

ZONING BOARD OF APPEALS

PLACE: HEARING ROOM 2, MARSHFIELD TOWN HALL
TUESDAY, JANUARY 12, 2016 at 7:00 p.m.
MEETING MINUTES

MARSHFIELD TOWN CLERK
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Members Present:

Joseph Kelleher
Lynne Fidler
Heidi Conway
Frank Hubbard
Brian Murphy, Associate
Richard Murphy, Associate

Also Present:

Jerry O'Neill, *Building Commissioner
and Code Enforcement Officer*
Jon Witten (for Executive Session)
Special Counsel
Robert Galvin (arrived at 7:50; regular hearings)
Town Counsel

Via Telephone: Mark Ford (for Executive Session Only)

CALL TO ORDER / ROLL CALL: Mr. Kelleher called the meeting to order. He noted all the Board members were present and asked if any had any objection to Mr. Ford being phoned in for the Executive Session. No one objected and Mr. Kelleher instructed staff to contact Mr. Ford.

EXECUTIVE SESSION: Mr. Kelleher confirmed that Mr. Ford had no one else in the room with him and then moved to go into Executive Session in accordance with M.G.L. c. 30A, § 21 (a)(3), to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares regarding 2104 Ocean Street, Roderick and after the Board will be coming back into Open Session; seconded by Mr. Hubbard: Roll Call: JK – yes; FH – yes; LF – yes; HC – yes; BM – yes; RM – yes; via phone MF – yes.

The Board came back into Open Session at approximately 7:34 p.m.

Note: Attorney Witten left at this time and Mr. Ford hung up from the conference call.

NEW HEARINGS:

#16-01: Gregory J. & Julia M. Downing: The Petitioners are seeking a Special Permit under Article X, Section 10.12 of the Marshfield Zoning Bylaws to add a two-story addition consisting of a 17' x 15' screened porch on the first floor and a 20' x 16' master bedroom on the second floor, and a small deck that extends off the porch off the rear of a pre-existing, non-conforming dwelling and relocation of the shed on the property located at 47 Colonial Road, Marshfield, which is further identified on the Assessors' Maps as M08-25-04 and is located in an R-3 zoning district.

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

Present before the Board: Greg Downing

Mr. Downing explained the existing structure is a two-bedroom house, 1-½ bath. They have two children – a boy and a girl and they would like to add another bedroom so the children are not sharing a room as they begin to grow up. Because it will be upstairs with the other bedrooms, they will also be adding a screen porch below. He believes it is a straightforward, simple project.

Note: at this time a young gentleman started laying wires, and stepping between the applicant and the Board, putting up a microphone. When asked what it was for, he responded, "Marshfield Community

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T.V." He was told he should do this before the meeting; he asked if they started at 7:30. He was told by staff that this evening's meeting started at 7:00; he stated he was told 7:30 and apologized, and returned to the car in the back of the room.

Mr. Kelleher continued with Mr. Downing to confirm that he wants to add on what is shown in the shaded area on the plans. He asked Mr. Downing what makes his property non-conforming to have to come her. Mr. Downing answered the distance to the property line. Mr. Kelleher confirmed that they will not be any closer to that property line; Mr. Downing confirmed.

Mr. Kelleher asked if the Board had any questions: None. Mr. Kelleher asked Mr. O'Neill for his thoughts. Mr. O'Neill stated that he had already discussed with the petitioner that the shed needed to be attached to the deck in order to conform with the zoning setbacks of 20 feet off the street. That kicks in some building code stuff that they can handle with him. Mr. Downing stated he understands that but there is a possibility that they may eliminate the shed. Mr. O'Neill stated less is fine, too.

Mr. Kelleher asked if there were any comments from the audience: None. Mr. Kelleher moved to close the hearing; seconded by Ms. Conway. Mr. Kelleher moved to grant the Special Permit as requested, conditioned that the shed be attached to the deck as required by the Building Commissioner; seconded by Mr. Hubbard. VOTE: Unanimous.

Mr. Kelleher explained the process of the decision and waiting time and recording to the applicant.

Mr. Grimes asked what was the duration of the permit? When does it expire? Mr. O'Neill stated Special Permits are good for 2 years.

Attorney Galvin arrived at this time.

#16-02: Richard Grimes: The Petitioner is seeking both a Special Permit, under Article X, Section 10.12, and a Variance in accordance with Article X, Section 10.11 for relief from 6.10 to add an 8' x 36' farmer's porch to the front of the dwelling located at 67 Quincy Avenue, which is further identified on the Assessors' Maps as J11-01-15 and is located in an R-2 zoning district.

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

*Present before the Board: Dick Rockwood, Rockwood Designs
 Richard Grimes*

Mr. Rockwood stated the property is in an R-1 zone, which the Board might find hard to fathom when they are looking at the spacing. Mr. Kelleher corrected him that it is an R-1 zone; Mr. Rockwood agreed, and stated it is supposed to be 40 foot frontage and 40 foot rear setback. He showed the Board the Assessors' maps so the Board could get a feel for what is down there. The lot is a 20,000 s.f. lot, where 60% - 80% of them are not. The house is setback 40 feet from the street. The house was built in 1987- 88. He believes there used to be another house on the premises before this one. Mr. Rockwood stated they have a hardship because what they would like to do is add a farmer's porch to the front of the

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house; the house is forty feet back, the rear of the house is 33 ft. +/-, so that is non-conforming. Looking at the front of the house, the left side of the house is the leaching field right against the house, the right side has a drive under garage. What the owners have found is based on the orientation of the house, they will always gravitate and sit out on their front lawn, based on the sun late in the afternoon, when they're working in their yard, that is the best spot of their house. When they are in the back, they are catching the cold, northeast breezes. There is a deck in the back and a full walk out basement under the deck, so it doesn't really bring them to the yard because of the height. But the hardship is they actually have three fronts – not necessarily developed, but for zoning setbacks, there are three fronts. He believes the layout of the neighborhood, he only found one house in the neighborhood that might be conforming.

Mr. Kelleher asked him for the purposes of this application, what is he asking for? Mr. Rockwood stated they are asking for a reduction in the setback of the frontage from 40' to 32' so they can put on a farmer's porch. Mr. Rockwood stated Quincy is the main street, the others are basically dirt roads, undeveloped. Mr. Hubbard asked what did the petitioner want to treat as his frontage. Mr. Rockwood stated the Quincy Street, so it would go from the 40' to the 32'. Ms. Fidler stated she believes that Mr. Hubbard was arguing that if the frontage was on Arlington or Charleston the setbacks would be sufficient. Mr. Hubbard stated that is exactly why he asked the question, and that is why he is surprised by the answer.

Mr. Rockwood stated the house is facing Quincy Street. Mr. Kelleher stated they understand that, but if the petitioner declares one of the other streets as the front, then Quincy would be a side setback. Mr. Rockwood stated he knows that, but the house faces Quincy, the address is Quincy, it's 40 feet right now, so he put it in as a Special Permit / Variance based on however the Board chooses to approve it. Mr. Hubbard stated if, for zoning purposes, they treated Charleston or Arlington as the frontage, he doesn't see why they would need a variance or a Special Permit. Mr. Grimes stated Arlington is not a developed road. Mr. Hubbard stated whether it is paved or not, you're located between three streets. Mr. Kelleher stated the applicant can do that, but once they make that decision, they can't come back again and say they want to use another street for the frontage; it would be stuck forever as Arlington as your frontage. Mr. Rockwood stated they have so much real estate over in that direction, so....*(he said to his client)* "if you wanted to build near the garage doors' side, you'd still have your 40 feet."

Mr. Hubbard stated it is the petitioner's choice, which one of the three streets – the one they come in on, Quincy, is going to require a variance, whereas if they declared Arlington or Charleston the front, for zoning purposes, they would meet the site setback requirements, front and rear setbacks requirements and they wouldn't need a variance or special permit. Mr. Rockwood stated they were directed here because they thought they would have, but.... Mr. Kelleher asked Mr. O'Neill if he had anything to say about if they chose Arlington or Charleston. Mr. O'Neill stated he considers it three fronts and a rear; there are no sides. Mr. Kelleher asked Attorney Galvin if the applicant could pick one front, for zoning purposes, one-time; Attorney Galvin stated they could, but he doesn't know if that has already been decided once before; he doesn't know if they already picked one.

Mr. Kelleher stated if that's the case, then people who live on a corner, and the front of the house is clearly on one street, but they declare the other the side. Attorney Galvin stated but on this their driveway comes off Quincy Avenue, the house fronts Quincy Avenue; Mr. Kelleher stated he agrees.

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Mr. Rockwood stated that never, from a zoning really determines where the front of your house is on a corner lot; if you're on a corner, they're both fronts. Mr. B. Murphy stated he didn't think the front of the house had to face the frontage; Mr. Kelleher concurred. Ms. Conway stated she believes they need to determine if it had been chosen prior. Mr. Kelleher asked if there is anyway to determine if he chose Quincy as his frontage for zoning purposes. Mr. O'Neill stated that placing the lot depth at 120', working off of Quincy, they do not have 120' of depth. Mr. O'Neill asked if Arlington or Charleston improved, or both dirt roads? Mr. B. Murphy stated Arlington is built. Attorney Galvin asked if it were private or public? No one knew. Attorney Galvin stated in order to have legal lot frontage, the frontage needs to be on a public or private way, adequately. Mr. B. Murphy stated Arlington is built out to 20 feet for the house to be on there. Attorney Galvin stated it's not whether you can get down there, it's whether the Planning Board has said it's adequate street improvement. Mr. B. Murphy stated he knows there are houses built on Arlington Street, and received a street determination; Arlington is an improved road, so they could use that as their front. Attorney Galvin asked if Charlestown was improved? Mr. B. Murphy stated it was not, but Arlington was. Mr. Rockwood stated that would be most advantageous, then they wouldn't need anything.

Mr. O'Neill asked if they were going to have something forwarded to the Board; because he still considers these three fronts. Mr. B. Murphy stated he just needs to go to the Assessors' and they can give them a new address on Arlington Street. Mr. O'Neill asked if it would be a surveyor and then the Planning Board would have to send the ZBA a comment; Attorney Galvin stated it would have to say it was improved, sufficient to grade construction. Mr. B. Murphy asked then if there would be no address change; several people stated "No," Mr. Kelleher stated it would be for the purposes of building. Mr. Kelleher told Mr. Grimes that he can't come back and say at a later date that he wants Quincy. Mr. Grimes stated he understood. Mr. Kelleher asked what was needed. Mr. O'Neill stated something from a surveyor stating that... Attorney Galvin stated the Board needed some confirmation from the Planning Board that stated Arlington has adequate grading and construction, which they will probably give you, and then the applicant will put something in writing declaring Arlington Street their legal frontage. Mr. Kelleher asked if the Board wanted to continue to get that stuff; Ms. Fidler stated she thinks that's wise. Mr. B. Murphy stated he doesn't need any relief if he does this, correct? Mr. Kelleher stated he thinks they should continue to make sure they get it, then they could dismiss without prejudice; and moved to continue to January 26, 2016; seconded by Ms. Conway. VOTE: Unanimous.

CONTINUED HEARINGS:

#15-59: Don McNeill: 11 Hancock St, M08-47-03, R-3: SP (Section 10.12) to construct an 18' x 28' two-story addition with associated deck and balcony to the rear of the existing dwelling (5' x 18" balcony over an 11.3" x 18' deck which will be less than 4' above grade) and enlarge a balcony, or open deck over the existing 1st floor, on the existing 2nd-story on the front of the dwelling and to construct a detached 12' x 24' garage in a different location to replace an existing non-conforming detached garage

Mr. Kelleher re-opened the hearing.

Present before the Board: *Dick Rockwood, Rockwood Design*
 Brian Taylor, Stenbeck & Taylor
 Don McNeil, owner

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Mr. Kelleher stated the Board just received new plans at the office this afternoon.

Mr. Rockwood reviewed the modified plans, rebuilding the garage. The question of this property was the side lot line. The Board had requested to show the other houses on the left and right side, and they are on the updated plan. Mr. Kelleher asked how far away is 335. The applicant's answer was a bit convoluted; Ms. Fidler asked to hold on and asked from point-to-point 12 feet. Mr. Taylor confirmed.

Mr. Rockwood stated they turned in elevations on the addition. Mr. Kelleher asked if anyone had any questions. Ms. Fidler stated she was disappointed this was last minute; she would have liked the opportunity to look at it. Mr. Kelleher stated they can close and deliberate. Ms. Fidler stated it has just been so long that they have been continuing it, and she is trying to now rush through to see the differences. Mr. Kelleher asked if there was anyone in the audience who wished to comment: none. Ms. Fidler asked if the plan they have in front of them now is the same as the previous except for the abutting properties. Mr. Rockwood added and one minor change in the garage; it was 19 feet from the street, and it has to be 20, so they pushed it back.

Mr. Kelleher moved to close the hearing and take the matter under advisement; seconded by Mr. Hubbard: VOTE: UNANIMOUS.

#15-79: Bruce Kittredge: Petitioner is seeking a Special Permit (10.12), to elevate and existing single family dwelling onto wooden piles, and add a new 14' x 30' deck to the rear of the home and new stairway access on the front of the home located at 3 Atlantic Street, which is identified on the Assessors' Maps as parcel K12-17-08 and is located in an R-3 Zoning District.

Present before the Board: Dick Rockwood, Rockwood Design

Mr. Rockwood stated that he developed a pile plan; Stenbeck & Taylor did the survey. One of the questions was about the height of the building. He disseminated photos to the Board and gave the Board a sketch of the elevation; give or take a few inches or even a foot, the ridge would only be 32 feet. Ms. Fidler asked if he could stop for a second, they are all scrambling all the things he just handed to them. Staff informed the Board that this was the first of these plans; people have been in to the office to see the plans, but there have been none to show them.

He believes he is only there to ask for permission to put on the deck, which is more than 4 feet above ground, and the front deck and stairs to get out of the property. Questions came up about the elevation and what that is going to look like, but he is only there to get zoning approval. Mr. Hubbard asked if this was the one they were concerned because the stairs were going towards the street; Mr. Rockwood said he didn't change anything. Mr. Hubbard stated maybe he is confusing this with another property. Mr. Kelleher asked how much are they elevating the height? Mr. Rockwood stated 6 or 7 feet; he would have to look at the survey drawing; he calculated it and came out at elevation 24. Mr. O'Neill asked if the 32 represented the new proposed height; Mr. Rockwood stated yes. He said the house has to be at 24 to meet the FEMA requirement of the VE zone. Mr. Kelleher asked Mr. O'Neill if he was happy with this. Mr. O'Neill stated elevating by right, as long as it does not exceed 35 feet, is allowed without a Special Permit; he is correct, the special permit is required because of the deck. Mr. O'Neill stated the

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egress of the stairs, typically they try to keep them parallel to the front lines, if they can, so it's not going into the setbacks. Mr. Rockwood stated he did the best he could, but that was where the front door is. Mr. O'Neill stated he could use landings and turn them. Mr. Rockwood stated they wanted to get off the street. Mr. Kelleher agrees with Mr. O'Neill.

Mr. Kelleher asked if there were any questions from the audience. *MaryAnn Brogan.*

Ms. Brogan stated she has a problem with not having the plans to see; she came in several times and the office had none. She is an abutter. Mr. Kelleher stated that she had asked for site protection during construction, or something. Ms. Brogan stated, correct; she wants construction fence or something because it looks like there is only 3 feet between them. She thought the plans should be available. Mr. Kelleher asked if she would like some time to review it. She said she would. She stated she also can't conceptualize how they are going to move the house; logistically with such little room, without going on her property.

Mr. Rockwood stated when it goes out to bid they'll be qualified. Mr. Kelleher stated they have to comply to get it in right. Mr. Rockwood stated he just wants to clarify; they are not doing anything to this house except bringing it to flood elevation requirements, because he wants to go to FEMA to see if he can get help for multiple losses, but he needs approvals of a plan. Ms. Brogan stated she has concerns because they put in an 8 foot fence; Mr. Rockwood stated it can only be 6 ft; Ms. Brogan stated it is much taller than her, it is 8 feet. Ms. Brogan stated he has taken 2 sections down preparing for construction. She wants a barrier because she spent quite a bit of money on her rip-wrap, and if one of the machines go over and destroy it, plus she doesn't want heavy equipment on her land. Mr. Kelleher stated they can't go on her land. She said she knows they are not supposed to, but she is concerned and would like a construction fence put up. Mr. Kelleher stated the Board can do that in their conditions; as far as going on her land, they aren't supposed to, and she would contact the authorities if he does. Mr. Rockwood stated they are working with Conservation now; he would like wood piles, but they require concrete pilings. Mr. Kelleher asked what the Board wanted to do; Mr. Hubbard suggested continuing to January 26; Moved by Mr. Hubbard, seconded by Mr. Kelleher: VOTE: Unanimous.

DISCUSSION: Marshfield Rod & Gun Club: Deminimis change in roof slope / design

Present before the Board: Bob Morell, General Contractor

He explained they are going from a block & brick building to a pre-cast, so the shape is a little different. The size, and footprint is the same, it is the roofline; rather than a sloped roof, it will be more of a flat roof with a 3 inch pitch on it.

The Board concurred that this was a deminimis change. Mr. Kelleher stated there was no need to vote; Mr. O'Neill will have those plans submitted with the building plan. Mr. O'Neill stated he has one small item if the Board will take it as unanticipated 48 hours in advance. Mr. Kelleher agreed. Mr. O'Neill stated the Jetty restaurant wants to add a fireplace, but as a result they have to build a 2 foot by 4 foot box on the outside to hold the fireplace. It does not affect the egress; it is about the size of a file cabinet. The Board concurred a deminimis change.

ZONING APPLICATION & FEES The Board reviewed the 40B application; the Building Commissioner wanted "overlay" identified if necessary. On the fees, the Board agreed that it needed to

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charge actual costs of advertising, as the Board has been losing money for years on it. Also, the application should make the applicants more deliberative in what they are seeking.


Site Plan, while higher than previously, it is still much lower than surrounding towns. The 40B fees vary in other Towns, it is recommended they maintain the fees of subdivision fees. The Board suggested staff works with the Planner and make use the subdivision prices. They also felt to maintain the guidelines of 53G of the Planning fees. Attorney Galvin stated the problem is the Planning Board's fee is based on acreage; so the Board could use the fee of a small definitive subdivision. Ms. Fidler asked if the escrow worked towards peer review. Attorney Galvin stated some do, but everyone comes in and asks for a pay rate. Mr. Kelleher suggested staff works with the Planner. Mr. Hubbard thought an appeal from the Building Inspector was high, Mr. Kelleher and Mr. Murphy were fine with it. Attorney Galvin stated he can tell you anecdotally because the just filed 2 Pembroke that it is more expensive than a Special Permit (\$300). Mr. B. Murphy moved to adopt the fee structure and advertising on the instruction sheet, seconded by Ms. Conway: VOTE: Unanimous. The Board also agreed to use the definitive subdivision fees fro 40B; moved by Mr. Kelleher, seconded by Mr. B. Murphy. VOTE: Unanimous.

There was a brief discussion regarding the fulfillment of the applications, and they deadlines for submission. The Board decided to make them 1 week in advance, if they bring them to the meeting, the Board will continue to the next week, so everyone has the new plan and has a chance to review it. Mr. Kelleher stated it also will stop them from coming in that day with plans that have been talked about for months; we'll hear you, but we'll continue the hearing.

The Board asked if they could be converted to put them so they can be filled out online; Attorney Galvin suggested they speak to IT. Mr. Rockwood asked if they could discuss the building height. Staff apologized they did not recall the request. He thought it was sent weeks ago; staff may not have been in. They will put it on the agenda for the next meeting.

ADJOURNMENT: Mr. Kelleher announced the next meeting will be January 26, 2016 moved to adjourn; seconded by Mr. Hubbard: VOTE: Unanimous.

Respectfully submitted,


Brenda Eckstrom
Zoning Aide

These minutes were approved by the Board on JANUARY 26, 2016 by a
unanimous (5-0-0) vote.

Signed,


Clerk