

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL NOVEMBER 28, 2017 7:30 p.m.
MEETING MINUTES**

Members Present:

*Lynne Fidler
Francis Hubbard
Heidi Conway
Brian Murphy
Richard Murphy
Mark Stiles*

Also Present:

Robert Galvin, Town Counsel

MARSHFIELD TOWN CLERK
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Ms. Fidler called the meeting to order at 7:40 P.M., stated that the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were being recorded.

#17-69: Robert Decastro: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 18'-6" x 18'-6" addition on the left side of the existing single family dwelling on the property located at **145 Woodlawn Circle**, which is further identified on the Assessors' Map as parcel I08-08-02 and is located in an R-2 zoning district.

Ms. Fidler read the petition into the record and stated that she would be the Hearing Officer. Bill Papastratis of NIKE Construction Services represented the Petitioner and stated that they wanted to build an 18' x 18' addition. He said that the house does not meet Zoning setbacks but that the addition will. Ms. Fidler said that it seemed pretty straightforward. Nobody on the Board or from the public had any questions. Ms. Fidler made a motion to close the hearing which was seconded; all were in favor. Ms. Fidler made a motion to grant the Special Permit which was seconded; all were in favor.

#17-71: Gregory Muscato: The Petitioner is seeking a Special Permit in accordance with §305-10.12 and §305-9.02C of the Marshfield Municipal Code to construct a 28' x 36' second story dormer on the existing nonconforming single family dwelling on the property located at **18 Saginaw Avenue**, which is further identified on the Assessors' Map as parcel M09-05-02 and is located in an R-3 zoning district.

Ms. Fidler read the petition into the record and stated that she would be the Hearing Officer. Richard Savant of Stenbeck and Taylor represented the Petitioner, Gregory Muscato, who was also present. Mr. Savant said that they were proposing a second story dormer over a portion of the existing house, all within the limits of the existing footprint. Ms. Fidler asked if the Board had the architectural plans and Mr. Savant replied that there had been sketches prepared by Rockwood Design but they were still finalizing them. Mr. Savant said that there would be a full set but they still wanted to proceed with Zoning. He said that they will be replacing the roof and will call it a dormer. Ms. Fidler asked how long it would take to get the actual architectural plans to add to the file and Mr. Savant said that he would tell them that he needs them as soon as possible so maybe a week or so. Ms. Fidler asked if the paved drive on both sides was changing and Mr. Savant said that it was not and he was not aware of any other changes. Nobody on the Board or from the public had any questions. Ms. Fidler made a motion to close the hearing which was seconded; all were in favor. Ms. Fidler made a motion to grant the Special Permit

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL NOVEMBER 28, 2017 7:30 p.m.
MEETING MINUTES**

with the condition of having the final drawings submitted. The motion was seconded and all were in favor.

#17-72: Von Dong: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 30' x 15' addition on the existing single family dwelling on the property located at **1001 Ocean Street**, which is further identified on the Assessors' Map as parcel K10-19-06 and is located in an R-3 zoning district.

Ms. Fidler read the petition into the record and stated that she would be the Hearing Officer. Von Dong explained that she would like to put a second story with a bathroom on top of the first floor and raise the roof. Ms. Fidler asked if they were staying within the footprint and just going up and Ms. Dong replied that they were. Ms. Fidler stated that the Petitioner was nonconforming at eight feet (8') and at five feet (5'). Ms. Fidler asked John Henderson who was with the Petitioner to identify where the second story would be going. Mr. Hubbard asked where the front door to the house was and Mr. Henderson said that it was actually on the side. He also pointed out the open deck and a free standing shed. Mr. Hubbard asked if the front of the house was on Ocean Street and Mr. Henderson said that it was actually on Leon Street. Mr. Hubbard said that the existing home was nonconforming on Ocean Street by .8' in the upper corner and one foot (1') in the lower corner. He said that another nonconformity was on the side and he asked about the fence enclosure. Mr. Henderson said it was a breezeway with a grill. Ms. Conway asked if it were already there and Mr. Henderson said that it was. Mr. Hubbard asked if they were relocating the existing shed and Mr. Henderson said that it would be going back but it was not part of this project. Ms. Conway said that the Board could not endorse the shed. Mr. Hubbard advised that when they relocate the shed that they meet setback requirements. Ms. Fidler said that for the purposes of this hearing, the frontage is on Leon Street. Mr. Hubbard asked if that was on record anywhere with the town; Mr. Galvin said that it was a corner lot. Mr. Hubbard asked if it had to be declared that Leon Street would be the frontage, that they normally require that to be registered. Mr. Galvin said the numerical frontage was Ocean Street. Mr. Hubbard said that when they come for Special Permits we require the Building Department to state that from this point on this would be considered the front lawn. Mr. Galvin said that Leon Street would be the frontage for Zoning. Ms. Conway stated that there was a fence enclosure. Ms. Fidler said that if Leon Street is the frontage, the left is nonconforming at one foot (1'), the back is nonconforming at five feet (5'), the right at fifteen feet (15'); forty-five feet (45') from the front is the open deck and there is sixty-five feet (65') of frontage. Nobody on the Board or from the public had any questions. Ms. Fidler made a motion to close the hearing which was seconded; all were in favor. Ms. Fidler made a motion to grant the Special Permit without endorsing the shed; the motion was seconded and all were in favor.

#17-73: Charles Barnicoat: The Petitioner is seeking a Special Permit in accordance with §305-10.12 and §305-9.02.C of the Marshfield Municipal Code to construct a 15' x 19' addition on the existing two family dwelling on the property located at **12 Idaho Street**, which is further identified on the Assessors' Map as parcel L04-01-93 and is located in an R-3 zoning district.

Ms. Fidler read the petition into the record and stated that she would be the Hearing Officer. Daniel King from DA Construction was in attendance representing the Petitioner. He stated that

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL NOVEMBER 28, 2017 7:30 p.m.
MEETING MINUTES**

they are putting a conforming addition on a nonconforming dwelling; it's nonconforming by five (5) feet. He said that the addition will be fifteen feet (15') off the back and it will meet all setback requirements. Ms. Fidler asked if it would be anymore nonconforming and Mr. King replied that it would not be; they will have the same roofline and will not be going any higher. Mr. Hubbard stated that in the application for a hearing it says that this is a two (2) family dwelling. Mr. King said that it currently is a grandfathered two (2) family but won't be at the end of the project. Mr. Hubbard said that the plans show the proposed, not the existing. There were no additional questions from the Board. Marilyn Dunn from South River Street stated that it was a two (2) family now and asked if it will be a three (3) family or one (1) family when finished. Mr. King said that the project is to eliminate everything for the two (2) family, separated gas lines, separated everything, to make it a one (1) family. Ms. Fidler made a motion to close the hearing which was seconded; all were in favor. Ms. Fidler made a motion to grant the Special Permit which was seconded; all were in favor.

#17-74: Christine and Tim Pesko: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 18'-4" x 24'-6" two (2) story addition on the left hand side of the dwelling with approximately an 11' x 11' covered porch and a 17' x 11' mudroom extension on the rear of the existing single family dwelling on the property located at **94 Holyoke Street**, which is further identified on the Assessors' Map as parcel G12-13-03A and is located in an R-1 zoning district.

Ms. Fidler read the petition into the record and stated that she would be the Hearing Officer. Richard Savant of Stenbeck and Taylor represented Mr. Pesko who was also in attendance. Mr. Savant stated that if you are on Vermont Street which is an unconstructed street, the left side of the house is the proposed two (2) story addition. They are extending the house out about 18.3 feet and will be utilizing the existing covered porch. They will maintain a 13.6 foot setback and will not be getting any closer to Vermont Street on that side. They own the parcel to the left giving them 57.3 feet from the back left corner; the rear line closest point is 44.9 feet. They will be squaring off the existing kitchen and will not be going any closer to Holyoke Avenue. Mr. Hubbard asked if the shed would be remaining and Mr. Savant said that it would not be. Mr. Galvin asked if it was a covered porch. Mr. Savant said that it was and the setback to that is 9.7 feet. Mr. Galvin said that the plan says 16 feet and 13 feet which make it look like a Variance. Mr. Savant said that it was 16 feet to the house and 9.7 feet to the porch. Mr. Galvin said that the covered porch is part of the structure. Ms. Fidler stated that 9.7 feet is the conforming number that they are looking at. Mr. Galvin stated that is the existing nonconformity and they are not getting any closer. Nobody on the Board had any questions. Collins Fay-Martin of 75 Dedham Road said that she is not wholly opposed to the addition but she has some concerns. One concern is that it will be an additional strain on the septic system and another is that the property abuts Conservation land. She said that there is a lot of encroachment. There's a private road that is open to public access where kids bike and walk; but not clear where the public access ways are. She said the Vermont Avenue sign had been on a telephone pole but was taken down. She would like to see the public access stay and that she hasn't heard enough about the additional bedroom and bathroom. Ms. Fidler stated that Ms. Fay-Martin had asked a few questions one of which is will the septic system be affected by the new addition. Mr. Savant said that the current septic system was designed for three (3) bedrooms and will remain a three (3) bedroom; they

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL NOVEMBER 28, 2017 7:30 p.m.
MEETING MINUTES**

won't increase the number of bedrooms. He said there will be a future septic plan filed with the Board of Health to relocate the tank and make it more conforming but they don't anticipate any increased loading on the septic system. Ms. Fidler said that was out of the realm of what the Board does but that Mr. Savant provided an answer. Ms. Fidler stated that the question about the public way going down Vermont does not pertain to this hearing. Their property lines are set and this addition wouldn't cause that to change; they aren't going to be any more nonconforming than the existing dwelling. Mr. Savant said that the porch was not being extended; the addition in red is stepped back a foot but it won't get any closer than the existing porch. Ms. Fay-Martin asked if there should be a deed restriction on the back lot if it were to be sold. Ms. Fidler stated that the Board did not have the authority to do that; Mr. Galvin confirmed that. Ms. Conway stated that they can only deal with what is in front of the Board. Mr. Hubbard asked about the rear setback and Ms. Fidler stated that Mr. Savant said that it's 57.3 feet to the covered porch. Mr. Savant said that they own that parcel along with the house parcel. Mr. Galvin said that it would be considered one lot for Zoning purposes. Ms. Fay-Martin said that they just bought it and Mr. Galvin said that didn't make a difference, it would still be one lot; people can add land to their property. Ms. Fay-Martin said they could turn around and sell it. Mr. Galvin said that was a different issue and they probably wouldn't be able to do that without a Variance because their lot is nonconforming and they have made it more conforming. They aren't allowed to divide the lot and make it more nonconforming without a Variance. He said that it would create Zoning problems for both parcels if they tried to sell it. Ms. Fay-Martin said that her concerns seem to be with everything the Board cannot address. Nobody on the Board or from the public had any additional questions. Ms. Fidler made a motion to close the hearing which was seconded; all were in favor. Ms. Fidler made a motion to grant the Special Permit which was seconded; all were in favor.

Ms. Fidler stated that ended the new hearings from the Agenda and the Board would move on to the closed hearing.

#17-68: Kathy Smith: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 35' x 6' covered front porch on the single family dwelling and a Variance in accordance with §305-10.11 for relief from §305-6.01 Applicability of Dimensional and Density Regulations and §305-6.02 Table of Dimensional and Density Regulations to encroach into the conforming front setback on the property located at **26 Rayfield Road**, which is further identified on the Assessors' Map as parcel H06-02-16 and is located in an R-1 zoning district.

Ms. Fidler said that Mr. Ford was at the last hearing but was not at this hearing to weigh in on the request for the Variance; she also stated that the Board had had some discussion on the Special Permit. She asked who was here to vote – Ms. Fidler, Mr. Hubbard, Ms. Conway, Mr. B. Murphy; Mr. R. Murphy said that he had watched the hearing on television so he would be able to vote; Mr. Stiles said that he was not at the first hearing. Ms. Fidler said that it pulled at the heartstrings when the gentleman who presented questioned why he was at the hearing if the Board would not grant the Variance. She said that the front setback is forty-one feet (41') and they were proposing to add a six foot (6') farmer's porch. This would give them a thirty-five foot (35') setback which makes the project more nonconforming. Mr. Galvin said that it actually

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL NOVEMBER 28, 2017 7:30 p.m.
MEETING MINUTES**

creates a new nonconformity. Ms. Fidler stated that the Board had briefly discussed the Variance and that it wasn't warranted in this case. She said that she believed that all, with the exception of Mr. R. Murphy who wasn't in attendance, mentioned that the Variance wasn't something that they were likely to do. Mr. B. Murphy said that he didn't say that and he was for the Variance. He said that he didn't think that it was a big deal, it's five feet (5'). He said that they just did Dedham and they didn't have to get into a Variance and they are thirty-eight feet (38'); this would be thirty-five feet (35'). Ms. Fidler asked if Mr. B. Murphy was suggesting that the Variance was appropriate and he replied, absolutely because it fits everything that it needs to do and it was a hardship. Mr. Hubbard asked what the hardship was and Mr. B. Murphy said that it the applicant has nowhere to go in the front. Mr. Hubbard said that they were proposing two (2) porches; the front porch would require a Variance but the side entrance was well within the setback. He said the issue is why do they need a Special Permit and he said that they were at twelve feet (12') on the left side setback. He said they could build a very nice, very large covered porch in the center and go out to the forty foot (40') setback line; they could extend the border to the wall of the house. Ms. Conway stated that there was a chimney there and Mr. Hubbard said that they could build around the chimney. Ms. Fidler asked when the Board became architects for the applicants. Mr. Hubbard said that he wasn't saying they were architects; he was saying it's not a hardship. Mr. B. Murphy said that it was absolutely a hardship because of the location of the home; they didn't cause it. Ms. Conway thinks that the way it's situated on the lot, an elderly woman that needs access to the front; it wasn't their fault the house is situated where it is; it's not uncommon; it's an issue with the lot.

Mr. Hubbard asked why the Board made the people on Ninth Road change what they wanted to do which was encroaching because it was six feet (6') off the ground; we made them go to four feet (4') even though it would be blocking their windows on their finished basement on the front of the house. Ms. Conway said that she was not there so couldn't answer that but that each Variance is different. Mr. Hubbard said that he does not agree with cutting five feet (5') into a setback. Mr. B. Murphy asked what made this different than Dedham Road. Mr. Hubbard said that Dedham was one foot (1') and they treated it as a storm enclosure. Mr. B. Murphy said he thought their setback was thirty-eight feet (38'); Mr. Hubbard said it was thirty-nine feet (39') and they encroached by one foot (1'). Mr. B. Murphy said that Dedham didn't need a Variance; Mr. Hubbard said that the Variance became moot. Mr. B. Murphy agreed with Mr. Hubbard that a Variance was needed here but did Mr. Hubbard think that it has a big impact; Mr. Hubbard said that he did. Mr. B. Murphy asked if Mr. Hubbard saw the hardship and Mr. Hubbard said that he did not. Mr. R. Murphy said that he did not see an issue with the encroachment; Mr. B. Murphy said that it is forty feet (40') and they would be at thirty-five feet (35'). Ms. Fidler said shape, soil, topography and asked what made this lot unique; she believes that this is slippery slope but Mr. B. Murphy does not. Mr. B. Murphy said they grant Variances for some reasons but not for others; they're only asking to go six (6') closer. Mr. Hubbard said that he is not a person who is always against Variances but in this case he feels that there are options although they might not be the applicant's #1 choice. He said that he cannot agree with a five foot (5') encroachment into the setback. Mr. Stiles asked what the harm was with going towards the street other than not being within the four (4) corners of the Bylaw; he said that no neighbors objected. He understands how difficult it is to comply with the rules of Variances but he said that they are in the Bylaw and it is at the Board's discretion. Mr. Hubbard said that Board members have a right

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL NOVEMBER 28, 2017 7:30 p.m.
MEETING MINUTES**

to disagree. He said that he goes case by case and when he looked at this he saw that they had an option to do a large, legal porch. Mr. Stiles feels that it is intrusive to ask them to do that. Ms. Conway said that she is normally stringent with Variances but she does not think going into the setback is too much. She said that it raises the property value, increases income to the Town. She said that she isn't sure if the other side would be accessible to the applicant. Mr. Hubbard said that the applicant's representative's failed to present a better case other than why he was bothering if the Board wasn't going to grant the Variance. Ms. Conway said that sometimes people don't present well and they shouldn't hold that against them. Mr. Hubbard said that nothing specific was presented as to why this was necessary. Ms. Conway said that they might not have known how they were supposed to present it; he was a builder and not used to public speaking. Mr. Hubbard said that the Variance was closed so there is no more information that can be brought in. Ms. Conway said that she did some homework on her own and doesn't have a problem with this because she thinks it is a good thing; it will improve the value of the home. She said as an agent selling a home, she would think that it would be weird to have the deck with a chimney there. Mr. Hubbard said that there is not one criteria that says they should grant it.

Ms. Fidler made a motion to grant a Special Permit for the **side porch on the westerly side** which was seconded; all were in favor. Ms. Fidler made a motion to grant the Variance which was seconded. Ms. Conway, Mr. B. Murphy and Mr. R. Murphy were in favor, Ms. Fidler and Mr. Hubbard were opposed. The request was **DENIED** since the concurring vote of four (4) members of a Board consisting of five (5) members is necessary to effect any Variance in the application of the Zoning Bylaw.

Meeting adjourned at 8:45 P.M.

Respectfully submitted,

Nanci M. Porreca
Zoning Administrator

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

May 29th, 2018 meeting by a 5-0 vote.

Signed: [Signature] Date: June 1, 2018