again, it should say "porch". Mr. Ford then moved that the Board reverse the November 1, 2016 Decision in Case #16-53 the following ways: for Conditions 1 and 2 for the Special Permit Decision on Page 2, insert text "no more than" prior to the 48"; Condition 5 in the same section on Page 3 in the parenthetical on the second line, change the word "deck" to "porch"; for the Variance decision, the fourth Condition should be stricken and replaced with the following, "that any second story deck above the first floor deck shall encroach no more than 2' into the side setback pursuant to Section 6.08, 5c; in the Variance Decision on Page 5 on the third line, the word "construct" shall be revised to read "extend"; and then finally, in Reasons for Decision on Page 6, second line the word "deck" should be revised to "porch". Mr. Ford made a motion to approve which was seconded by Ms. Fidler. The vote was 4-0 and Mr. Ford said that we would get this into the file as soon as possible.

Mr. Kelleher arrived at the meeting and Mr. Ford explained that the Board had heard Hunt and the clarification for Lentine and that they hadn't heard any of the continued hearings yet so they could proceed however Mr. Kelleher wanted. Mr. Kelleher said that they would take them in order, St. Mary and St. George Coptic Church. He stated that the Board was here on Continued Hearings and that they have four (4) members; two (2) could not be here and one (1) recused. He stated that they could go forward with the meeting and one of the other members could listen to the recording if they needed to and participate in the decision. Mr. Kelleher said that they didn't know that this would happen, that it was unavoidable and asked if the Petitioner wanted to continue this to another hearing. He stated again that the Board members could listen to the tape or the Petitioner could continue to another night when they would have five (5) members present. Mr. Farouk Yousef, the architect for the Petitioner, said whatever Mr. Kelleher would recommend. Mr. Kelleher said that he can't recommend anything; the other members have the ability to watch the tape and listen to the hearing. Mr. Yousef chose to continue.

ST. MARY & ST. GEORGE COPTIC CHURCH: The Petitioners are seeking a Special Permit in accordance with Article X, Section 10.12 of the Marshfield Zoning Bylaws to enlarge the existing building of the church with an approximately 34' x 54' addition and modify the façade to make one uniform-looking building with a domed steeple and other adornments in keeping with traditional Coptic churches on the property located at **255 Furnace Street** and **490 Main Street**, which is further identified on the Assessors' Maps as parcel F10-05-04 and F10-05-05 and is located in an R-1 zoning district.

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additional buffering, adding some trees definitely as part of the condition. He said that again, the building is not obstructing anyone's view; if you drive on a highway there are big concrete walls to shield the noise from the neighbors, they don't put trees. Mr. Kelleher said that Mr. Yousef was talking about a highway like Route 3, that this isn't a highway and he didn't think it was a fair comparison. Mr. Yousef said that they can add trees and that walls are to shield the noise and trees are for the looks. Mr. Ford said that he was talking about a substantial buffer. Mr. Kelleher said that there was a pretty substantial buffer wherein if they weren't as large and weren't extending as far out, a lot of those trees could remain and the buffer would still be there. Mr. Yousef said that they would be glad to look into trees and fencing and pointed out the area. Mr. Ford suggested actually making a proposal for the type of screening and stated that his concern is just having a vague condition. He said that he sort of respected the Board's discretion but he does want to do whatever we can to protect the neighborhood behind it from an addition that in a lot of ways will change the character of that neighborhood. Mr. Ford said that he didn't know how the other Board members felt but he would like to see a proposal for the type of extensive buffering they could do sort of parallel to the extension. He said that he accepted that there was some buffering where the existing building is but when you talk about the area of the extension, and maybe the aerial isn't doing it justice, it's a more limited buffering. Mr. Ford said that he was just out there a few days ago and to him that seemed like a reasonable accommodation; he also stated that it probably didn't make anyone here happy. Mr. B. Murphy asked if the Board was not providing an answer tonight or not deciding this until the next meeting. Mr. Ford said that he thought the Board needed a proposal; Mr. Kelleher said a proposal for some buffering. Mr. B. Murphy asked Mr. Yousef what it would take to have them stake the area of the addition so that the Board could go out there and actually see the trees that will be coming down; then they could make a decision from that. Mr. Murphy said that he was out there and could see straight through. Mr. Kelleher said that he thought that was a valid point because Mr. Yousef is saying 5 or 6 trees and he is respectfully disagreeing based upon his visual. Mr. Kelleher stated that if they stake that section people could see where the trees are coming down. Mr. B. Murphy said that he didn't care about the count of trees, he just wanted to see what the difference would look like; he has been out there several times and he knows that there is an open end and that you can already see straight through. And building into that, that they are not taking down any trees that are in that section. He said that he did not have a problem with the visual, that he has been out there. Mr. B. Murphy thinks that for the Board members and anyone else it would help if they could stake that section so that people could say, alright these trees are coming down. But if they are trees with no leaves until you get up about 30 feet, they really don't buffer anything so he would like to see what is exposed. Mr. Yousef said that they would be glad to do that and will stake the area where the building is going to be. Mr. R. Murphy said that he thought it was a great idea and he goes by there quite often; a lot of trees are scrubby pines that don't offer much buffer; there's give and take here. Mr. Yousef said that they were willing to cooperate and they aren't building a nightclub or a restaurant. Mr. Kelleher said that they were trying to provide balance and asked how long it would take to get the area staked. Mr. Yousef said that he could have it done by next week.

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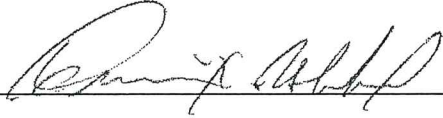
Mr. Kelleher said that he was going to the audience because they are waiting for some input, but he wanted to tell the people that since this is a church the Massachusetts Courts and Legislature have limited what we can do here; they have certain exemptions. He told the audience that they could Google the Mormon church in Belmont; their steeple was over 100 feet tall and they said it could go. Mr. O'Neill asked if they could also show the location of the existing trees in the caliper on the plot plan of what may be coming down and asked if it would help. Mr. Kelleher said that if they staked it then we could figure it out. Mr. Kelleher then asked the audience member to identify herself. Amy May, 2 Stacey Marie Drive, said that she is directly behind the church and she has a lot of questions from when they met last month. Ms. May said that she wanted to know why they are going to the Zoning Board of Appeals, why do they have to have a Special Permit, why are they non-conforming. She said that she had spent a lot of time this week reading some of the Bylaws and gathering information to get answers to what she wasn't familiar with. Mr. Kelleher asked for her questions. Ms. May's first questions were why they are going to the ZBA and why they needed a Special Permit. Mr. Kelleher stated that they were seeking to enlarge a pre-existing structure and to do that you need a Special Permit. Ms. May said that another concern is about property lines, she is not sure where the property lines are. Mr. Ford said that the envelope is sort of dotted out and Mr. Yousef used a pointer to show the property lines and the setbacks and said that they were staying within the setback. Mr. Ford said that the two (2) properties have merged and Mr. Yousef pointed out the old line dividing the properties. Mr. Ford said, so it doesn't encroach on anything and Mr. Yousef said that it did not. Ms. May said that she had spent a lot of time at Town Hall going department to department and she was not able to find a lot unfortunately; but what she did find from the Board of Health was the plan from when they were putting the parking lot in; what they told her is that the existing building to the first property line is 11 feet and from the corner of the building to Furnace Street is 20 feet and they measured it out for me. Ms. May said that she knows there are Bylaws and one of them is setbacks. She said that in the original meeting they measured from the front of the building but didn't measure the side or the rear. Ms. May believes the setbacks, side, rear and front...again the 11' and 20', so they have to be violating the setback already and in the future would they need a Variance as opposed to a Special Permit? The Bylaw states also that there's a 35' buffer and over 20' would need a Variance because it's not in compliance with the Bylaw.

Respectfully submitted,

Nanci M. Porreca
Zoning Administrator

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

May 29, 2018 meeting by a 5-0 vote.

Signed:  Date: 6/1/2018