

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,  
MARSHFIELD TOWN HALL JANUARY 10, 2023 6:30 P.M.  
MEETING MINUTES**

*Members Present:*

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

*Also Present:*

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

MARSHFIELD TOWN CLERK  
RECEIVED  
2023 JAN - 7 AM 11:13

Mr. Murphy called the meeting to order at 6:35 PM. He conducted roll call attendance as Mr. Hensley was on Zoom. He explained to the public that Zoom was provided as a courtesy and advised callers to use \*6 to mute and unmute.

**#23-01: Neil Duffy:** In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioner is seeking an Appeal of the Building Commissioner's non-response to his request(s) for enforcement for possible Zoning By-law violations on the property located at **278 Ocean Street** which is further identified on the Assessors' Maps as being on parcel N07-01-34 and is located in a B-4 zoning district.

Mr. Murphy read Case **#23-01** into the record. Neil Duffy, 17 Bryant Lane, said he wished he didn't have to be here but couldn't get answers from the town. He bought his house in 2016 and it's a great neighborhood. It was quiet when he bought it but got a little louder at night which was understandable living near a restaurant. Then COVID hit and they moved the entertainment outside. He said he went along because it was COVID. He said then they moved in the Recreational Vehicle (RV) and the circus lights. Mr. Duffy said it was really loud last year from Tuesday through Sunday with the outdoor entertainment; he couldn't even have a conversation on his porch; he asked the owners to turn the music and lights down. In 2021 a storm knocked the fence down and he couldn't get the owner to fix the fence. At the same time the Town was fixing the seawalls and patrons would walk through his property to get to the beach. Mr. Duffy said Mr. Stewart wrote a letter to the owner to repair the fence; he noticed the RV and said it was a violation; the RV has been there for three (3) years. Mr. Duffy said he has paid \$286.00 on top of his taxes to get answers from the Town. He said what is more pressing is that he is killing rats in his kitchen. He believes the drink mix is draining out of the RV into the yard and it's like sugar water for rats as well as food that drops from the tables. Pictures of a rat were displayed. Mr. Duffy said Mr. Stewart had asked the owner to remove the RV in March of 2022 but it wasn't removed. Additional pictures were displayed showing the "circus lights" that light up the neighborhood and his house.

Mr. Duffy said he understands the outdoor dining because of COVID but they moved the entertainment outside. He stated that the owner took 4x4s from him to repair the fence and he has him on camera. Mr. Duffy asked if there were permits for the outdoor entertainment but didn't get an answer. He said as far as he can tell they don't meet the Bylaws and nothing has been done. The entertainment has taken out fourteen (14) of their parking spaces and people park in the Esplanade. Mr. Hensley said he lives in the Brant Rock area and everyone has rats, it's not from the RV. Mr. Sullivan said rats were not a zoning violation.



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Mr. Stewart explained what he has done for this situation. He received a request for enforcement on the Jetty property last spring because the fence had been damaged in a storm; it's the required buffer between the Residential homes and this business. Due to the Covid-19 State of Emergency, this business had been granted approval by the Select Board to have temporary outdoor seating and it also has an entertainment license by the Select Board for outdoor entertainment. During this original request for enforcement, Mr. Stewart also found that there was an unregistered RV being used as a drink-making station; that's a floodplain violation. The owner of the Jetty was served with a notice of violation and responded that they intended to fix the fence according to the Site Plan Approval they had been granted by the ZBA and that he would be registering the vehicle. Mr. Stewart said the decision granting Site Plan approval to the Jetty was appealed by Mr. Duffy; the Site Plan has not been recorded because of the appeal. He said the Site Plan established the fence as the buffer and Mr. Stewart said he found it difficult to enforce this since it was under appeal. The fence was repaired in the spring but the RV remained unregistered and unmoved throughout the summer. After this notice was sent, some string lighting was added to the site, some of the lighting fixtures were changed, and a metal framed tent structure was added. Mr. Duffy filed several complaints via email throughout the summer about the lighting and continued use of the parking lot for seating, adding some complaints about rats that were forwarded to the Board of Health. Once the summer season came to a close, Mr. Stewart sent another enforcement letter to the owner of the Jetty about the unregistered RV as 180 days had expired since his last letter; this is the longest amount of time an unregistered RV can be stored in a flood zone during a 365 day period without being properly elevated and anchored. Mr. Duffy filed another request for enforcement, but as Mr. Stewart was already working on getting the owner to comply with the floodplain violation, he failed to act on his new enforcement request within a 14 day period. Mr. Duffy appealed this failure to act to bring these matters before the ZBA. The owner of the Jetty has since met with Mr. Stewart and has plans to have the RV removed this month and return the parking lot to its original plan for the spring as the temporary outdoor seating will be discontinued in April. The owner contends that even though the lighting was changed, it still complies with the bylaw requirements. The string lighting over the parking lot is quite bright, but is something that other businesses in Town utilize over the outdoor seating areas and outdoor patios. It does appear that there are some flood lights in use on this property. Mr. Stewart said he focused on the things he absolutely knew – the Flood Zone and FEMA. He said that the Jetty owner understands that the COVID accommodations expire in April and he cannot utilize outdoor seating.

Mr. Stewart said it wasn't clear to him where the Zoning Board jurisdiction was regarding outdoor seating and entertainment; that was Select Board jurisdiction. He said he told Mr. Duffy to file again because Mr. Stewart needed help with this. Mr. Keane asked if the Site Plan approval addressed the lights. Mr. Stewart said it did as well as the fence and several other aspects. Mr. Keane asked if the parking lot will be restored once the COVID accommodations go away in April. Mr. Galvin said that the Jetty is obligated to follow the guidelines in the decision regardless of the appeal. Mr. Murphy asked about lighting and Mr. Galvin said they can get rid of lighting. Mr. Keane asked about the light pole and Mr. Galvin said he does not know where they got approval to put up a light pole. Mr. Stewart believes the Select Board approved it. Mr. Galvin said it was clear they can have outdoor seating until April. He said the lighting wasn't something that the Select Board approved; he doubts they would have approved it based



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on what he has just seen. Mr. Murphy said they can enforce the decision. Mr. Galvin said he thinks they asked about modification of the back and that was what is under appeal. Mr. Sullivan said the May 17<sup>th</sup> letter sought enforcement to change the lighting and remove the RV. Mr. Keane asked if the light pole in the middle of the parking lot was a Flood Zone violation. Mr. Stewart said the owner has met with him and addressed these issues. Mr. Keane said he didn't see anything about lighting and Mr. Murphy said it says 10:00 AM to 10:00 PM.

Mr. Stewart said this is the first time these "COVID allowed" situations has come up for enforcement which is why he needs help. Mr. Murphy said he wouldn't want to sit in the dark and Mr. Sullivan said there must be a medium point between the carnival lights. Mr. Stewart said it doesn't; get dark in the summer until 9:30-10:00. Mr. Galvin said he should remove the RV and see what Select Board said about the lights; lighting should be reasonable and this is not reasonable. He said that Mr. Duffy can ask the Select Board to revoke this. Mr. Stewart said that Mr. Vaughn said the RV will be removed by the end of the month which is twenty-one (21) days from now. If it's still there on February first then he will be fined. Mr. Stewart said he has forwarded other complaints to the Board of Health.

Mr. Murphy asked Mr. Galvin what they should do; Mr. Galvin said to grant or deny the appeal. He suggested they ask Mr. Duffy if he would be happy with enforcement action by Mr. Stewart. It won't cost him anything to file with the Select Board to remove the lights or have the lights turned to a certain level. Mr. Galvin said if nobody is outside and the lights are on, that's wrong. Mr. Duffy said that until now Mr. Stewart wasn't able to make the call. Mr. Galvin asked him if he would be satisfied if the RV was gone at the end of the month and he replied yes. Mr. Keane stated that the COVID rules will be gone April 1<sup>st</sup>. Mr. Keane said that he appreciated that Mr. Duffy said he understood that he bought a house next to a restaurant. Mr. Sullivan said from what he understands it was fine before COVID. Mr. Galvin suggested the Board deny the appeal without prejudice so that Mr. Duffy can come back if the issues are not resolved. Mr. Murphy made a motion to deny the appeal which was seconded by Mr. Sullivan; Murphy, Feeney, Keane, Hensley and Corwin were in favor.

**#23-02: Joseph and Jodi McDonough:** The Petitioners are seeking a Special Permit in accordance with §305-11.09 of the Marshfield Municipal Code to create a 26' x 26' Accessory Apartment above the existing attached garage on the property located at **36 Waterman Avenue** which is further identified on the Assessors' Maps as being on parcel K11-25-08 and is located in an R-3 zoning district.

Mr. Murphy read **Case #23-02** into the record. Joseph and Jodi McDonough said they were here to ask for an Accessory Apartment; Ms. Stewart displayed the files. Mr. Murphy asked if the lot and house coverages were okay and asked if Mr. Stewart or Mr. Galvin had any problems with this. Mr. Stewart said it was a standard application; Mr. Galvin said they have the lot size and the space was there already. Mr. Stewart said this was more in line with the previous Bylaw. Mr. Murphy asked the Board if they had any questions or comments and they did not. Mr. Murphy asked the public if they had any questions. Peter Smith of 24 Waterman Avenue said that he has a one (1) paragraph letter signed by six (6) to ten (10) neighbors. They do not want parking on the street and they want a one (1) year lease; they don't want it used for daily or



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weekly rentals. He said they are concerned with the Petitioners selling the property. Joseph McDonald of 25 Waterman Avenue said that he was sorry that they were moving and sorry about the eyesore next door. He also does not want parking on the street. Mr. Shaughnessy said he lives at the end of the street and he and his family are opposed. He wanted to know about a change of owner because the house is on the market. Mr. Murphy explained that if the property does change hands then the new owner would need to apply. Mr. Shaughnessy said they have issues with the street; they are all summer people; they have single family rentals but no apartments.

Mr. Murphy asked if there was anything else. Mr. Galvin said that Waterman Avenue is a private way that is closed to the public. There is an HOA that should regulate parking. He said that we don't have a Bylaw in effect like Hull does with people renting for short periods of time. This still has to remain the owner's primary residence. This should have an As-Built and water conservation measures; it will terminate on change of ownership. Mr. Murphy asked if they could add the parking restrictions; Mr. Galvin said they could but it could be appealed. Mr. McDonald said there isn't enough room for people parking in the street. He said they call the police and they laugh; Mr. Sullivan said because it's private. Mr. Shaughnessy asked if this meets the requirements of the Bylaw; Mr. Murphy said it meets the requirements for an accessory apartment. Mr. McDonald said he wasn't against the apartment, just the parking. Mr. Murphy made a motion to close the hearing which was seconded by Mr. Hensley; all were in favor. He made a motion to grant the Special Permit which was also seconded by Mr. Hensley; Murphy, Keane, Hensley, Corwin and Sullivan were in favor.

**#22-127A: Paul Sagristano/DISH Wireless:** The Petitioner is seeking a Special Permit in accordance with §305-11.12 of the Marshfield Municipal Code to add three (3) proposed antennas, install three (3) antenna sector frames, install proposed jumpers, install six (6) proposed RRU's and install one (1) proposed hybrid cable on the property located **Off Eames Way** which is further identified on the Assessors' Maps as being on parcel F15-01-04 and is located in an R-1 zoning district.

Mr. Murphy read **Case #22-127A** into the record. The Petitioner was not in attendance but Mr. Stewart said the Board should hear this. They came before the Board at the December 13, 2022 meeting for Site Plan approval and are now back for the Special Permit. Mr. Galvin said that this is the type of thing that we want people to do. Mr. Stewart said they were just swapping out antennas. Mr. Sullivan said that for the record with the Site Plan application, the applicant presented and met all standards. Mr. Murphy made a motion to close the hearing which was seconded by Mr. Sullivan; all were in favor. Mr. Murphy made a motion to grant the Special Permit which was seconded by Mr. Keane; Murphy, Keane, Feeney, Hensley and Corwin were in favor.

**#22-110: Elizabeth Barrett, Trustee:** The Petitioner is seeking a Variance in accordance with §305-10.11 for relief from §305-6.02, Table of Dimensional and Density Regulations, to facilitate the construction of a single family dwelling on the property located at **20 Dog Lane** which is further identified on the Assessors' Maps as being on parcel G16-02-06 and is located in an R-1 zoning district.



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Mr. Murphy stated that **Case #22-110** had already been read into the record and continued. James Creed, attorney for the Petitioner, said that he had submitted a memo with two (2) typos and stated that it should be R-2 and somewhere in the memo it says Scituate. Mr. Stewart displayed that plan that was submitted to him today; it was not submitted to the Board. Mr. Creed explained that was the plan submitted to Conservation. Mr. Sullivan asked what happened at Conservation and Mr. Creed said they want the Zoning Board to do it. Mr. Stewart said they want the Zoning Board to decide if someone can build outside of the circle; they should determine where they can build with the wetlands. Mr. Creed said under the Coning Bylaws it has to be built in a circle which puts them in the wetlands. Any house on this lot will have a three (3) to ten (10) foot drop. He said they discussed last time if the applicant created the hardship; their position is that the wetlands were there. They can move it out of the building circle and line it with the other houses. He asked if that was a substantial derogation. Mr. Sullivan asked Mr. Stewart to go back and asked if the pink highlighted houses were in the building circle; Mr. Creed did not know. Mr. Sullivan asked if their building would be an anomaly; only house that will derogate from the Bylaw. Mr. Creed told Mr. Sullivan the Board had a chance to do greater good. Mr. Sullivan said they created the hardship and are now asking for a Variance; they don't meet the criteria for a Variance. Mr. Creed said nothing he can say will convince Mr. Sullivan that a Variance is warranted here. Mr. Sullivan said they were just applying the law; Variances are difficult to get; is the hardship that it will cost more to build? Mr. Creed said that was what Wolfe decreed, hardship. Mr. Sullivan said if this was purchased for \$200,000 and sold for \$800,000 or if they sold it for \$400,000, he still got his money back. Mr. Creed said he doesn't see that as a standard for a Variance. Mr. Sullivan said the applicant has made a substantial amount and the lot can be developed.

Mr. Creed said a house in the building circle with a thirty foot (30') slope will have an impact on wetlands. Mr. Creed said they needs to be outside of the dark line; in essence two-thirds of the lot is unbuildable because of wetlands. Mr. Stewart clarified they have the building circle and need the setbacks. He said the topography is steep; the house will be back, undersized and behind it. They are looking for a Variance to be up front and out of the way; they could build something smaller. Mr. Stewart said this house does not conform and he has seen several iterations. He said this one could potentially conform. Mr. Murphy asked if they all agreed that it was a buildable lot but that is the area where they need to build. Mr. Creed asked if they were suggesting that they get a foundation permit and come back. Mr. Keane said it would clear it up; Mr. Stewart said there still wasn't a decision from Conservation; Mr. Murphy suggested they go back to them. He said they are here without a hardship.

Mr. Creed asked if they preferred to continue this or should he withdraw and re-apply. Mr. Keane said he would like to see a foundation permit; he also said Mr. Sullivan was right about the hardship. Mr. Junior brought up a Variance granted on 82 Danforth Street; Mr. Murphy said that what they have in front of them is not a hardship. Mr. Sullivan said they weren't bound by precedent. Mr. Creed asked for a two (2) minute recess and left to confer with Mr. Junior. On returning they advised they will withdraw and re-apply. Mr. Murphy made a motion to allow them to withdraw without prejudice which was seconded by Mr. Keane; Murphy, Feeney, Keene, Hensley and Corwin were in favor.

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Mr. Murphy made a motion to adjourn which was seconded by Mr. Keane; Murphy, Feeney, Keene, Hensley and Corwin 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