

ZONING BOARD OF APPEALS MEETING
MEETING MINUTES
PLACE: HEARING ROOM 2, MARSHFIELD TOWN HALL
JANUARY 28, 2014

Members Present:

Michael P. Harrington, Chairman
Joseph Kelleher
Arthur Vercollone
Paul Younker
Kevin McMahan, Associate

Also Present:

Jerry O'Neill,
*Zoning Code Enforcement
Officer & Building Commissioner*

Member Absent: Jon. C. Russell

Chairman Harrington called the meeting to order at 7:30. He noted that Mr. Russell would not be present this evening.

NEW HEARINGS:

#14-10: Robert and Kristine Luciani & Ryan and Kelli Blair: Petitioners are seeking a Special Permit in accordance with Section 11.09, or in the alternative, a Variance in accordance with Section 10.11 of the Marshfield Zoning Bylaws for approval of an existing accessory apartment that was constructed as part of the detached garage construction in 1988 on the property located at 505 Summer Street, which is identified on the Assessors' Maps as parcel F17-02-03 and is in an R-1 zone.

Chairman Harrington opened the meeting by reading the petition into the record.

Present before the Board: Attorney John Laine

Attorney Laine explained that he was representing both parties for this. Mr. & Mrs. Luciani are selling their house, and, as he understands it, they bought the home with an existing accessory apartment that is above the detached garage. The Blairs have entered into an agreement to purchase the property, however, during the appraiser's inspection and investigation, it was discovered that there was no permit for the accessory apartment. The Assessors' Office has listed two stoves and counts the bath, but the permit that was pulled to build the detached two-car garage in 1988 makes no mention of the accessory apartment. He isn't sure if it was required back then.

Chairman Harrington asked Mr. O'Neill about it. Mr. O'Neill stated the permit makes no mention of living quarters, and if it had, they would have been required to come in front of this Board for not only the Special Permit for the accessory apartment, but a variance as well.

Mr. Harrington explained to Attorney Laine that if one wanted to build an accessory now, it has to be part of the main structure, and less than 40% of the square footage of the main house. He stated the town does not allow two separate living structures on the same lot; Attorney Laine asked if the did in 1988. Mr. McMahan stated according to the Assessors' records submitted by the applicant, the permit they applied for in 1988 was for a detached two car garage, if it said anything about living quarters upstairs and was not caught by the Building Department, that would be one thing, but it doesn't. It lists 2 stoves, but that could be in the main kitchen; it is not proof that there is a second living area.

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Mr. Kelleher asked if they had any proof that it was more than ten years' old. He stated because if it had been there for more than ten years, it could be grandfathered. Attorney Laine asked if that was when the bylaw changed for accessory apartments; Mr. Kelleher stated he didn't know, but grandfathering would be another way. Attorney Laine asked if Mr. O'Neill could go out and look at it and tell by the age of the wood or something how old it was. Mr. O'Neill stated he could not with any true accuracy, but even if he could, that would get them around the permit, but not zoning.

Chairman Harrington stated Mr. O'Neill is correct: it would still not satisfy the zoning requirements for an accessory apartment. Not only must it be less than 40% of the square footage of the main structure, and be part of the main structure, but the main structure must also be owner-occupied. As far as a variance, he can see no reason it would qualify for one. Attorney Laine stated it was owner-occupied by the Lucianis and will be by the Blairs. He stated the Blairs are only concerned that it gets approved; they just want to buy the property. He wanted to know if there was any evidence that he could provide the Board that may show it was built properly. Mr. Kelleher stated he doesn't feel comfortable with giving Attorney Laine ideas to prove it. He feels it would have to be incontrovertible proof, for him. Chairman Harrington stated there is no record in the Zoning Board files that this property has ever been in front of this Board for an accessory apartment. An accessory apartment permit is not transferable, which the applicants know, because that is why both the Lucianis and the Blairs are on the application. So even if it was built in 1988, the Lucianis should have come before this Board for approval for an accessory apartment when they bought the house. He can't say why the Lucianis' mortgage appraiser didn't catch it, but if they intended on keeping it, they would have needed to come in front of the Board.

Attorney Laine stated that if it is approved, the Blairs have no intentions of renting it out, or using it as an apartment, but they cannot get their financing released until this is taken care of, so they are in limbo with their living arrangements until this is settled. If it is not approved, they need to know what has to be done in order for it to comply with zoning, so the appraiser will okay it with the bank. Chairman Harrington asked when they needed the decision; when were they planning on passing papers. Attorney Laine stated the sooner, the better.

Chairman Harrington asked if there were any questions from the Board: None. From the audience: None. Chairman Harrington stated he believed the most simple way to do it is to deny the application and to state in the decision that if the stove and shower are removed from the room above the garage, the dwelling would be compliant with the Town's Zoning bylaws for a single family. He asked the Board if anyone had any other suggestions; the Board concurred with the Chairman's suggestion. Chairman Harrington moved to approve the Special Permit for an accessory apartment; seconded by Mr. Kelleher: VOTE: 0 – 5 – 0 Motion fails. Chairman Harrington stated the proposed accessory apartment does not adhere to zoning requirements; and to put that if the stove and shower are removed from the room above the garage, the dwelling would be compliant with the Town's Zoning bylaws for a single family, in the decision. Chairman Harrington moved to grant the variance for the accessory apartment, seconded by Mr. Kelleher: VOTE: 0 – 5 – 0, Motion fails. Chairman Harrington stated that the applicant did not satisfy the requirements for a variance, but if the stove and shower are removed from the room above the garage, the dwelling would be compliant with the Town's Zoning bylaws for a single family.

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DISCUSSION: with Town Planner and Building Commissioner RE: Proposed Bylaw Changes and Site Plan Reviews

Present before the Board: Paul Halkiotis, Town Planner

Mr. Halkiotis began by clarifying he was not attempting to step on any toes, or stick his nose in to ZBA business. But, in most towns, Planning Boards do Site Plan Reviews. He wanted to make the Board aware of a law that was adopted in 1988, Mass. General Law Chapter 44, Section 53G, which allows for town Boards to hire consultants to assist them in reviewing the project and ensuring the project is built properly. Most communities do it. Mr. Halkiotis concern is once the plan get approved, the ZBA doesn't have the work reviewed / approved. For example, after Haddad's was constructed, he noticed part of the parking lot collapsed (the back corner); he doesn't know if the ZBA had anyone inspecting. He in no way means to infer Haddad's did anything wrong, but if the ZBA hasn't had anyone in the past, human nature being what it is, people will cut corners. Hiring a consultant can prevent problems. The Planning Board uses Pat Brennan from Amory for a lot of their stuff.

Chairman Harrington stated they do Peer Review on big projects – they used Ed Pesci and he's caught a lot of things. Mr. Halkiotis stated they have a pre-construction meeting, they exchange contact information in case anything happens that they can get in touch, and at that meeting, they tell the contractor that he has to call before they bury the pipes, for example.

Mr. Younker stated this sounds more like code enforcement. He feels the job of the ZBA is to approve, not enforce. He doesn't feel this is within the scope of the ZBA, but of the Building Department and the Code Enforcement Officer's job. Mr. Halkiotis stated Mr. O'Neill is responsible for building code enforcement – nothing else. He doesn't confirm that pipes are dug deep enough or backfilled with the right stones and things like that. He thinks Mr. Harrington does a great job, and above his job on the Board in confirming that the landscaping is done properly on some of these projects. The Board could require the applicants to pay up front, the anticipated costs the Board feels it would cost to hire consultants, which includes inspections. It would go into a separate, interest-bearing account that could be drawn from, without appropriation, to pay for the expenses incurred by the town to ensure these projects are being built to specifications. At the end, whatever is left over, goes back to the applicant.

Chairman Harrington stated this is fine for the Planning Board, they deal with subdivisions that become part of the town, not commercial buildings. Mr. Halkiotis stated whether it is a residential subdivision, which is a commercial endeavor, or a retail sales store, a 53G would be used to make sure the project is being built according to the approved plan.

Chairman Harrington stated they used to work with Rod Procaccino until Mike Clancy came in and put an end to that. The Board assumes Mr. Clancy was inspecting everything.

Mr. Younker asked what about the projects that don't come before the ZBA, would the ZBA be responsible to inspect those? Mr. Halkiotis explained this would be no more work for the Board, and it shouldn't be. This is a way for the Board to make sure that what you approve is what is actually being built.

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Mr. McMahon stated he doesn't believe the ZBA should get involved into the inspection or enforcement side, and he is concerned that it could put them in a vulnerable position, legally.

Chairman Harrington stated he is feeling a certain resonance from the Board. Once they put their approval on the project, it's out of their hands, and frankly, none of them have the time to do more than that. Mr. Halkiotis state he believes there is a disconnect from what he is bringing forward and what the Board is perceiving it to be. Chairman Harrington agrees there is a disconnect. He suggested the Mr. Halkiotis work with staff to see if they can get them examples of what he is suggesting, and they'll take it under advisement.

Mr. Halkiotis went on to tell the Board that the Planning Board is moving forward with four Zoning Bylaw amendments for the Annual Town Meeting in April. There will be a public hearing on them on February 10. The first one is a change in the definition of "building height;" it will now say the height is measured from the bottom of first floor to the highest peak. They have also moved the measuring out 6 feet from the house, to discourage people from pushing dirt up the foundation, only to slope down on either side. It will also clarify how it is measured for flood proofing purposes (Base Flood Elevation for National Flood Insurance Rate Maps).

The second proposal addresses the medical marijuana facilities. He wants to let the Board know that because it was passed by the voters of Massachusetts, if they didn't address it, they were informed by Town Counsel they could be put up anywhere. The Board may recall, many towns, including Marshfield, approved a one-year moratorium, so they could consider possible areas to put it. So the Planning Board looked at the zones as to where to put it. There were two theories; the first was to put it in the industrial zone and hide it from sight. The other was to put it out in the open, so the police can easily see it. Having the police see it has nothing to do with the marijuana. From the Planning Board's understanding, this will be an all cash business and between all cash and the controlled substance in the building, it could be dangerous, and subjected to break-ins. Ultimately, the Planning Board decided to put it in the industrial zone, taking into consideration how close the other areas were to schools, parks, and other areas associated with children.

Mr. Halkiotis also stated as part of another amendment, the Board is recommending to shrink the I-1 zone; they want to pull the I-1 out of the PMUD.

Finally, on the Medical Marijuana Facilities, the Bylaw will have the Zoning Board of Appeals the Special Permit granting authority.

Chairman Harrington asked if there were any questions. Mr. Vercollone asked if the medical marijuana facility moves in, then a dance school or something moves in, can they stay? Mr. Halkiotis stated yes, if the dance school moves there knowing it's there, there is not a lot that can be done about it. Chairman Harrington asked if there were any security requirements; Mr. Halkiotis stated all security would be approved by the police. They are required to offer delivery service, for those who are too ill to get there, but the delivery vehicles have to be plain white, with no symbols, insignias or signs identifying it as a delivery vehicle for the store.

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Chairman Harrington asked if that was the area for the new hotel site; he stated that is an interesting choice.

The next proposed article for Town Meeting deals with the esplanade area. A couple of months ago, he sat down with the D'Ellasandros' family attorney, the owners of Arthur & Pat's, and the Building Commissioner and the Zoning Aide to look at a proposal they had for their land. They presented a plan which provided housing on the second floor and commercial space on the first floor, all built with a raised deck-type walk that would keep it all above the flood plain. Currently, this would have to be done through a use variance.

Coincidentally, in the same week, Mr. Halkiotis had two other property owners from the Brank Rock area looking for other similar uses. Mr. Halkiotis stated that in his experience, residential rent check stabilize finances of seasonal or volatile business use. This plan addresses the flood zone issue and saves the properties. Parking requirements and other zoning requirements would still apply.

Mr. Halkiotis stated that Mr. Haddad told him that the flooding is getting worse. His property has flooded 23 times since 1988. When Mr. Haddad saw the design, he said it was what he was looking for; the owner of the Venus also was excited. As the Board knows, he tried to use a dual use on a property down there and was denied.

The Planning Board is writing this as an overlay district and it is supported by the selectmen. He wants the Board to know up front that D'Ellasandros do not plan on building it, but if approved, they are going to market it.

Mr. Younker asked if the residential would be rental or condos. Mr. Halkiotis stated they can regulate usage, but cannot regulate ownership. His belief is they would be very attractive and most likely be higher-end condos. Mr. Vercollone asked if they could put decks on the residential portions. Mr. Halkiotis stated they could, if they met all the criteria.

The final bylaw for Town Meeting is the PMUD bylaw. The Planning Board amended the map last year and now they are amending the language of the bylaw. Originally, VRT was writing the draft, but it began to go in a different direction, so Planning took it back and reworked it to what they wanted. He had copies of the proposed bylaws for the Board to review, and asked if there were anymore questions.

Chairman Harrington asked how many units would the Brant Rock overlay allow per acre? Mr. McMahon stated that the pictures looked a bit like Scituate Harbor, but he feels Scituate is overkill. Mr. Halkiotis stated they are looking at 12 units per acre; he believes Scituate is 17 per acre; they are trying to find a balance.

With no other questions, the Board thanked Mr. Halkiotis for the update and information.

CONTINUED HEARINGS:

#14-08: Town of Marshfield, Fire Department: Petitioner is seeking to amend the

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previously approved Site Plan with a Special Permit under Section 10.10, as required by Section 6.0.8 (6) of the Marshfield Zoning Bylaws, to include a public safety communications antenna that exceeds the current zoning height allowance, on the property located at 21 Massasoit Avenue, which is identified on the Assessors' Maps as M08-16-03 and is an R-3 zone.

Chairman Harrington read the petition into the record. He explained that the hearing was opened and continued without testimony on January 14.

*Present before the Board: Kevin Robinson, Marshfield Fire Chief
Brian Adams, Building Manager, Town of Marshfield
Ron Menard, IT Manager, Town of Marshfield*

Chairman Harrington stated that the Board received a list of questions at approximately 5:30 this evening from a Mr. McKinnon. He thought the questions were fairly reasonable. Chief Robinson stated they received the same list of questions and believes they will answer them.

Chief Robinson stated the antenna on the old building was on the roof; they will not be placing it on the roof, but rather tight to the building. There will be no lights on it, nor any support wires. It will be a brushed stainless, so it will blend with the sky and won't redirect sunlight. They need this antenna to restore the communications between this station and the fire alarm office. The height of this antenna will be similarly in height, visually, to the Pudding Hill Water tank and the WWTF Monopole so as to allow uninterrupted communications between headquarters, South River Street Station and this station.

They are working with Valmont Industries; around the antenna will be an approximately 2 foot lattice triangle. Chairman Harrington asked if it were far enough away from abutting properties, if it fell over. Chief Robinson stated it couldn't fall over; it will be mounted against the wall of the building, so if anything, it is designed that the lattice would bend, but even if it could fall over, because of where it is on the building, it would only hit the building, no neighbors.

Chairman Harrington asked if there were any questions from the Board: None. From the Audience: None. Chairman Harrington stated most of the questions in the email were answered, except the last couple regarding the radio waves and radiation levels. The Chief stated he believes he answered #s 1 through 9; 10, 11 and 12 are technical in nature, so Mr. Menard is preparing those for Mr. McKinnon. Mr. Menard stated it is an unlicensed spectrum, it is only 5 gigahertz, it won't interfere with any household t.v., cable, telephone or radio signals, and this system is the same as the existing antennas and radios, which are FCC approved.

Mr. O'Neill stated he would have permitted it if it was staying the same height, but he had them come here because it is going higher. Any proposed Communications Tower that exceeds the height requirements, in this case, 35 feet, has to file for a Special Permit.

With no other questions or comments, Chairman Harrington moved to close the hearing and grant the Special Permit as requested; seconded by Mr. Kelleher: VOTE: Unanimous.

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Mary Jenkins / Sally Jenkins: #13-90: 0 Canoe Tree Way, F17-02-12, R-1. Special Permit (10.12) for use of a pre-existing, non-conforming lot, and a Variance (10.11) to construct a 30' x 40' barn, and to install a fence.

Chairman Harrington stated they received a request from the applicant's engineer that there was a conflict with this meeting and her attorney's schedule and that her attorney has touched base with Town Counsel regarding this, however, due to Town Counsel's court appearance on another matter, they have not been able to go into any depth, so they would like a continuance. Chairman Harrington moved to continue the hearing until February 11th meeting; seconded by Mr. Kelleher: VOTE: Unanimous.

Chairman Harrington asked if the Board took a couple of items out of order, because he believes Mr. Corry's discussion may take more than a few minutes. The Board agreed.

ANY OTHER BUSINESS NOT REASONABLY ANTICIPATED BY CHAIRMAN 48 HOURS IN ADVANCE

Chairman Harrington told the Board that Mr. Haufler contacted the office regarding his property on Little's Lane; he received a copy of the ZBA decision from more than 5 years ago from the office today, and asked if he could come in to speak to the Board tonight.

Present before the Board: Christian Haufler

Mr. Haufler stated he has someone who is interested in buying the property, which is great, because they want to build a hydroponic farm and a greenhouse. However, in his original plans, he put a proposed turnabout, as required by the Board, for emergency vehicles, right in the middle of the property. He would like to ask the Board if he could pull it closer to the entrance of the property. The condition states that it has to meet with the Fire Department's approval, and he has spoken to them, and he asked the Chief to stay to speak on the subject. Chief Robinson stated that the Fire Department has no objection to moving the turnabout closer to the street, as long as it maintains the correct turning radius.

Mr. O'Neill stated that he wanted to talk to Mr. Haufler, but not about the turnaround. Mr. Haufler stated to Mr. O'Neill that he wanted to build this accessory use, then a cottage. He wants Mr. Haufler to understand that he needs to build the house before he builds the accessory. Mr. Haufler stated he understood and will be. He went in front of the Historical Commission and that went very well.

Mr. Younker asked if the turnaround only impacts Mr. Haufler's property. Mr. Haufler stated it is. With no other questions, Chairman Harrington moved allow Mr. Haufler of Little's Lane to move the turnabout easterly the property line, maintaining the same size as approved on the plan on file; seconded by Mr. Kelleher: VOTE: Unanimous.

CLOSED HEARINGS / DECISIONS TO BE MADE: James Corry, 102 & 106 Preston Terr., I16-14-10&11, R-3:

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#13-82 Special Permit (10.10) per Article XIII, Section 13.02(3a) for a walkway, ramp, and pier (w/ kayak racks, main float w/ 2 finger floats, constructed along the common property line to the South River

#14-05 Variance (10.11) for relief from the street and property line setback requirements of Article VI, Section 6.10 of the Bylaws due to the property's location in the South River and in the river's intertidal zone

Chairman Harrington stated he went down there and saw it, it's not a road like the previous unimproved private way, but it's salt marsh grass; it's a right of way to get to the river and get back from the river. Mr. Kelleher stated he sees it as a fundamental issue that has to be determined by and through the Courts. Mr. McMahon agrees. He doesn't believe it's up to the Board to make a determination that no one can have access.

Chairman Harrington stated the applicants offered to make it movable; what if the Board conditioned it that it had to be left open except when they needed to use it. Mr. Younker and Mr. McMahon both thought that would still create an impediment for the other property owners. Chairman Harrington asked if the Board thought they could still approve the dock but stipulate it cannot cross the road. Mr. Kelleher stated the setbacks of the two properties cause an issue, and could open up the doors for others to want to do it, with far less room. Mr. McMahon believes to approve the dock would defeat the purpose.

Mr. Younker stated the applicants may own the fee, but they do not own the road. Chairman Harrington stated that he's looking at it that they should have as much right to get there, like the others. Mr. McMahon agreed, but stated they have as much, not more. Chairman Harrington checked to see when a decision had to be made; it was determined that by March 10th a decision needed to be made. He stated that he understands the mood of the Board is against it in its entirety, but how would the Board feel if he asked them to go and see it; they could see the concrete impediment that already exists. Mr. Kelleher, Mr. Younker and Mr. McMahon all stated it wouldn't change their minds.

Mr. Younker stated that as far as the concrete structure, there is nothing that states the neighbors need to drive, they can and could walk. Personally, he doesn't believe it's a valuable street, but he does agree that it's up to a court to decide. Mr. Younker stated he thinks it's great that neighbors get together to share one pier, and on the surface, he supports that. Mr. McMahon stated they would have to be very careful in wording that because it still infringes on setbacks.

With no other comments, Mr. McMahon moved to grant the Special Permit, as requested; seconded by Mr. Vercollone: VOTE: 0 - 5 - 0 (Motion fails). Mr. McMahon moved to grant a variance; seconded by Mr. Vercollone: VOTE: 0 - 5 - 0 (Motion fails).

Mr. McMahon stated Ferry Street, whether improved or not, has unextinguished rights; people have the right to pass and repass in front of the petitioners' home on the street.

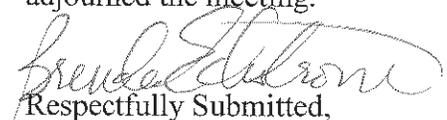
APPROVAL OF MINUTES: Mr. Vercollone asked if we could put off the approval of the minutes until the next meeting; the Board concurred.

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ANNUAL VOTE OF OFFICERS (in accordance with Marshfield Zoning Board of Appeals Rules and Regulations, Article I: Organization, Section A)

Mr. Younker asked why were they doing it; was someone not happy in their position. Chairman Harrington stated that it was required that the Board annually vote for the positions of Chairman, Vice Chairman, and Clerk. He asked if anyone was interested in putting their name in for consideration. He stated that Mr. Russell informed the office that he was not interested in any one of the positions. Mr. Younker asked if any of them, Mr. Harrington, Mr. Kelleher and Mr. Vercollone were looking to get out of, or give up their positions. They all said they were fine with keeping them, unless someone else was interested. Mr. Younker then made a motion to nominate Mr. Harrington as Chairman, Mr. Kelleher as Vice Chairman, and Mr. Vercollone as Clerk; Mr. McMahon seconded the nomination. Mr. Younker then moved to vote the three in, on a slate, for their respective positions, seconded by Mr. McMahon:
VOTE: Unanimous.

ADJOURNMENT: Chairman Harrington announced the next meeting would be February 11, 2014 and adjourned the meeting.


Respectfully Submitted,

Brenda Eckstrom
Zoning Aide

I attest the foregoing minutes were approved by the Zoning Board of Appeals at their

February 11, 2014 meeting by a ~~unanimous~~ 4-0-1 vote.
(J. Russell abstained)

Signed:  date: 2-11-14