

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 26, 2019 7:00 P.M.
MEETING MINUTES**

Members Present:

*Brian Murphy
Lynne Fidler
Heidi Conway
Richard Murphy
Mark Stiles
Stephen Feeney*

Also Present:

Jeremiah Folkard, Building Commissioner

2019 JUL 15 AM 10:57
MARSHFIELD TOWN OFFICE
RECEIVED

Mr. Brian Murphy opened the meeting at 7:02 P.M. and advised that the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were also being recorded.

#19-25: Frederick Russell: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 24' x 32' two and one half (2 ½) story addition at the rear of the dwelling on the property located at **92 Marginal Street** which is further identified on the Assessors' Maps as being on parcel M06-05-02 and is located in an R-3 zoning district.

Mr. B. Murphy read #19-25 into the record and asked the Petitioner to explain the project. Mr. Frederick Russell said that the garage had been damaged by a storm last March and he needed to demolish it. He plans to construct a 2½ story addition that will be no more nonconforming. Mr. B. Murphy asked Mr. Folkard if he had any questions and Mr. Folkard said that it all looked good. He said the only thing would be on the building permit; the side that has less than five feet (5') would need a fire rated wall. Ms. Fidler said that the Site Plan was incorrect, that it had been written on. She said that we would need an updated Site Plan. Mr. Stiles said that he was trying to understand what is existing and what was proposed. Mr. Russell said that the garage has hash marks and will be demolished; the proposed has the dark outline and will not be getting any closer to the setbacks. Mr. Stiles stated the dark line is proposed and is not there right now; Mr. Russell said that was correct. Mr. Stiles asked if they were getting any closer to the setbacks and Mr. Russell replied that they were not.

Mr. B. Murphy asked if the Board had any more questions and they did not. He asked if the audience had any questions and Richard Spillane of 94, 96 and 98 Marginal Street said that he was wondering about the 3.5 foot setback and asked if that was appropriate. Mr. B. Murphy said that he was allowed to continue that close to the lot line along that line and that it is a preexisting nonconforming structure. Mr. Spillane asked if the existing house was more than 3.5 feet and Mr. B. Murphy said that they were allowed to go to the closest point. Mr. Stiles asked what point Mr. Spillane was talking about and Mr. B. Murphy said that he was talking about the 3.5 feet. Mr. Spillane said that the proposed building will be closer to the property line than the existing dwelling is. Mr. B. Murphy said that it would not be, that it flares out so it will be stronger than the 3.5 feet. He asked if there were any other questions and there were none. He made a motion to close the hearing which was seconded; all were in favor. Ms. Fidler said that the Board would not endorse the existing shed and said that there were pluses and minuses (+/-)

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on the setbacks on the site plan. Mr. B. Murphy said the Petitioner could do that with Mr. Folkard who said that it could be done on the building permit. Mr. B. Murphy asked if Mr. Folkard if the adjustment on the plan could be done with him and he replied that it could. Mr. B. Murphy again mentioned that the shed would not be endorsed and Mr. Stiles asked why. Mr. B. Murphy explained that they are endorsing the plan; the shed doesn't affect their decision because the structure has been there. Ms. Conway said that it had nothing to do with the Board. Mr. B. Murphy moved to grant the Special Permit which was seconded; all were in favor (5-0 B. Murphy, Fidler, Conway, R. Murphy, Stiles).

#19-26: C&M Realty Company, L.L.C.: The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to use the existing industrial/commercial building for offices and warehouse storage of non-hazardous supplies, tools and equipment for its affiliated elevator company on the property located at **165 Enterprise Drive**, which is further identified on the Assessors' Maps as being on parcel D09-01-16 and is located in an I-1 zoning district.

Mr. B. Murphy read #19-26 into the record and turned it over to Attorney George Sousa who was representing C&M Realty. Mr. Sousa stated that Michael Walsh was with him and that Mr. Walsh was also with C&M Realty and part owner of United Elevator which is the affiliated company. Mr. Walsh purchased the property in December of last year and it is currently occupied by Gatehouse Media; they will be leaving the premises at the end of this month. They are seeking Site Plan approval for the use of the affiliated company as office space and storage for what they call non-hazardous supplies. This is an elevator company so they go out to wherever the job is; no work will be performed on the premises other than office work. All repairs and maintenance of elevators and escalators will be done off site at the customer's location. Supplies and parts will be sent to the job sites because the employees don't carry parts with them; they have a small storage area for certain supplies, tools, etc. Trucks will come in, pick up their job orders and go off; there will be very little traffic involved because trucks will be on the road to sites and then will come back at night; workers usually have trucks with them because they are on call.

Mr. Stiles asked if there would be any change to the structure and Mr. Sousa said that there would be work done inside; Mr. B. Murphy confirmed that there would be no work done on the outside. Mr. Sousa said that all of the deliveries will come through the loading dock; he also stated there was sufficient parking. He said that there will be no impact to abutters and there would be minimal use. Mr. B. Murphy said that he did a Site Visit and asked Mr. Folkard if he had any comments. Mr. Folkard asked if there would be anything hazardous on site, hydraulic fluids and Mr. Sousa said there would not. Mr. Stiles asked Mr. Sousa if they would just be storing the trucks there and he replied that they would be storing the trucks. Mr. Stiles asked if there would be new garage bays and Mr. Sousa said that they weren't contemplated. Mr. Sousa said that around 2006 this was a printing location and was built as a printing location. The predecessor to Gatehouse Media sold the property to Gatehouse and Gatehouse maintained it as office space; United Elevator will be doing the same thing. Ms. Fidler asked Mr. Sousa if he had reviewed the existing Site Plan before the property was purchased and she asked if the Board had the existing plan. Mr. Sousa said that he had the ALTA survey that was provided when he

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ordered it prior to the losing; he said this is as current as it comes. Ms. Fidler said that the building was built in 1988 and there must have been Site Plan approval to look at. Mr. Sousa said it was the same building. Ms. Fidler asked Ms. Porreca if she had the previous Site Plan and Ms. Porreca said that she could go look in the archived files. Ms. Fidler said she wanted to make sure it was in compliance. Mr. B. Murphy asked if anyone else had questions and there were none. He made a motion to close the hearing which was seconded and all were in favor. He made a motion to grant the Special Permit which was also seconded and all were in favor (5-0 B. Murphy, Fidler, Conway, R. Murphy, Stiles).

#19-27: John DeMeo: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to raze the existing dwelling and construct a new two (2) story 19.4' x 36.5' dwelling and an 8' x 16' deck on the property located at **76A Marginal Street** which is further identified on the Assessors' Maps as being on parcel M06-04-13 and is located in an R-3 zoning district.

Mr. B. Murphy read #19-27 into the record and turned the hearing over to Richard Servant from Stenbeck and Taylor. Mr. Servant said that Mr. DeMeo was also in attendance. He said that they are proposing to demolish the existing house and construct a new house up on piles. He said they did their best to adhere to the setback requirements. He said that it is close in the back, 3.9 feet off the line. The proposed structure would be moved further off the line to 4.2 feet; he said they meet the side and front setback requirements. He said they are making adjustments on the rear line and he understands about the five feet (5'). Mr. Folkard said that they can't get the five feet (5'); Mr. Servant said they would be squeezed on the other side. Mr. Folkard said that would have been his suggestion if they could get there. Mr. Servant said that it is in the Flood Zone and would be on driven wood piles with a 2½ story house proposed on top of the piles; they have done their best to fit in in the best that they could. They have been to the Conservation Commission.

Mr. B. Murphy asked if the board or Mr. Folkard had any questions. Mr. Stiles asked if all of the setbacks were less nonconforming than they were before. Mr. Servant said that they were conforming or less nonconforming. Mr. Stiles asked if access was through the Right of Way and Mr. Servant said that it was. Ms. Conway asked if it was a ten foot (10') Right of Way to get into the property and Mr. Servant said that it was. Ms. Conway asked if the shed in the back was staying and if it belonged to the owner. Mr. DeMeo said that it was there when they bought the house; it's a cheap aluminum shed but it serves a purpose; he does not have any intention of taking it down. Mr. B. Murphy asked if anyone had any questions and asked if the audience had any questions; there were none. He made a motion to close the hearing which was seconded and all were in favor. Mr. B. Murphy made a motion to grant the Special Permit with the Condition that the shed was not endorsed. ~~Mr. Servant said that the Public Notice~~ stated this was a two (2) story dwelling but as he stated before, this is a 2½ story dwelling and he wanted it on the record that it was a 2½ stories. Mr. Stiles asked if the advertising at two (2) stories made the publishing defective. Mr. B. Murphy said that it did not, that the Board accepted the 2½ story construction. He made another motion to grant the Special Permit which was seconded and all were in favor (5-0 B. Murphy, Fidler, Conway, R. Murphy, Stiles).

Mr. B. Murphy said that was it for hearings tonight. He said that he had a discussion with Greg

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Guimond, Town Planner and said that he would paraphrase what Mr. Guimond said. He said he talked to Mr. Guimond about the impact from the 2007 Marzelli memo. Mr. B. Murphy said that when Mr. Guimond took over as Town Planner in 2015 he implemented the adoption of policies and procedures for the Planning Board rules and regulations that feed the street improvement policy to a state law strengthening Residential Lots of Record and the need to comply with this. Mr. Murphy said that he has concluded that after three (3) of these Residential Lot of Record approvals for vital access with a 5-0 unanimous decision with the guidance of Town Counsel on all of them, and one with a 4-1 decision and another a 3-2 decision, all in favor of vital access, that there is a grey area that the Planning Board should be able to weigh in as he believes they have on past decisions. Mr. B. Murphy said that just to get it out there, Mr. Guimond is not here to tell us but he had explained to Mr. Murphy that what this memo from 2007 tied in when he came here in 2015. Mr. B. Murphy said this was meant to strengthen the ability to take the lots of record and at least let the vital access be decided by...the Board has it under their purview but it's also under the Planning Board's purview. They would be the ones to tell the ZBA, along with Mr. Folkard from what I read in the book and Mr. Guimond showed him. Mr. B. Murphy said that it stinks because they reached out to the Planning Board for a joint meeting prior to these last two (2) decisions and they couldn't get it done. He feels that moving forward it is a little more clear to him and said that for those Board members who still don't think it is clear, he suggests that they meet with Mr. Guimond. He said that Mr. Guimond was supposed to come to the meeting tonight but he couldn't. Mr. B. Murphy said to let Mr. Guimond clarify the best that he can. Mr. B. Murphy is hoping that in the future the Board can meet with the Planning Board with a joint Board meeting to go over some of the bumps in the road that they could use better assistance with. Ms. Porreca said that she wanted to point out that Mr. Guimond wasn't at the meeting because he was called to the Advisory Board/Selectmen meeting; it wasn't that he did not want to be there but he was called to the other meeting.

Mr. Stiles asked where it stood now and stated that they had received an email. Mr. B. Murphy said that is going to be a meeting held in Executive Session so they wouldn't discuss that until then. He asked if anyone else had a comment. Mr. R. Murphy asked what Mr. Guimond pointed to. Mr. B. Murphy said that Mr. Guimond told him all along that they had something with the 2007 thing but in order to strengthen the law they had to do something in 2015; he thought it was Town Meeting. Mr. Stiles asked if it was a street improvement plan and Mr. B. Murphy said that it was but Mr. Guimond added things to the procedures and the way they do things over there that weren't in there. Implementing those strengthened the ability to move this. Mr. B. Murphy said the ZBA still determines vital access and they have been getting it from the Fire Department. It is on the ZBA books that they determine it with Mr. Folkard's help or Mr. Folkard determines it with their help; it's one of the two. Mr. B. Murphy said the definition is in the big green book which is confusing. Mr. Stiles asked Mr. B. Murphy if he meant the vital access definition. Mr. Murphy replied yes the vital access definition was in there but the problem is that they couldn't get Mr. Guimond to help them and let's face it, they have been doing these since 2016. Under Mr. Galvin's guidance there were 5-0 decisions; he agreed with them and helped get them to that decision. Mr. Murphy thinks that with this new information they have to look at them and say that they have to bring in the Planning Board somehow and try and let them have their say in it. Mr. Stiles said that what was frustrating was that they had tried.

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Mr. B. Murphy said that he understood; they just couldn't get it done before the last meeting and he didn't want this to go into another presentation without at least trying to paraphrase what Mr. Guimond said. He said that he could never be as eloquent as Mr. Guimond but he is trying to do the best he can to make it sound like what they had.

Mr. Folkard asked if Mr. Guimond would be at the meeting on April 8th. Mr. B. Murphy said that he would be but that is something they have to talk about in Executive Session. He then asked if anyone else had any questions. Mr. R. Murphy said that it's not just about vital access for those lots; he understands the vital access component but a Residential Lot of Record can't have any zoning that affects any changes in the dimensions. The stuff he read is it's not just quantity of the frontage but the quality of the frontage which goes back to the definition of a road and that's one of the key factors that keeps him on the side that he is on. Mr. B. Murphy said there was enough evidence to make it a grey area for him. He isn't saying that he agrees with either side on something that should be decided in a court; but he doesn't know if that is going to happen. He said that for now it is confusing enough for him to say that he wants the Planning Board to weigh in. Mr. R. Murphy said that he has seen it a certain way and he hasn't been dissuaded the other way. Mr. Stiles said they should have weighed in when they were authorized to have the meeting. Mr. B. Murphy said they still believe the Bjorkland decision was good and Mr. Galvin does. As far as Mr. B. Murphy is concerned they did a good job with it; did the best that they can to this point and hopefully moving forward with Mr. Galvin's help and Mr. Guimond's help they can make this an easier area to travel. Mr. R. Murphy asked Mr. B. Murphy if Mr. Guimond helped him with the nuances between the Bjorkland subdivision and...Mr. B. Murphy said that they don't agree with that so he did not. Mr. R. Murphy said that reading stuff today and last week, by deed or by plan; how you get that subdivision to him is moot. Mr. B. Murphy said he understood the struggle with that but that is why Mr. Guimond was coming tonight. They weren't going to do a Q&A; he was basically going to give them a synopsis on this. He said that each one of them could meet with Mr. Guimond if they wanted or they will hopefully do a joint meeting at some time between both Boards just to clarify where they are at. But Mr. B. Murphy thinks they are in a good place now and hopefully moving forward.

Mr. B. Murphy made a motion to close the meeting.


Meeting adjourned at 7:30 P.M.



Respectfully submitted,

Nanci M. Porreca
Zoning Administrator

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

May 24, 2022 meeting by a 5-0 vote.
Signed:  Date: 5/24/22