

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

Members Present:

*Brian Murphy, Chair
Heidi Conway
Stephen Feeney
Larry Keane
Grover Hensley, Jr. (R)
Brian Sullivan
Jean Lee*

Also Present:

*Andrew Stewart, Building Commissioner
Anthony Riley, Esquire (R)*

2023 NOV - 7 AM 11:16

MARSHFIELD TOWN CLERK
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Mr. Murphy called the meeting to order at 6:31 P.M., read the disclaimers and explained to the public that Zoom was provided as a courtesy and advised callers to use *6 to mute and unmute. Mr. Murphy conducted roll call attendance as Mr. Hensley was in a remote location. Mr. Murphy said that the cases would be taken out of order.

#23-81: Alexander and Stella Gorodetsky: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to raze the existing home and construct a new 29' x 44' two and a half (2½) story dwelling with a 9' x 14' elevated deck and 5' wide egress stairs to grade on the property located at **1187 Ferry Street** which is further identified on the Assessors' Maps as being on parcel I15-11-13 and is located in an R-3 zoning district.

Mr. Murphy read **Case #23-81** into the record. Dick Rockwood of Rockwood Design said that he did the architectural work and that the Petitioner had been before the Zoning Board before (February 28, 2023) when he requested approval for a two (2) story dwelling. After Mr. Gorodetsky started the design, he realized that he would like a two and a half (2 ½) story. They will be adding a half story but will not be going outside the footprint; they used the same site plan and added the half story. Mr. Murphy asked if that was the only change and Mr. Rockwood said except for the stairs; Mr. Sullivan said that was a function of elevation. Mr. Murphy asked if the Board, public or Mr. Stewart had any questions or comments and there were none. The Board agreed that the Petitioner met 1-10 of §305-10.12. Mr. Murphy made a motion to close the hearing which was seconded and all were in favor. He made a motion to grant the Special Permit subject to conditions of compliance with the Floodplain Bylaw, a building permit, an As-Built and a Certificate of Occupancy. The motion was seconded by Ms. Conway and the Board voted 5-0 to grant the Special Permit with Murphy, Conway, Feeney, Keane and Hensley voting in favor.

#23-83: Town of Marshfield/Department of Public Works: The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to make comprehensive upgrades to the existing Plymouth Avenue Pump Station (PAPS) and implement protection for the potential risk of flooding during storm events; improvements to include mechanical, civil/site, structural, architectural, HVAC, electrical, plumbing, and process instrumentation and controls work and will include the construction of a new 18' x 26' addition/generator room that will be attached to the east

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side and a flood barrier wall constructed along the pump station perimeter on the property located at **373 Plymouth Avenue** which is further identified on the Assessors' Maps as being on parcel L09-09-11 and is located in the I-1 zoning district.

Mr. Murphy read **Case #23-83** into the record. Alston Potts from Environmental Partners Group was at the meeting on behalf of the DPW. Mr. Potts said that they would be rehabbing the pump station on Plymouth Avenue. He said that it was constructed in the late 1970s and pumps approximately 3 million gallons per day of wastewater flow from three (3) existing sewage pumps that are original to the station. Most of equipment (outdated heating, ventilation, air conditioning/HVAC, and electrical equipment) is original to the station and does not meet current code requirements. They will be replacing the generator; Mr. Sullivan asked what kind of generator and Mr. Potts said gas. Mr. Potts said that there would be a cast in place foundation and a flood wall. Mr. Sullivan asked if any soundproofing was required and Mr. Potts said yes. Mr. Potts said that there is an exhaust pipe on the side that will be dampered and the duct going out will have insulation. There will be an emergency generator that will probably go on once a week, around 10:00 AM on Tuesdays. Mr. Riley said that the Board should condition a strict time to do the test so it doesn't end up at 9:00 AM on a Saturday. Mr. Potts was okay with that condition. Mr. Sullivan said it could say during the week during business hours. He also said a newer generator will probably be less noisy than the old one. Mr. Potts said that they did a sound study. Ms. Conway asked if there would be any extra lighting; Mr. Potts said it would be motion-activated and dark sky compliant.

Mr. Murphy asked if the Board, public or Mr. Stewart had any questions or comments. Linda Melville, 19 Johnson Terrace, said her question about sound was answered. She said she does hear the generator. She also had a question about the wall; she wants to make sure it won't flood more. Mr. Potts said he could say with certainty that it won't be worse. He said it will go around the perimeter to prevent flooding in the building. Mr. Stewart said that he could confirm that and they have been working directly with FEMA and the State. He said there was one change, all flood walls will be part of the structure. Mr. Sullivan asked Ms. Melville when she hears the generator. Ms. Melville said she hears it when the power goes out, usually during the day. Mr. Hensley said that "normal business hours" is too broad; he feels that he hears generators around him all of the time. Mr. Sullivan asked Mr. Hensley what he would suggest and Mr. Hensley said on Tuesday at 10:00 would be good; it just needs to be standard. Ms. Melville said 10:00 was better. Ms. Conway asked Mr. Potts if he expected that to change and he said no, that it was just to keep the engine warm. Mr. Hensley said that since this is a Town building, they should set the standard; if you go down the street, there could be a hundred of them. Mr. Keane asked about Tuesday between 10:00 and 2:00. Mr. Hensley said that would work and Mr. Potts said it was fine. Ms. Melville said she sees the Town a couple of times a week checking the cul-de-sac and asked if there was any update; she said she wasn't sure if this was Mr. Procaccino. Mr. Potts asked if it was for storm water and Ms. Melville said no, the end of the street is overgrown and it overflows. Mr. Sullivan said sewerage overflows; Ms. Melville said it was the river. Mr. Stewart said that would be more for the Board of Public Works. Mr. Potts said this station collects sewer water from her house and upland; they don't deal with storm water. Mr. Murphy asked if there were any more questions and there were none. The Board agreed that the Petitioner meets the requirements of §305-12.02. Mr. Murphy made a

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motion to close the hearing which was seconded and all were in favor. He made a motion to grant the Site Plan approval subject to conditions of compliance with the Floodplain Bylaw, a building permit, an As-Built, a Certificate of Occupancy and the generator tests would be between 10:00-2:00 weekdays. The motion was seconded by Ms. Conway and the Board voted 5-0 to grant the Site Plan approval with Murphy, Conway, Keane, Hensley and Sullivan voting in favor.

#23-80: Jonathan R. Bagnell and Caroline Pereira: The Petitioners are seeking a Special Permit in accordance with §305-10.12 and §305-9.02.C of the Marshfield Municipal Code to raze the existing home and construct a new 26' x 51' dwelling with a 14' x 14' three (3) season porch in the rear on the property located at **30 West Street** which is further identified on the Assessors' Maps as being on parcel M05-11-07 and is located in an R-3 zoning district.

Mr. Murphy read **Case #23-80** into the record. Ms. Conway recused herself from this hearing. Attorney Matt Mitchell was in attendance for Attorney Jeff DeLisi and Jonathan Bagnell was on Zoom. Mr. Mitchell referenced the Stenbeck and Taylor plan dated September 1, 2023 to raze and reconstruct 30 West Street. He said the side setback on the north and rear are nonconforming; the side will be increased from 7.5' to 7.7'. Mr. Mitchell said this meets the maximum building coverage at 35%. Mr. Sullivan stated they are eliminating one nonconformity and going up; Mr. Mitchell said that he believed Mr. DeLisi provided renderings. Mr. Sullivan said they were old school architectural drawings, free hand. Mr. Murphy asked if the Board, public or Mr. Stewart had any questions or comments and there were none. The Board agreed that the Petitioner met 1-10 of §305-10.12. Mr. Murphy made a motion to close the hearing which was seconded and all were in favor. He made a motion to grant the Special Permit subject to conditions of compliance with the Floodplain Bylaw, a building permit, an As-Built and a Certificate of Occupancy. The motion was seconded by Mr. Sullivan and the Board voted 5-0 to grant the Special Permit with Murphy, Feeney, Keane, Hensley and Sullivan voting in favor.

#23-82: Lynne Ann Murphy: In accordance with §305-10.09 of the Marshfield Municipal Code, the Petitioner is seeking an Appeal of the Building Commissioner's determination that neither the segment of Brewster Road nor Chilton Street required for frontage for the issuance of a building permit meet the definition of a "street" according to the Marshfield Zoning Bylaw on the property located at **47 Brewster Road** which is further identified on the Assessors' Maps as being on parcel J12-02-10 and is located in the R-1 zoning district.

Mr. Murphy read **Case #23-82** into the record. Ms. Conway recused herself from this hearing. Attorney James Creed was in attendance with Lynne Ann Murphy. Mr. Murphy asked Mr. Stewart to go first; Mr. Stewart said it was their appeal. Mr. Creed said that he would give an overview and Ms. Murphy has some comments. He said that the Petitioner had requested from the Building Commissioner direction as to the issue of frontage for the Residential Lot of Record

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located at J12-02-10, now 47 Brewster Road. Based on a contract to construct Chilton Street to the satisfaction of the Planning Board standard, they previously got a Street Improvement Plan that has expired. The intent here is to build Chilton Street to the Planning Board standards but not to build Brewster Road which the Planning Board requires. A Residential Lot of Record requires 50 feet of frontage which it has. Mr. Creed said that he has submitted the Residential Lot of Record by Town Counsel. Mr. Creed said that Chilton Street is a paper street and doesn't exist. He said that their proposal is to build a 50' x 20' street to the Planning Board standards. He isn't sure they have to do it but they intend to do it to placate the Planning Board requirements. Chilton Street is at the end of Brewster Road off Peregrine White which is off South River Street. Brewster Road was recently before the Zoning Board of Appeals for the dissolution of Georgia Street by Mike Buressa, Trustee of the Building Trust. That house which is being built is on its foundation. This will be the last lot on this road. The Zoning Bylaws for lot frontage talks about "A street line from one front lot corner to the other". A, singular. Lot line, front is defined as "the property line between a lot and a street or the line defining the limit of a Right of Way set aside for road purposes". A street is defined as "A way, over 24 feet in right-of-way width...". A street line is defined as "The line between a street and an adjoining piece of property...". Mr. Creed said that a Residential Lot of Record is grandfathered under the Zoning Ace and protected as a buildable lot.

Mr. Creed said that in 2019 they asked the Fire Department about vital access. It was the deputy's opinion at that time, and Mr. Creed concurs, that their equipment could access this location however, if road or weather conditions were different, they could not be sure that their equipment could access that location without potential for delay. Mr. Creed said that as a result of that they requested 20 years of responses and at no time was Brewster Road not available for emergency response. That's the definition of vital access.

The Planning Board provisions for a street determination and a Street Improvement Plan are set forth in the Subdivision Rules & Regulations under §305-405-7; under B, Authority it states, "A building permit may not be issued by the Building Commissioner for new construction unless the lot on which the building is to be constructed has frontage on a "street" as defined in the Marshfield Zoning Bylaws". It says on "A" street, singular. The Planning Board could have waived this. Mr. Creed said a contract with Sealund would be \$31,000 for 300 feet; its' \$633 per foot. The lot is under agreement for sale for \$275,000; they would have to expend funds to sell the property at a loss. He said the issue they bring before the Board is the engineering fees, not the legal fees.

Ms. Murphy said she is a lifelong resident of Marshfield with good character; everything she has touched has been improved. She lived on Brewster and when she left there it wasn't by choice. She mentioned her ex-husband and foreclosure. She said her plan was always to go back to Brewster; she has been a Catholic school teacher for 24 years. The reason she is selling is because someone from New York bought next door and the real estate agent called her when she had a buyer. She told the real estate agent to tell him that he does have a house that will go in next to him because she has a legal Residential Lot of Record. Ms. Murphy said this man has cost her quite a bit of money. She said she knows that her neighbors don't want her to put in a road because it would take away from their frontage. Ms. Murphy knows her neighbors don't want a 20 foot road. She said this would make the lot useless; she is asking to put in a small 2

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bedroom house. Ms. Murphy said she has been bullied by this neighbor and doesn't have the funds to fight; friends had to step in. She said this is a special place and a paved road will be dangerous. She said she has had to call the ambulance for her children and it was never a problem. She asked the Board to look at what is fair; she knows her legal rights and she is asking for help; she has owned this property for 35 years. Ms. Murphy said newcomers are coming in and they are not required to pave anything. She is humbly asking the Board to reconsider for the sake of her neighbors.

Mr. Sullivan said that with all due respect, this is the first time the Board is hearing this; Ms. Murphy said they are her last hope. Mr. Stewart said that he got a request as to whether he could issue a building permit if they made this proposed improvement. He said unfortunately, he could not. He said along with the definition of a street, there are 3 other things to be included. One, it has to be a public way laid out by a governmental entity; it has to be shown on an official map that has been adopted by the Town. Mr. Stewart said the Town does not have an official Town map that lays out streets so that is not an option for any street determination. Two, it has to be shown on a plan approved and endorsed according to subdivision rules and regulations which we don't have right now. Three, in the opinion of the Planning Board it has sufficient width and grade for adequate construction to provide for the needs of vehicular traffic. The Planning Board told Mr. Stewart that it does not so he cannot issue a building permit according to the street determination Bylaw.

Mr. Sullivan said they are talking Brewster Road and the frontage is on Chilton; they will build 50 feet of roadway on Chilton. Mr. Stewart said they don't have an approved plan for that. Mr. Stewart said what the Planning Board approved was improving all of Brewster and the 50 feet of frontage on Chilton; now they just want to do the 50 feet on Chilton. Mr. Sullivan said he doesn't know what the bee is in the Planning Board's bonnet; it was the same for 13 Brewster. He said there is a means of egress and ingress and frontage was sufficient for 6 other homes; he asked why were we dragging Ms. Murphy through the mud.. He said the Planning Board was fascinated with Brewster.

In looking at the GIS map, Mr. Keane asked where the car was parked; Mr. Stewart said someone paved it for a driveway. Mr. Creed said it was in the right of way. Mr. Keane said it wasn't their property, it was in the public way. He asked Mr. Stewart to display an aerial view and asked if they want to take the dirt road and make part of it paved. Mr. Creed said that the Planning Board wants it paved all the way to the pavement that is there. Mr. Stewart displayed the Planning Board approved plan. Mr. Keane said he drove there in a 2500 truck and had no issue; the fire department has already provided services. Mr. Hensley said they will figure out how emergency vehicles will get there and asked if the Board had just approved one of these. Mr. Stewart said that one was different because the lot already had structures on it and he had said they were abandoned; this is new. Mr. Feeney and Ms. Lee agreed with Mr. Sullivan. Mr. Stewart said that the Planning Board wanted their comments read into the record. Mr. Murphy said that Mr. Galvin said they are part of the record and he can say that.

A resident (name and address missing) said that fire trucks and police go down there with no problems and that nobody wants that road paved; they want it to stay as it is. Attorney Gene Guimond representing Mr. Ochs from 39 Brewster, the next door neighbor, said that he also

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owns half interest in the part of Chilton Road that is being used. Mr. Guimond said the Planning Board made a determination that is now expired which means the condition to pave has expired. He said this should go back to the Planning Board. He said that there are also Conservation requirements. Mr. Guimond said in October of 2013 this same applicant requested a determination from that Building Commissioner and got the same decision as this Building Commissioner. Mr. Guimond said they don't have 50'feet of frontage on Chilton because they don't show the lot lines on the plan. He said the corner of the lot line is 20 feet further south and he isn't sure if the lot lines are contiguous. He said Mr. Ochs also has the right to use Chilton Street. He said that with the other case, he heard that they already had existing structures.

Ms. Bouressa of Peregrine White Drive said that part of the charm of living there is having the dirt road; having to pave Peregrine changed the atmosphere. They worry about when they do change. Karen Deane of Peregrine White Drive said that her family owns property on both sides of Brewster and she is looking at the changes that would have to be made. She has had to move her trampoline to the Brewster side of the yard because of traffic. An ancient stone wall as well as telephone poles will have to be moved. It will cut into her driveway and they would only be able to park 2 cars; nobody wants it paved.

Jeff Creed said he has talked to Mr. Ochs to see what he wants; they have spent thousands of dollars on this. He said that Mr. Ochs is not a resident, he doesn't live here full time. They have agreed to do drainage for this guy and it isn't fair to Ms. Murphy. He said it would be 8 feet and poles would have to come off these people's properties; he disagrees with Attorney Guimond. He said they will pave Chilton and it was unfair what the Planning Board pulled.

William Tyminski of 178 Peregrine White said that he owns 114 feet on Brewster Road and would like to join the neighbors against the Planning Board scheme. He said there are 3 issues: 1) the water discharge – where will the rainwater go; 2) there was no discussion tonight but will the impervious surface affect the drinking water; 3) the environment.

Annette Parziale, owner of a realty group said that she has been on this project for 3½ years; she has been harassed by Mr. Ochs every time she shows the property. She said he has hindered the sale of this property; she took it off the market to give it a rest; when she listed it again he came out again.

Mr. Murphy asked if the Board, public or people online had any questions. Mr. Stewart said that he feels that he cannot issue a building permit unless this meets the definition of a street. Mr. Murphy told Mr. Stewart he could read the Planning Board comments into the record; Mr. Stewart declined. Mr. Creed said that they made it clear they wanted a determination that if Chilton Street was built to the Planning Board standards then they can get a building permit. Attorney Guimond said that they don't have the right because the street improvement plan expired. Mr. Creed also said Mr. Ochs does not own the northern half of Chilton Street. He said Mr. Ochs made an offer to buy the lot for \$150,000 and their counter offer was \$180,000. Mr. Creed said they didn't get a response from Mr. Ochs.

Mr. Murphy was going to suggest a site visit. Mr. Keane said he had already been out there and nothing can sway him; they've waited long enough. Mr. Murphy made a motion to close the hearing which was seconded and all were in favor. He made a motion to grant the Appeal which

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was seconded. The Board voted 5-0 to grant the Appeal and overturn the Building Commissioner's decision with Feeney, Keane, Hensley, Sullivan and Lee voting in favor.

Mr. Murphy asked if there was anything else and Ms. Porreca said the Board needed to discuss the meeting scheduled for December 26, 2023. Mr. Murphy said that was a holiday week and the meeting should be removed. He made a motion to cancel the December 26, 2023 meeting which was seconded. The Board voted 5-0 to cancel the December 26, 2023 meeting with Murphy, Feeney, Keane, Hensley and Sullivan voting in favor.

Ms. Porreca said that the minutes from the September 26, 2023 needed to be approved. Mr. Sullivan made a motion to approve the minutes and the motion was seconded by Mr. Murphy; the Board voted 5-0 to approve the minutes with Murphy, Conway, Feeney, Keane and Hensley voting in favor.

Mr. Murphy made a motion to adjourn. The motion was seconded and the Board voted 5-0 with Murphy, Conway, Feeney, Keane and Hensley voting in favor.

Meeting adjourned at 7:42 PM.

Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

These minutes were approved by the Board on October 24, 2023 by a
5-0 vote.

Signed: _____



Date: _____

10/24/23