

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL SEPTEMBER 28, 2021 6:30 P.M.
MEETING MINUTES**

Members Present:

*Lynne Fidler, Chair
Brian Murphy
Heidi Conway
Mark Stiles
Stephen Feeney
Larry Keane (remote)*

Also Present:

*Andrew Stewart, Building Commissioner
Atty. Robert Galvin*

MARSHFIELD TOWN CLERK
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Ms. Fidler called the meeting to order at 6:30 P.M. and advised that they were waiting for Mr. Feeney; they have four (4) fulltime members and will use an alternate until he arrives.

Ms. Fidler stated that regarding **Case #19-81, DJ Sullivan**, the Planning Board had completed that project and she anticipates that it will be off the Zoning Board plate at the next hearing.

Ms. Fidler stated that **Case #21-44, CJV Automotive & Towing**, had requested to continue to September 14, 2021. She made a motion to continue to that date at 6:30 PM and the motion was seconded by Mr. Stiles; the Board voted 5-0 to continue with Fidler, Conway, Stiles, Feeney and Belezos voting in favor.

Ms. Fidler stated that **Case #19-81, DJ Sullivan**, had requested to continue to September 14, 2021. She made a motion to continue to that date at 6:30 PM and the motion was seconded by Mr. Stiles; the Board voted 5-0 to continue with Fidler, Conway, Stiles, Feeney and Belezos voting in favor.

Ms. Porreca advised that **Case #21-72, 17 Seminole Avenue**, had requested to withdraw without prejudice.

Ms. Fidler named the Board members in attendance and said they would stay with the Agenda. She asked about **Webster Point Village** and Mr. Galvin suggested to open the hearing and continue for 30 days; they have filed an appeal with Mass Housing. Mr. Galvin explained that Webster Point Village was on the Agenda September 14th and had to have the next hearing within 30 days. Ms. Fidler made a motion to continue to the October 26, 2021 at 6:30 PM which was seconded by Mr. Murphy; Ms. Fidler, Mr. Murphy, Ms. Conway and Mr. Keane were in favor.

Mr. Feeney joined by phone.

#21-70: 165 Prospect Street, L.L.C.: The Petitioner is seeking a Special Permit in accordance with §305-9.05.A of the Marshfield Municipal Code to change one commercial use to another commercial use on the property located at **173 Prospect Street** which is further identified on the Assessors' Maps as being on parcel E17-04-10 and is located in an R-1 zoning district.

Ms. Fidler read Case **#21-70** into the record and stated that Mr. Keane would vote in place of Mr. Feeney. Trish Vivado and Steven Carrell, the owners of the Marshfield Hills General Store, stated that they bought the building next door last year; it used to be a dentist office. They want

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to use it as an annex to the General Store and sell ice cream seasonally. There won't be any drastic changes to the building, they will just open up a window; it will be a walk-up place. Mr. Stewart said that he had met with the applicant previously about changing the pre-existing nonconforming use as a professional office to another nonconforming use as retail. Mr. Carrell said that he considered the hours would be 12:00 until dark from Memorial Day to Labor Day plus Christmas. He said they want a mom and pop ice cream store for the neighborhood. Mr. Stewart said they would be back before the Board for Site Plan approval; Mr. Carrell said they would have a comprehensive landscaping plan. Mr. Murphy said that he thinks it's a business to business change. Pamela Keith of Standish Road said that she didn't think the Bylaw allowed this. Ms. Fidler made a motion to close the hearing which was seconded by Mr. Murphy; Fidler, Murphy, Conway, Mr. Keane and Mr. Belezos were in favor. She made a motion to grant the Special Permit which was seconded by Mr. Murphy; Fidler, Murphy, Conway, Mr. Keane and Mr. Belezos were in favor.

#21-59A: Town of Marshfield/Harbormaster: The Petitioner is seeking a Special Permit in accordance with §305-10.10, §305-10.12 and §305-13.02 for the extension and alteration of an existing nonconforming use and Site Plan approval under §305-12.02 of the Marshfield Municipal Code to regrade the Town's existing Dredge Spoils Area (DSA) to provide additional parking for a total of ninety-four (94) parking spaces and eighteen (18) trailer spaces for use by Harbor Park visitors and overflow parking for the Town Pier on the property located at **Joseph Driebeek Way** which is further identified on the Assessors' Maps as being on parcel M07-03-01 and is located in an R-3 zoning district.

Ms. Fidler said that this is a new hearing because **Case #21-59** did not include §305-10.12; she then read **Case #21-59A** into the record. Patrick Brennan said that nothing had changed from the plans previously submitted; they just added the §305-10.12. Ms. Fidler said that Mr. Feeney would vote, it would be the five (5) full time members. She said there were two (2) concerns the Board needed to address; the parties will need to go to another Board or agency if the issue should be handled by them. She asked the Board if they felt §305-10.12 was the proper way to proceed; Mr. Murphy said he thinks the application is correct. Mr. Stewart brought up the parcel on GIS. Mr. Murphy said he wanted to verify this was an accessory use and find out if the parking lot at the end of the road was part of the parcel to show existing parking at the location. Ms. Fidler stated the public would have an opportunity to speak. Mr. Stiles said it should be site plan approval. Mr. Galvin said that on April 22, 1931 the Town took possession of the property from the harbor down to Dyke Road. He heard what Ms. Keith said earlier and saw correspondence from her about §305-10.12 and he agrees with her. He said that §305-10.12 is a fairly permissive use and read the criteria for it. One thing the Marshfield Bylaws that others don't is that they are more permissive if they find the case meets all 10 criteria. He said if it doesn't meet the criteria then it can't be granted. Ms. Fidler said the other point she wants to understand is what other forces are in play here, with the lot in the DSA. Mr. Galvin said he doesn't think that is the Board's call about what belongs to what entity/state/etc.

Ms. Fidler said that many spoke at the last hearing; she said they don't want hearsay, they want something concrete. She said that Ms. Porreca has received emails and asked if there was an index; Ms. Porreca said she would put one together. Steven Lynch, 50 Central Street said he has

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a problem with the application because it says existing parking lot; that lot is unlawful. Someone stated that it was built in 1966 before zoning; Mr. Lynch said this was late 1980s after zoning. He said it's not a nonconforming use if you are expanding. Secondly, it's more than 10.12 and 10.10 criteria. If the residents feel it's detrimental you need to take that into consideration. He asked if he could ask the Harbormaster a question and Ms. Fidler said through the Board. Mr. Lynch said that he had sent a FOIA request but hadn't heard back; Mr. Galvin and Ms. Fidler said this was irrelevant. Ms. Fidler said they are here for the Special Permit and asked Mr. Lynch if he could address that. He said that people come in and drive up and down and they don't think it's relevant? Mr. Lynch said to expand the use to 100 spaces will put undue congestion for the people who live and work there. They pay taxes and don't want to pay taxes for someone in Worcester to use it. Ms. Fidler asked if there was another topic besides the use of out of town people. Paul Clark of Branch Street said that he agreed with Mr. Lynch; they shouldn't be on the verge of having something put forth; mentioned a casino in Revere on contaminated soil; Ms. Fidler said they can't go off topic. Mr. Brennan said they have submitted chemical analysis to the Board and said that based on the analysis the soil placed there doesn't meet the criteria. Mr. Clark said the town did those tests and he would feel better with an independent test. Ms. Fidler asked if he was willing to provide someone to prove his point.

Mary Murphy said this has been a dumping down since the 1960s and her husband and friends were told not to ride their bikes there in the 1970s. She was told you can't change the use of a DSA from a DSA. Ms. Fidler asked if she had that information and she said the DEP, Peter Wong and another gentleman were pulling old records. Ms. Fidler asked for the specific records and Ms. Murphy said they were going back as far as they could go. John Cusick said that testing was done in 2002 and is almost 20 years old. What was good in 2002 might not be good in 2021. He said he heard Mr. DeMeo was expanding the parking because large trailers are a problem. Ms. Fidler said she read his email and understood. Mr. Cusick said there should be testing and Ms. Fidler asked when testing would occur. Mr. Cusick said they will put it out to bid and Ms. Fidler said he has known about this and should provide proof. Mr. Cusick said at the last meeting Mr. Brennan said there would be testing. Mr. Murphy asked if the material was tested before it gets there and Mr. Cusick said yes. Mr. Murphy said if that was 2002 then all material put there was tested before it was dumped. Bob Arsenault of Cove Street said this should be put off for 30-60 days. He said the DPW is a town department and is credible.

Pam Keith of Standish Street said that Mr. Brennan is telling people it was tested before it was dumped. She said to look at 2009/2010 testing for water quality that protects aquatic life. If it's too toxic for the sea they are dumping it in the DSA. Ms. Fidler asked if she had that information and Ms. Keith said it was on line at the Registry of Deeds. Ms. Fidler asked for the Book and Page and Ms. Keith said it was from two (2) years ago when the Board approved the Green Harbor dredging. Ms. Keith said she has six (6) comments and Ms. Fidler said rules of procedure is that every resident has an opportunity to speak. Ms. Keith said they skipped over 10.12.

Ms. Fidler asked if anyone was here or on Zoom who was in favor. Linda Daichman (sp) didn't give an address but said she was doxed on line and threatened on Facebook. Ms. Fidler said the Board would reflect on what is going on and get back to Ms. Keith. She said there are two (2) people who want information that isn't available right now. She asked the Board if they thought

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they should wait. Mr. Murphy said that Mr. Cusick said the BPW is testing; he thinks the Board should get through everything and go from there.

Ms. Daichman said she became aware of this from remarks on line about town government trying to pull wool over eyes; she looked at all documents and doesn't see it. She said this is great for small business in the area; she said it's not all of our tax dollars because we get state and federal money. Scott Dixon of Ocean Street said directionally he is in support of the project; he thinks changes over the last few years have been positive. With that said, out of respect for the abutters he doesn't think this is a good idea.

Michael Kiely of Ocean Street said he is in favor and will send in emails if opposed. He said you could say Lizzie Borden is buried there but you can't prove it. You can't just say something, you have to prove it. Ms. Fidler went back to Ms. Keith who said the Board doesn't know what it is talking about with the state. She said they can't dump within 500 feet and stated that Mr. Galvin had left; Ms. Fidler said he had a previous commitment. Ms. Keith said it was too bad he was gone because he seemed to be saying earlier that you don't have to decide this tonight. She said that our own Bylaws say if you haven't used something in two years...Ms. Fidler asked if she had something for reference. Ms. Keith said the use as dumping has gone away and it's illegal. Ms. Fidler said she keeps saying it's illegal but she recalls the intent of the DSA is not abandoned. Ms. Keith said that Mr. Galvin said 10.12 was permissive; Ms. Fidler asked if she had a legal background. Ms. Keith said no and Mr. Galvin had asked that a few years ago. She is not an abutter but she is a concerned citizen. Ms. Keith said she had more signatures to turn in and said she doesn't agree with Mr. Galvin on the change of use; he said you can change one nonconforming use for another. She said Findings of Fact #1 is a problem for her. Ms. Fidler asked if she was talking about 21-59A and she said yes. It says use requested is listed in Table of Use in at least one district – it's an answer but it's not a fact. She said last time it said Maritime Center now it says public utility. Ms. Fidler said when she stated 10.12 was the only change she was reading it into the record. Ms. Keith said when you go to the Table of Use #14 includes water, sewer treatment and refuse facility. That stood out to me because if constructing a refuse facility you can't fill the land. She doesn't think the harbor needs 2 acres of parking; 10.10 isn't needed for parking unless it's for refuse.

Mr. Galvin returned to the meeting and said he saw the application that said 10.12. Mr. Stewart said the reason 10.10 is included is because it's the method of getting a special permit; that's the reason to use 10.10.

Ms. Fidler said it was 8:24 and they are looking for new information. Bob Tice said when he was at Town Meeting for Harbor Park it was for small things, for people to go to the park; the little lot is appropriate. Ms. Fidler asked what his argument is and he said it wasn't needed. Ms. Fidler asked for his proof; she asked if he was a resident and were the other members residents. Joseph Pecevich of Wilson Road said he heard about the little parking lot from Mr. Tice and said if it's the lot across from the park it's illegal. He doesn't know the methods or how they did the testing. Ms. Fidler asked Mr. Pecevich if he was qualified. Mr. Pecevich said the results he has seen mean nothing; if an area has been in use for years and you don't know how many layers, what will we get for an area. He said the results are worthless; the DPW will test but where; there hasn't been any real information about results. He said the letter from Amory Engineering

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talks about congestion and increasing visibility; that's speculative. Mr. Cusick said that Mr. DeMeo said they need additional parking when the lot is full; he asked Mr. Guimond about accessory parking and he said the distance there is over 300 feet and regulations don't allow structures. He would like to address the little lot; he was told it was grandfathered after 10 years. Mr. Belezos asked Mr. Cusick if those were concerns of the BPW or himself; Mr. Cusick said he was a resident but on a Board. Fran Lonergan of Town Way said the Board should be here for the town but is hostile. Ms. Fidler said that wasn't correct and would like the opportunity to correct the misconception. She asked Ms. Lonergan if she had any information. She said she and her husband ride bikes down there several times a day and every time someone says something there is a rebuttal. Ms. Conway said the Board has to take in all sides and stay within guidelines. She said they have heard this before; they try to stay neutral and do the best for the town. She said sometimes the Board is here for 6 hours; Ms. Lonergan asked why it matters if it's 6 hours.

Marlene Labossier of Central Street said these are residential homes, it's the air that they breathe. She said she is a cancer survivor and will stay here 20 hours. Ms. Keith said this is not a lawful nonconforming use with 10.12 and can't do it with 10.10 either. Mr. Stiles said he would like to dive deeper into what the DPW is doing and he would like to hear from the closest abutter. Martin Lynde of Cherry Street has property across the creek and said he looks at the lot all the time and it's half full; it might be busy July 4th. Eric Murphy of Ocean Street said this is the 3 S's – soil, safety and slippery slope. He wants the soil tested and he remembers when the whole area was a dump. Safety is an issue; people come back, pick up their boat and go out to Brant Rock center; now we will be dealing with bigger boats. Ms. Fidler said they could condition things but they are not at that point. Mr. Stiles said he wants to know more of what the DPW plans are and Mr. Cusick said he would get back to him. Mr. Galvin said the BPW has a budget to test this and normally they would write a letter to the Board; he isn't sure if they are coordinating with Mr. Brennan. Mr. Cusick said they were coordinating with Mr. Grafton and that the BPW is doing a traffic study. Mr. Galvin asked if the BPW had expressed an opinion in favor or against this and Mr. Cusick said not yet. He said Mr. DeMeo came to them and was turned down. Mr. Belezos said they need a timeline.

Ms. Fidler said Mr. Brennan and Mr. DeMeo have sat here for a long time and asked if they had comments to make. Marie McCue of Cherry Street asked what necessity was, is it a month or a few days; nobody in the neighborhood wants it. Ms. Fidler said it's their right to come to the Board and the public's right to oppose it. Ms. Fidler said they have been at this a long time and talked about moving it to the next meeting. Mr. Murphy feels it should be left open and Ms. Conway and Mr. Feeney agreed. Mr. Murphy advised the public to send in their questions in writing if they feel their questions got missed. Ms. Fidler said that if the BPW is planning testing she would like it in writing. The next meeting is October 12th and the Board suggested October 26th. Ms. Fidler advised the residents to send in their comments and questions by the Friday before the hearing. She made a motion to continue the hearing to October 26th at 6:30 PM with the expectation that the public will have responses to what was talked about tonight and Ms. Murphy will have the information from the DEP. Mr. Murphy seconded the motion and Fidler, Murphy, Conway, Stiles, Feeney and Keane were in favor.

Ms. Fidler stated it was 9:00 and made a motion to take a 5 minute break which was seconded

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and all were in favor. She made a motion to call the meeting back to order at 9:05 which was seconded and all were in favor.

Mr. Stewart said someone was refusing to mute and is not following the procedures. Ms. Fidler read **Case #21-72** into the record and stated the Petitioner wants to withdraw without prejudice. She made a motion to withdraw without prejudice which was seconded by Mr. Murphy; Fidler, Murphy, Conway, Stiles and Feeney were in favor.

Mr. Stewart asked if they could discuss an issue. He said earlier this year someone applied to remodel an existing accessory apartment on 1121 South River Street. He told them they needed a Variance because the lot was nonconforming; they said they didn't need it because it is existing. It's labelled as a 2 family home and they want to do an addition and make it a duplex. Ms. Fidler advised bringing it to Mr. Galvin for legal advice and said they would table this for now. Mr. Stewart said they are taking advantage of this decision for the duplex.

Ms. Fidler made a motion to adjourn the meeting which was seconded by Murphy; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Stiles and Feeney.

The meeting adjourned at 9:10 P.M.

Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

These minutes were approved by the Board on April 11, 2023 by a
5-0 vote.

Signed:  Date: 04/11/2023