

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MAY 23, 2023 6:30 P.M.
MEETING MINUTES**

Members Present:

*Brian Murphy, Chair
Heidi Conway
Stephen Feeney
Larry Keane
Grover Hensley, Jr.
Brian Sullivan*

Absent: Mark Corwin

Also Present:

*Andrew Stewart, Building Commissioner
Atty. Robert Galvin, Town Counsel*

MARSHFIELD TOWN CLERK
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Mr. Murphy called the meeting to order at 6:36 P.M. due to technical difficulties and read all disclaimers; he explained to the public that Zoom was provided as a courtesy and advised callers to use *6 to mute and unmute.

Roll call attendance was not necessary as the six (6) members were all physically present at the meeting.

#23-35: Sherry and Michael Mathieu: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to raze the existing structure and rebuild a new 44' x 26'6" two and a half (2½) story dwelling, a 26'6" x 16' rear deck with a 4' landing and stairs to grade, a 4' landing and 38' walkway connecting to rear deck with stairs to grade, an 11'6" x 4' rear second story balcony and an 8' x 4' front balcony on the attic floor on the property located at **10 Charlotte Street** which is further identified on the Assessors' Maps as being on parcel K13-05-06 and is located in R-3 zoning district.

Mr. Murphy read **Case #23-35** into the record; Dick Rockwood, who did the architectural work for the Petitioners, and Karli Tobias from Rockwood Design explained the project. They also said that there would be parking under the house and that the property stops at the "W" of the Right of Way. Mr. Murphy asked Mr. Stewart if he had any comments and he said only the comments that he submitted earlier. He asked the Board or Public if they had any questions and there were none. He made a motion to close the hearing which was seconded and all were in favor. The Board agreed that the Petitioners met 1-10 of the Special Permit requirements. Mr. Murphy made a motion to grant the Special Permit with the conditions of a building permit, a demolition permit, a Final As-Built, a Certificate of Occupancy and adherence to the Floodplain Bylaw. The motion was seconded and the Board voted 5-0 with Murphy, Conway, Feeney, Keane and Hensley voting in favor.

#23-36: Barbara C. Saad: The Petitioner is seeking a Special Permit in accordance with §305-10.12 and §305-13.01 of the Marshfield Municipal Code to construct a new 28' x 28' garage with breezeway, a 12' x 48' deck and a 14' x 12' addition on the property located at **90 Seaview Avenue** which is further identified

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MAY 23, 2023 6:30 P.M.
MEETING MINUTES**

on the Assessors' Maps as being on parcel G16-08-06 and is located in R-1 zoning district.

Mr. Murphy read **Case #23-36** into the record. Rick Servant from Stenbeck & Taylor represented the applicant. Mr. Servant said that the existing structure is nonconforming on the front and left setbacks. The new structure will meet zoning requirements. He said that they were before the Board because the existing structure is nonconforming. Mr. Servant said that §305-13.01 was advertised but none of the work will be in that district. Mr. Murphy asked Mr. Stewart if he had any comments and he said only the comments that he submitted earlier and that he echoed what Mr. Servant said about conforming. He asked the Board or Public if they had any questions and there were none. He made a motion to close the hearing which was seconded by Ms. Conway and all were in favor. The Board agreed that the Petitioners met 1-10 of the Special Permit requirements. Mr. Murphy made a motion to grant the Special Permit with the conditions of a building permit, a demolition permit, a Final As-Built and a Certificate of Occupancy. The motion was seconded by Ms. Conway and the Board voted 5-0 with Murphy, Conway, Feeney, Keane and Hensley voting in favor.

#23-37: Michelle and Brian Balconi: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 8' x 16' front porch on the property located at **40 Riverside Circle** which is further identified on the Assessors' Maps as being on parcel D19-03-05 and is located in R-1 zoning district.

Mr. Murphy read **Case #23-37** into the record. Michelle and Brian Balconi said that they wanted to add a porch that would be within the setbacks. Mr. Murphy asked Mr. Stewart if he had any comments; Mr. Stewart said the structure is nonconforming on one side but the project will be conforming. Mr. Murphy said the Board would not endorse the location of the existing shed. He made a motion to close the hearing which was seconded by Ms. Conway; all were in favor. The Board agreed that the Petitioner met the requirements found in §305-10.12. Mr. Murphy made a motion to grant the Special Permit with the conditions of a building permit, a certified As-Built and a Certificate of Occupancy and Ms. Conway seconded the motion; the Board voted 5-0 with Murphy, Conway, Feeney, Keane and Hensley voting in favor.

#23-38: Colin Yanovitch: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 13'6" x 26'3" two (2) story addition at the rear of the dwelling on the property located at **15 Virginia Street** which is further identified on the Assessors' Maps as being on parcel L04-08-15 and is located in R-3 zoning district.

Mr. Murphy read **Case #23-38** into the record. Sean Connolly, the builder, explained that the Petitioners were proposing to construct a two (2) story addition in the back of the house; he said

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MAY 23, 2023 6:30 P.M.
MEETING MINUTES**

that everything new would be conforming. Mr. Stewart advised that the deck can only be two feet (2') into the setback without a Variance; they would need a Variance because there is not a current existing nonconformity. Mr. Connolly stated that the Petitioners do not want the deck. Mr. Murphy made a motion to close the hearing which was seconded by Ms. Conway; all were in favor. The Board agreed that the Petitioner met the requirements found in §305-10.12. Mr. Murphy made a motion to grant the Special Permit with the conditions of a building permit, a certified As-Built and a Certificate of Occupancy and Ms. Conway seconded the motion; Mr. Murphy noted that the Petitioner has withdrawn the request for the rear cantilevered deck which is shown on the plan submitted which is titled "The Yanovitch Residence, 15 Virginia St., Marshfield, MA" consisting of twenty-one (21) pages by AJA Engineering which is undated and is signed and stamped by Abdulrahman J. Al-Zaim, Professional Engineer. The Board voted 5-0 with Murphy, Conway, Feeney, Keane and Hensley voting in favor of granting the Special Permit.

#23-40: Teresa and Steven Flavin: The Petitioners are seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-11.09.C.7 and/or §305-6.10 Table of Dimensional and Density Regulations, Minimum Lot Area, and a Special Permit under §305-11.09 to create an Accessory Apartment within the recently completed 11' x 28' addition on the property located at **252 Careswell Street** which is further identified on the Assessors' Maps as being on parcel L05-31-13 and is located in an R-3 zoning district.

Mr. Murphy read **Case #23-40** into the record. Mr. Galvin said that the Petitioners have already built the addition; Mr. Stewart said they were looking for relief from the lot area requirement for an Accessory Apartment. Mr. Murphy asked Mr. Stewart if there was a problem and he said no that this is what he wants people to do. Mr. Sullivan said they already received a Variance and asked if the Board could allow them to do the apartment. Ms. Conway noted that the apartment was discussed before when they applied for a Variance and Special Permit in February of 2021. Mr. Galvin said they couldn't apply for the apartment at that time because of the three (3) year rule. Mr. Stewart said that they were caught in that Bylaw issue. He said they have a small addition, the Bylaw changed and now they want to legitimize the apartment. Mr. Stewart said even if they didn't need a Variance in the first place they need one from the lot size. Mr. Galvin said there was discussion at Town Meeting to eliminate that portion of the Bylaw but it was withdrawn to be discussed further. He agrees with Mr. Stewart that a Variance is needed from the lot area.

Mr. Murphy asked if there were any questions from the Board of the Public and there were none. He made a motion to close the hearing which was seconded by Ms. Conway; all were in favor. Mr. Murphy made a motion to grant the Variance to allow the Petitioner to add an Accessory Apartment in the existing altered dwelling based on the findings that they met the requirements of §305-10.11. The motion was seconded by Mr. Sullivan; the Board voted 5-0 with Murphy, Conway, Feeney, Keane and Hensley voting in favor. Mr. Murphy made a motion to grant the

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MAY 23, 2023 6:30 P.M.
MEETING MINUTES**

Special Permit for the Accessory Apartment based on the findings that the Petitioners met the requirements of §305-11.09. The motion was seconded by Mr. Sullivan; the Board voted 5-0 with Murphy, Conway, Feeney, Keane and Hensley voting in favor.

#23-39: Kevin C. McDonough: In accordance with §305-10.09 of the Marshfield Municipal Code, the Petitioner is seeking an Appeal of the Building Commissioner's determination that this lot does not meet the minimum lot depth requirements needed to construct a single family residence and, if necessary, a Variance under §305-10.11 for relief from §305-6.10 Table of Dimensional and Density Regulations, Minimum Lot Depth, on the property located at **53 Juniper Road** which is further identified on the Assessors' Maps as being on parcel I15-03-13 and is located in an R-3 zoning district.

Mr. Murphy read **Case #23-39** into the record. Mr. Galvin said that there was an allegation that an abutter didn't get notice in sufficient time; he is convinced by Ms. Porreca that the Notice was properly published in time but the abutter notification wasn't timely. He recommended opening the hearing, letting the applicant speak and if the abutters choose to speak they can; he recommends the Board leave the record open and continue to the next hearing. Jeffrey DeLisi, attorney for Mr. McDonough, asked for a copy of anything submitted in writing by the abutters.

Mr. DeLisi said that Mr. McDonough owned two (2) lots in the R-3 zoning district with a lot depth of 100 feet. He wanted to convey the lot to his daughter but before selling it he wanted to be certain that he could divide the lot so the re-division of land would have a house on one lot and a vacant buildable lot. In 2018, Mr. McDonough sold the lot to his daughter for \$398,000 and he had a concept plan drawn up by Stenbeck & Taylor. He met with Jim Folkard to see if the lot would be fully conforming to the dimensional criteria of the Zoning Bylaws; the meeting resulted in a verbal determination from Mr. Folkard that it does. Mr. McDonough followed up with a formal written determination and a determination was made. The purpose for requesting the formal determination was to avoid possible misinterpretation of the spoken word and before he dropped a large sum of money on engineered plans. They have a letter from Mr. Folkard dated December 31, 2018 that says the lot is conforming; Mr. DeLisi said they had to go to the Planning Board to divide the land.

He said that now they are here years later in 2023 with a new Building Inspector, for whom he has the utmost respect, but he has a contrary determination. Mr. McDonough is appealing this determination and as an alternative he is requesting a Variance although Mr. DeLisi doesn't think one is necessary. Mr. DeLisi believes that the matter has been determined already and Mr. Folkard's determination is consistent with the way the Town has interpreted lot depth and lot width requirements through the years; Mr. McDonough has provided the Board with examples. He said that more socratically, as a lawyer, he thinks that Mr. Stewart failed to apply the second sentence of the definition of lot width. This zone requires 100 feet of lot depth and 80 feet of lot width. The definition of lot depth is the shortest distance between the front lot line and the rear lot line with a width at least equal to the lot width. Mr. DeLisi believes they meet lot width. He believes that Mr. Stewart is reading this as the shortest distance between the two (2) lines. Mr.

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MAY 23, 2023 6:30 P.M.
MEETING MINUTES**

DeLisi said they won't get into the Variance unless the Board feels the Appeal should be denied.

Mr. Stewart said he is totally sympathetic with the situation and that they were given the wrong information. He displayed the lot depth definition on the screen which says, "The shortest distance between the front lot line and the rear lot line within a width at least equal to the required lot width". He said this is in the R-3 zoning district and the required lot width AND frontage is 80 feet. Mr. Stewart pointed out on the plan (right side) that it's approximately 65 feet and not the required 100 feet. He said that is the only thing that doesn't comply with zoning requirements. The distance is only 65 feet and is the only condition that isn't met. Mr. DeLisi said if it wasn't necessary to incorporate the words "within the required lot width" then the Town shouldn't have adopted it. He said they have a situation here where it doesn't say measured "consistently". It says measured lot depth within the required lot width; lot width requires a circle and when they do that they are able to achieve the depth.

Mr. DeLisi said it is a question of interpretation. He said when Mr. Stewart just talked about the definition of lot width, he didn't indicate it should be measured with the circle; he said it at the end. Mr. DeLisi said you achieve the width at the point of the circle further from the street. Mr. Stewart said his opinion is that the building circle itself is secondary; it just shows where you can put the house; you still have to meet lot width and lot depth requirements. Mr. Sullivan asked if the dwelling would fit inside the circle and Mr. Stewart said yes. Mr. Sullivan said that the dwelling won't have any side line, front line or rear line encroachments; Mr. Stewart said that lot depth is lot depth; the lot width is okay. He said they have to maintain the required lot width for 100 feet somewhere between the front line and rear line. Mr. Stewart displayed the examples that were submitted and stated that he agreed with two (2) of them. He said he believed the permit for 21 Whites Ferry was issued in error. He explained the frontage would need an 80 foot lot width and go back 100 feet and they don't meet that.

Mr. Keane asked if the previous Building Inspector used the building circle and Mr. Stewart said he believed that he did. Mr. Stewart said all other Whites Ferry lots met the requirements. He said that 21 Elm Street did not meet lot depth; 4 Preacher's Path is a corner lot with two (2) lines and they used Plain Street for the front line; Mr. Stewart said this one complies. Mr. McDonough asked to go back to Elm Street and Boles Street. Mr. Stewart said that he believes this was the second one issued in error with a situation similar to the one before the Board tonight; he said the subdivision started in 2001 with Bob Wiley. Mr. Sullivan said if the subdivision was approved they wouldn't have an unbuildable lot; Mr. Stewart said it is different with an ANR.

Mr. Stewart said he feels that 33 Elm and 21 Whites Ferry were both issued in error by two (2) different Building Inspectors; there weren't electronic sign-offs then; the Planning Board is not usually included in sign-offs at the end. Mr. Sullivan said he doesn't think the Planning Board is the arbiter. Mr. Stewart said there were previous Building Inspectors who issued in error. Ms. Conway said they could have had a different interpretation and not an error. Mr. Stewart said nobody appealed and it wasn't precedent setting. Mr. Galvin said that he and Mr. Stewart don't usually agree but they do on this issue. He said that lot width and lot depth are different.

Mr. Murphy said they would go to the public and asked Mr. DeLisi and Mr. McDonough to step back from the microphone. Mark Sills and his wife Carol Herb of 31 Dwight Road are the most

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MAY 23, 2023 6:30 P.M.
MEETING MINUTES**

direct abutters and the ones who didn't get the notice until last Monday night. Mr. Murphy asked Mr. Stewart to display the address on the GIS map. Ms. Herb said that Mr. McDonough has an advantage with an attorney; they didn't have time. Mr. Murphy said the Board would leave the record open to give them time. Ms. Herb said they bought the house in 2018 and this would completely change life in their home as they know it. She said that they know they don't have a right to a view; if they put a fence up it would block the view; she said there won't be any privacy. Ms. Herb said she feels as if Mr. McDonough is trying to push the limit; she said she has read his attorney's letter that said it won't be a detriment. She said that she feels sorry for Mr. McDonough but there are several cases in Massachusetts where Mr. McDonough created hardship. She understands he wants to maximize his investment.

Mr. Sills said they were given a letter sent from Mr. Stewart to Mr. McDonough in April of 2023. He said they didn't come here to argue logistics; Mr. Stewart has done that. He said they have someone who is away and on their way back and they would like to at least consult with them. He said they were semi-retired and will probably downsize at some point. He said there are too many cookie cutter things to make this fit. Mr. Sills said they don't want to drag it out but they have to look after their lives as does Mr. McDonough.

Dana Toland of 26 Dwight Road asked if Mr. McDonough had any recourse for the error that was made by the Building Inspector and said there were two (2) errors. Ms. Conway said that nobody knows that there was an error; Mr. Murphy said it was interpretation. Michelle Glidden of 48 Juniper said they got a notice of road widening and it will change the character of the neighborhood. She is across the street and has never had drainage issues and now wonders if she will when the road is widened; she had to have the Town put in a berm after a repair. She asked which side of the road would be widened, her side or Mr. McDonough's side.

Mr. Sills said there was a letter in the packet sent by Mr. McDonough's attorney that said if he loses the appeal that he has a second appeal ready and asked what he would base that appeal on. Mr. DeLisi said that he sent a cover letter with the application; it's an Appeal of Mr. Stewart's determination and a Variance in the alternative. He said if the Board agrees with Mr. Stewart and the relief isn't granted, they would ask the Board to consider a Variance. Mr. DeLisi thinks that Mr. McDonough is entitled to consistency; they have three (3) different Building Inspectors with different determination. They respect Mr. Stewart's and Mr. Galvin's position but the Board makes the decision; this family spent \$398,000. Mr. Murphy said plus attorney fees.

Mr. DeLisi said the Board should discuss the first request and then can take up the Variance. If the Notice wasn't proper, and he thinks it was, it shouldn't affect his client. Mr. Sills said he has the postmarked envelope on May 10th and he received it May 15th. He spoke with Ms. Porreca who said two (2) weeks; he also spoke to two (2) attorneys they know as references; Mark Stiles referred them to another attorney. Mr. Sills said they don't want to ruin it for Mr. McDonough and it probably won't change what we said tonight; they don't get the paper. Mr. Murphy asked where they stood with the Notice; Mr. Galvin said they are required to be published in the newspaper fourteen (14) days before the hearing according to MGL Ch.40 §11. Mr. Sills asked what newspaper and Ms. Porreca said Coastal Mariner. Mr. Galvin said it requires fourteen (14) days for publication.

Ms. Herb said this process has a hold over their heads. They came in last summer to meet with

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MAY 23, 2023 6:30 P.M.
MEETING MINUTES**

Mr. Stewart who said it wasn't buildable. She said getting a Variance is going against the intent of the Bylaw. If something was wrong in the past now is the time to set it right. Mr. Sullivan said that with all due respect, he has been involved with zoning for twenty-seven (27) years and that this is his second town. His experience with people like Mr. McDonough is that he's rather have one (1) home than a four (4) condo building. Mr. Sills and some of the abutters said they felt threatened; Mr. Feeney asked that they let Mr. Sullivan finish his point. Mr. Sullivan said they should consider all their options. Mr. Sills said that was why they wanted an attorney; they aren't adept. He specifically asked today and was told two (2) weeks so they didn't get proper notification. He told his wife that however this goes, it's been hanging over their heads. He said if a Variance is granted then, okay, it's over; they just want to talk to an attorney. Mr. Galvin said that he thinks the point Mr. Sullivan was bringing up was to build it according to the Bylaw. He said that in another town, a house was built but it was wrong; the house was torn down and a four (4) unit 40B building was put up. He didn't think that Mr. Sullivan was trying to threaten.

Mr. Murphy asked how they felt now that everyone had spoken. Mr. Sullivan said he wanted to close the hearing. Mr. Feeney asked if they could talk to an attorney if they closed the hearing. Mr. Galvin said they could leave the record open to get a letter from their attorney; it's only fair and Mr. DeLisi and Mr. McDonough can respond. Ms. Conway asked if they could leave the written record open and Mr. Galvin said he didn't think they should close. Mr. Sills was told before that they could speak and this would be continued to June 13th. Mr. Murphy asked Mr. Sills if he understood that Mr. Galvin is the Town Attorney and it's not what Ms. Porreca said. Scott Healey, 36 Juniper Road, said that he thought at the beginning Mr. Galvin said he recommended leaving it open and not just the written record. Mr. DeLisi said if the Board is going to leave the record open for written submissions, the Board should put a timeframe; he will need time to respond. Mr. Galvin said the Public Hearing will be closed except for the written record and anyone can get information from Ms. Porreca. Mr. Sullivan said ten (10) days would be June 2nd. Someone in the audience asked if it would be ten (10) business days and they were advised no. Mr. DeLisi said he has an alternative request for a Variance and he did make that in writing. Mr. Murphy asked if they were closing both and Mr. Galvin said it was up to the Board. Mr. Sullivan said they should close the Appeal and Mr. Feeney asked if there should be time for Mr. DeLisi to respond to the Board. Mr. DeLisi said he could respond within 48 hours. Ms. Porreca stated that the abutters' attorney would submit their comments by June 2nd and Mr. DeLisi will respond by June 9th. Mr. Murphy made a motion to close the Appeal portion and reiterated that abutters will submit by June 2nd and Mr. DeLisi by June 9th. The motion was seconded by Ms. Conway and all were in favor. Mr. Murphy made a motion to continue the Variance to June 13th; the motion was seconded by Ms. Conway and all were in favor.

#23-25: Thomas Coleman/Liv Creative Cuisine: The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to create ten (10) additional seats for outdoor dining on the property located at **1849 Ocean Street, #10**, which is further identified on the Assessors' Maps as being on parcel H07-05-07 and is located in a B-1 zoning district.

Mr. Murphy read this into the record on April 11th and it was continued to the May 9th and May

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MAY 23, 2023 6:30 P.M.
MEETING MINUTES**

23rd meetings. Mr. Stewart said that he had spoken to Mr. Coleman (owner) that day; he was working and was not able to make the meeting. Mr. Stewart said that Mr. Coleman didn't have a lot to add; he wants to legitimize everything for the ABCC. Mr. Stewart said that the Select Board voted last night (05/22/2023) to approve a licensing agreement that would allow Liv Creative Cuisine to use the Town-owned land for outdoor seating. Mr. Murphy made a motion to close the hearing; Ms. Conway seconded and all were in favor. Mr. Murphy made a motion to grant Site Plan approval with the condition that the Petitioner submit an updated Site Plan depicting the seating area and Ms. Conway seconded the motion; the Board voted 5-0 with Murphy, Conway, Feeney, Keane and Hensley voting in favor.

Mr. Murphy made a motion to adjourn; this was seconded by Mr. Keane and all were in favor.
Meeting adjourned at 8:06 PM.

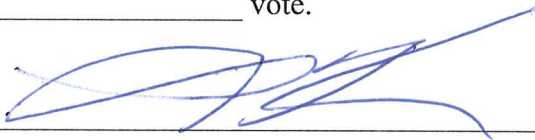
Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

These minutes were approved by the Board on 06-13-2023 by a
5-0 vote.

Signed: _____



Date: _____

6/13/23