

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL JANUARY 24, 2023 6:30 P.M.
MEETING MINUTES**

Members Present:

*Brian Murphy, Chair
Heidi Conway
Larry Keane
Grover Hensley, Jr. (Remote)
Mark Corwin
Brian Sullivan
Stephen Feeney (remote)*

Also Present:

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

MARSHFIELD TOWN CLERK
RECEIVED
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Mr. Murphy called the meeting to order at 6:30 P.M. and took attendance. He explained to the public that Zoom was provided as a courtesy and advised callers to use *6 to mute and unmute.

#23-03: Thomas Laur and Stephanie C. Baumann: The Petitioners are seeking a Special Permit in accordance with §305-13.02.C.01 and §305-10.12 and a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-6.07 to construct a 4' x 161' pier, a 3' x 30' gangway and a 10' x 20' float on the property located on **Ferry Street** which is further identified on the Assessors' Maps as being on parcel I16-15-05 and is located in R-3 zoning district.

Mr. Murphy read Case **#23-03** into the record. Jeff Hassett of Morse Engineering represented the Petitioners and stated that they also own 46 Preston Terrace on the left side as well as three (3) lots on the paper street and the dirt road part of Ferry Street. Mr. Morse said there would be a movable gangway. He said this will not be substantially detrimental and will be similar to other docks. The project has been approved by the Harbormaster and it is with Conservation; they also need DEP Waterways and Army Corps of Engineers approval. Mr. Stewart said that a dock walk had been conducted with the owner, the engineer, the Harbormaster and the Conservation Department. He said he had some concerns about storing floats below the base flood elevation; he and the CRS Committee recommend that all residential dock floats be stored outside of the flood zone or elevated above DFE during the winter off-season. He stated that they have an active Floodplain Permit. Mr. Keane asked if the Petitioners agreed to store the floats there. Mr. Stewart said the Petitioner didn't necessarily agree but said he felt it was the right thing to do; there is no rule about not storing on the salt marsh but it does damage the salt marsh. Mr. Keane asked if it was part of the previous conditions; Mr. Galvin did not think so but said if you don't move it you can lose it. Mr. Murphy asked if there were any questions or comments from the Board, the audience or from the people on Zoom; there were none. He made a motion to close which was seconded by Ms. Conway; the Board voted 5-0 to close with Murphy, Conway, Keane, Hensley and Corwin in favor. Mr. Murphy made a motion to grant the Special Permit subject to conditions of a building permit, Final As-Built, storage of float, etc. The Board agreed that it meets the requirements for §305-13.02.C.01 and §305-10.12. The motion was seconded by Mr. Corwin and the Board voted 5-0 to grant the Special Permit with Murphy, Conway, Keane, Hensley and Corwin in favor. Mr. Sullivan made a motion to grant the Variance for the aforementioned dock/pier/float and the Board agreed that it met the requirements of §305-10.11. The motion was seconded by Mr. Murphy and the Board voted 5-0 to grant the Variance with Murphy, Conway, Keane, Hensley and Corwin in favor.

#23-04: Michelle Collins: In accordance with §305-10.09 of the Marshfield Municipal

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Code the Petitioner is seeking an Appeal of the Building Commissioner's determination that the proposed use as an eating and drinking establishment is different than the existing nonconforming use on the property located at **62 Beach Street** which is further identified on the Assessors' Maps as being on parcel M05-05-86 and is located in an R-3 zoning district.

Mr. Murphy read **Case #23-04** into the record. Michelle Collins of 41 Park Street, said this was a new process for her and she walked through the project. She said she had a head injury from an accident; this is her neighborhood; she has been a coach and a business leader; daughter had to leave school to take care of her. Ms. Collins met with Mr. Stewart who gave her good direction and told her this would take a few steps. She asked Mr. Stewart for permission to speak with Ms. Conway. She mentioned several neighbors who were supporting her. She had two (2) meetings with Mr. Stewart and wants to understand the right steps; she knows this is a process. Mr. Murphy asked Mr. Stewart for his opinion. Mr. Stewart said this came about when a DBA was submitted for a new business at this location; he never knew there was another business there. He said as Zoning Enforcement Officer (ZEO) he has to ensure the DBA request is appropriate for the area. It's in the R-3 zoning district; it's pre-existing, nonconforming with two (2) uses – the Post Office is Retail and Service, #15 Government offices and post offices; the second business is Shucks, a seafood, raw bar caterer which is Retail and Service, #11 Other personal and consumer service establishment. Mr. Stewart said both uses are prohibited in the district but are pre-existing, nonconforming uses. He said the project was described as a Mediterranean Café and there would be food handling. When there is a proposed change to a nonconforming use, Mr. Stewart goes to the Bylaw; it can be changed as long as it's not substantially different. He determined that a catering business that prepares product and takes it off site and a restaurant/café that would prepare and serve on site are substantially different. One difference is there would be patronage. There is no sign there currently so the appearance would be different; the noise would be different, the employment would be different. He advised Ms. Collins that she could appeal his determination to the Zoning Board of Appeals and relief would come from the Board if they determine the use is not substantially different.

Mr. Galvin said that he agrees with Mr. Stewart, it is a change of use. They have had this situation many times before; this is not an evolution of a business; we have a method in the Bylaw. He said that Ms. Collins needs to apply for a Special Permit. Ms. Conway said she wanted to disclose that she did have a conversation with Ms. Collins. She said she couldn't be specific but gave her the background of the building. Ms. Conway stated that did not give any indication that Ms. Collins didn't need to come to the Zoning Board of Appeals. Ms. Conway said that forty-five (45) years ago this was an ice cream shop. Ms. Conway said she was concerned about foot traffic with people backing their cars out. Ms. Sullivan asked Ms. Collins if she had a lease and she said that she does; she said she also provided insurance information. She said she indicated to Mr. Stewart that she didn't need seats, it could be a grab and go. She said there would not be any ice machines and it would be clean, fresh food. Mr. Sullivan asked Ms. Collins if she agreed with Mr. Stewart that it was substantially different and she said she would defer to Mr. Stewart because he was the professional. Mr. Sullivan said that her next step would be to apply for a Special Permit and her information would be more relevant then. Mr. Stewart said he respectfully disagreed with Mr. Sullivan. He said the Board has to uphold the Appeal to be able to apply for a Special Permit. Mr. Galvin said he reads the Bylaw differently;

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alteration means change and there are circumstances where Mr. Stewart can approve it if the change is not substantially different. He said the Board has discretion. Mr. Murphy asked Ms. Porreca about filing deadlines and she advised that the deadline for the February 28th Public Hearing is January 31st. Someone asked if they should close and Mr. Galvin suggested they leave this open and hear both together.

Mr. Murphy asked the Board and public if they had any questions or comments and there were several. Steve Lynch of Central Street is in favor because he won't have to drive as far to get his daughter a special drink. Patricia Hoxie, 70 Beach Street, said she admires entrepreneurs who start their own businesses but she does not think 62 Beach is the right location for this. There are requirements for waste, seating, parking; this could impact the neighborhood with parking and asked if she would be liable if something happened when someone parked on her lawn. Nancy Monahan, 4 Genevieve Lane, agreed with the previous person and said there was a problem with parking. There isn't parking on Assumption Road; when the caterer was there they weren't cooking and serving; they were carrying it out. She feels this will damage the Marsh but she thinks it's a good idea. Harry Plebedoff, 52 Assumption Road, agrees with Mr. Stewart about not knowing there was a catering business there. He is concerned about the traffic, not even the beach traffic. He is concerned about kids on bikes, people with carriages. It's a blind corner. It's not a bad idea, just a bad location; it's an accident waiting to happen. Mr. Plebedoff said he would love to see Ms. Collins' business somewhere but not here. Diane Jordan of 15 Bancroft Street, President of the Brant Rock Village Association (BRVA), put this on Facebook to see what people said and she had over 250 in favor. One (1) person commented about the parking; Ms. Collins addressed it and said it was a grab and go, not seating. Roger Welch, owner of the building, said he has owned it for forty (40) years and has seen it all. He supports Ms. Collins and has dealt with all sorts of things there; he thinks it would be good. He said the Post Office is the main tenant and will be there for another year and a half; he isn't sure after that.

Mr. Murphy asked if anyone on line had a comment or question and Mr. Stewart said that Pamela Pristas had typed a comment: If Steve Carrell can get zoning in the Hills, why not here. Mr. Stewart explained that was different because Carrell didn't need a determination. Brian Leneghan, 7 Marginal Street, said he was new to the area and last year was eye-opening. He said if it's grab and go and the lot is full then people will be parking on his lawn. He said that the 250 people on line don't live in Green Harbor. He wished the applicant the best of luck and hopes the business will be somewhere he can walk.

Mr. Keane said it's been a retail-type business forever and he personally doesn't see the intensity being more than what is there now. He is from the other side of town but he doesn't see himself driving there. Ms. Collins said she thought about the neighbors and wants services for the neighborhood. The trash will be compostable and they will be using bamboo. She mentioned something about utilizing beach parking. She said she has had great support from the Post Office and they pointed out the parking. She wants people to walk or bike there. Mr. Murphy made a motion to continue the hearing which was seconded by Ms. Conway; Murphy, Conway, Keane, Hensley and Corwin were in favor.

Ms. Porreca advised the Board that Mr. Feeney was on Zoom and Mr. Murphy proceeded to take roll call attendance.

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#22-99: Ryan and Danielle Gardiner: The Petitioners are seeking a Special Permit in accordance with §305-10.12 and §305-13.02 of the Marshfield Municipal Code ~~and a Variance in accordance with §305-10.11 for relief from §305-6.08.5(C)~~ to construct a 24' x 26' two (2) car garage, a 24' x 26' master bedroom above and a 10' x 13' mudroom on the property located at **45 Hatch Street** which is further identified on the Assessors' Maps as being on parcel G08-05-22 and is located in an R-2 zoning district.

Mr. Murphy went to **Case #22-99** which was a continued case. Dick Rockwood represented the Gardiners; Mr. Gardiner was also in attendance. Mr. Rockwood said they previously came before the Board for a Variance and the Board was not in favor of that but they were also requesting a Special Permit and that was not previously heard. Mr. Rockwood said he was made aware of another project on Ferry Street and Mr. Sullivan asked for the plan he was proposing and it was displayed on the screen. Mr. Rockwood pointed out the frontage and said they were proposing a two (2) car garage with a master bedroom above. He took an average of all the abutters and nobody has 40'; Ms. Stewart displayed the GIS picture that was submitted showing the setback for each abutter. Mr. Rockwood said that Scituate has a regulation that you can be the average of the abutters and said the project on Ferry Street was approved a couple of years ago; Mr. Stewart displayed the drawing for that case). Mr. Rockwood said it's for an empty lot; the previous project was going to tear the house down but it wasn't an empty lot when they came to the Zoning Board. Mr. Sullivan said if you tear the house down then it's an empty lot. Ms. Conway asked if he was comparing the projects because of the averages. Mr. Sullivan said that the Bylaw does not allow you to do that unless you have an empty lot. Mr. Keane asked Mr. Rockwood if he saw Mr. Stewart's comments and gave him a copy to read. Mr. Rockwood said the neighbors were in favor.

Mr. Murphy asked if there were any Board comments and Mr. Keane said he doesn't see an issue with this. He has been down there a few times and housing is an issue there; he said Mr. Gardiner mentioned last time that he wants to stay here. Mr. Corwin agreed with Mr. Keane. Mr. Hensley said he wasn't here the last time and asked why the Variance was denied; Mr. Murphy said because they didn't show a hardship. Mr. Keane said they just did a dock tonight; they just gave a Variance but he doesn't see the hardship. People want a dock, it's a luxury, not a need. Housing to him is a hardship. Mr. Gardiner said there was also a problem with the shared driveway and the kids running around. Mr. Sullivan said a Variance needs to be for shape, soil, topography, etc. Mr. Keane said that thirty (30) years ago you could say you're going to sell but now there is no place to buy. Mr. Murphy asked Mr. Stewart for the GIS display so he can see an overlay with an acre. He said there was no relief for the people who have houses there. Mr. Rockwood said the line next to the garage is not correct on GIS; there's a hardship with the shape of the lot.

Mr. Murphy asked if there was anything else from the Board, the audience or online and asked Mr. Galvin how to address this. Mr. Galvin said his opinion is that this is not a vacant lot; he is sympathetic that the Board thinks that there is another option but it's not allowed here. When you connect the garage to the house it becomes part of the principal structure and does not meet the setbacks. Mr. Murphy asked if he should make the motion in the affirmative. Mr. Galvin said he could make the motion to grant the Special Permit and people will vote. A yes vote authorizes is and a no vote is a no vote. He said that they have had problems with the sign

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Bylaw and the Zoning Board would write a dissenting opinion saying the Bylaw should be changed. Ms. Conway said then they couldn't come back for two (2) years and Mr. Murphy agreed. Mr. Galvin said it has to be a material change. Mr. Murphy made a motion to grant the Special Permit subject to conditions which was seconded by Mr. Keane. The Board voted 4-1 to grant the Special Permit with Murphy, Keane, Hensley and Corwin voting and favor and Conway opposed. Conditions include a building permit, As-Built and Certificate of Occupancy

Mr. Keane made a motion to approve the minutes for December 13, 2022 and December 27, 2022 with Scribner's errors; Mr. Sullivan seconded and all were in favor. Mr. Murphy made a motion to adjourn; this was seconded by Mr. Keane and all were in favor.

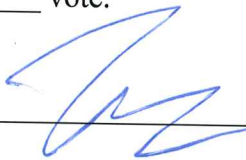
Meeting adjourned at 7:45 PM.

Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

These minutes were approved by the Board on February 14, 2023 by a
5-0 vote.

Signed:  Date: 02-14-23