

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL JUNE 8, 2021 6:30 P.M.
MEETING MINUTES**

Members Present:

*Lynne Fidler, Chair
Brian Murphy
Heidi Conway
Larry Keane
Christopher Belezos
Stephen Feeney*

Also Present:

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

Ms. Fidler called the meeting to order at 6:35 P.M. and stated that this was a hybrid hearing as it is both live and on Zoom. She advised the audience listening to Zoom by phone that they will need to use *6 to mute and unmute. Ms. Fidler read the second paragraph on the Agenda which states, *"The bill filed by Governor Baker on May 25, 2021 extends these provisions related to the Commonwealth's Open Meeting Law until September 1, 2021, which will allow additional time to consider possible permanent changes to the open meeting law to provide for greater flexibility in conducting open meetings through reliance on electronic streaming and similar measures"*. Ms. Fidler stated that MCTV was recording the meeting and noted that images and files would be part of the record.

#21-28: American Towers, L.L.C.: In accordance with §305-10.11 of the Marshfield Municipal Code the Petitioner is seeking a Variance for relief from §305-5.04, Table of Use Regulations, Retail and Service #23b, §305-6.05, §305-6.10, §305-11.12.B (1), §305-11.12.B(2), §305-11.12.B (3), a Special Permit under §305-5.04.22 and 23, Accessory Communications Tower to a Nonresidential Use, §305-10.10 and §305-11.12 and Site Plan approval under §305-12.02 to construct a self-supporting one hundred and twenty foot (120') Monopole Tower, the ground space of which will be surrounded with a six foot (6') high chain link fence with a twelve foot (12') wide locked entrance gate which will house the telecommunications tower, equipment cabinets and generator of Verizon Wireless and the equipment for future co-locators on the property located at **0 Snow Road** which is further identified on the Assessors' Maps as being on parcel H07-04-25A and is located in a B-1 zoning district.

Ms. Fidler began by stating that **Case #21-28**, American Towers LLC-0 Snow Road, requested to continue to the June 22, 2021 hearing. Ms. Fidler made a motion to continue to that meeting at 6:30 P.M. and the motion was seconded; Fidler, Murphy, Conway, Feeney, Keane and Belezos were in favor.

#19-81: D.J. Sullivan Collision Center, Inc.: In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioner is seeking an Appeal of the failure of the Building Commissioner to issue a decision confirming that multiple principal uses are allowed on the property located at **612 Plain Street** which is listed on the Assessors' Maps as being on parcel E10-02-10 and is located in a B-2 zoning district with a Water Resource Protection District overlay.

Ms. Fidler said that **Case #19-81**, D.J. Sullivan Collision Center, Inc.-612 Plain Street, had requested to continue to the July 13, 2021 meeting. Ms. Fidler made a motion to continue to that meeting at 6:30 P.M. and the motion was seconded; Fidler, Murphy, Conway, Feeney, Keane

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and Belezos were in favor. Ms. Fidler stated that there would be four (4) new hearings on June 22, 2021. Ms. Porreca said that Mr. Pesce would review the Modera project at that hearing and Mr. Stewart said there would be a final report for the completion of Modera.

A. #21-29: Steven Sawyer: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to replace a 24' x 12' deck which will include a 10.5' x 12' screened porch on the property located at **114 Dwight Road** which is further identified on the Assessors' Maps as being on parcel H15-15-01 and is located in an R-3 zoning district.

#21-29A: Steven Sawyer: In accordance with §305-10.11 of the Marshfield Municipal Code the Petitioner is seeking a Variance for relief from §305-6.02 and §305-6.10, Table of Dimensional and Density Regulations, to replace a 24' x 12' deck which will include a 10.5' x 12' screened porch on the property located at **114 Dwight Road** which is further identified on the Assessors' Maps as being on parcel H15-15-01 and is located in an R-3 zoning district.

Ms. Fidler read **Case #21-29A** into the record and stated that **Case #21-29** for the Special Permit was read into the record at a previous hearing. She asked the applicant, Steven Sawyer, to reiterate his case for a Variance. Mr. Sawyer said there was an existing, unsafe deck and they would be replacing that within the same footprint; a portion of the new deck would be screened in. Because of the unique rear property line and a setback issue, the open deck portion will be on the left side and the screened portion will be on the right; the topography here is over four feet (4') of marsh. Mr. Sawyer said that he had reached out to his neighbors and submitted two (2) letters; he reviewed the project with them and they are okay with it; the third neighbor further down did not answer when he reached out. Ms. Fidler asked if it was correct that there were no abutter comments at the last hearing and Mr. Sawyer said that was correct; the direct neighbors were there but had no comment. Ms. Fidler asked Mr. Galvin and Mr. Stewart for their thoughts and said this was a little different than what they thought a few weeks ago.

Mr. Galvin said this can be viewed as a Special Permit case if the proposed screen porch will not be more detrimental; the Variance should be denied as moot. Ms. Fidler stated that going forward the Bellatta case will have more impact. Mr. Galvin said the Bylaws could be updated and he will let the Board know when it comes up. He said the same nonconforming element makes it a Special Permit case; if they were putting this on the side of the house then they would need a Variance. Ms. Fidler asked Mr. Stewart if he was satisfied with the answer and he replied that he was. She asked Mr. Sawyer if he understood; Mr. Sawyer said it was difficult to hear but because the 27 feet is pre-existing it is a Special Permit and not a Variance. Ms. Fidler asked if the public had comments and there were none. She made a motion to close the Special Permit hearing and deny the Variance as moot. The motion to close Case #21-29 was seconded and Fidler, Murphy, Conway, Feeney, Keane and Belezos were in favor. Ms. Fidler made a motion to consider Case #21-29A be denied as moot; it was seconded and Fidler, Murphy, Conway, Feeney and Belezos were in favor. Ms. Porreca asked who would be voting and Ms. Fidler said Mr. Belezos and then alternate. Ms. Fidler asked if there was any additional discussion or conditions regarding the Special Permit and there were none. She asked if the Board agreed that #1 through #10 in §305-10.12 had been satisfied; Fidler, Murphy, Conway, Feeney, Keane and Belezos agreed. Ms. Fidler made a motion to grant the Special Permit. The motion was

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seconded and the Board voted 5-0 with Fidler, Murphy, Conway, Feeney and Belezos voting in favor.

#21-39: Fitzgerald Family Living Trust: The Petitioner is seeking a Special Permit in accordance with §305-10.12, §305-4.03 and §305-6.10 of the Marshfield Municipal Code to raze the existing structure and construct a new 24' x 38' two (2) story single family dwelling on the property located at **53 Abbey Street** which is further identified on the Assessors' Maps as being on parcel K12-09-11 and is located in an R-3 zoning district.

Ms. Fidler read **Case #21-39** into the record and stated that she had confirmed with the Conservation Commission that this was not in the Coastal Wetlands. Jack O'Leary from Green Seal Environmental represented the Petitioner. He said the Fitzgerald family has owned the house for a number of years as vacation property and will now be retiring there. On the west side is the South River and the ocean is on the east. It's a small home and they are making substantial renovations; they are razing and rebuilding it per FEMA regulations. They went to the Conservation Commission last Tuesday and they expect their Order of Conditions shortly. The lot is 5,000 square feet like most lots in the area; the front and side setbacks are less than the minimum required; 14.3' from the road and 9.2' on either side with an existing concrete deck. The new house will be more conforming with the side setbacks; the front will be 14.8', 12.9 feet on the west side and 13.1' on the east side. The existing deck will be demolished and the existing driveway will stay. There will not be a front door facing Abbey Street.

Ms. Fidler asked if the Board had any questions. Ms. Conway asked about the front door not being on Abbey Street. Mr. O'Leary said the door will be in the back which is used most of the time because the cars park in the back. He said the house will be a foot above the Base Elevation which is 9 in that area. Ms. Fidler said that the Board won't endorse the shed. Mr. O'Leary said the Conservation case is closed. Ms. Porreca advised that the microphones may not be working and advised the Board may want to finish this case and take a recess. Ms. Fidler asked if there were questions or comments from the Board or public and there were none. She advised that if anyone was dialing in by phone on Zoom that they needed to use *6 to mute and unmute. Ms. Fidler asked if the Board felt that #1 through #10 in §305-10.12 had been met; Fidler, Murphy, Conway, Feeney, Keane and Belezos said yes. Ms. Fidler made a motion to grant the Special Permit with the condition that the Board does not endorse the shed. The motion was seconded and the Board voted 5-0 with Fidler, Murphy, Conway, Feeney and Keane voting in favor.

At 7:09 P.M., Ms. Fidler made a motion to take a short recess; the motion was seconded and all were in favor. Ms. Fidler called the meeting back to order at 7:11 P.M.

#21-41: Donna and Edward Martynowski: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to demolish two (2) existing sheds and construct a 30' x 34' two (2) story addition with an upper deck and associated stairs and two (2) Variances in accordance with §305-10.11 seeking relief from §305-6.10, Table of Dimensional and Density Regulations, to allow the construction of an overhang 13' from the front lot line and the construction of an upper deck and associated stairs 12.6' from the left lot line on the property located at **25 Sekonnet Avenue** which is further identified on the Assessors' Maps as being on parcel M09-04-12 and is located in an R-3 zoning district.

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Ms. Fidler read **Case #21-41** into the record and Nicholas Leing of Grady Consulting represented the Petitioner and asked to share his screen. Mr. Leing said that this was pre-existing and nonconforming on an undersized lot. They are proposing to move two (2) sheds and construct an addition where the sheds are. They are proposing an overhang at the front entry which will be about a foot and a half to provide cover when entering and exiting; a stairwell will come up from the rear. He asked if the Board had any questions or comments. Ms. Fidler asked Mr. Stewart if he had the chance to address this. Mr. Stewart said it was pretty plain, the Variance is needed to encroach into the setback for the deck; it is up to the Board to decide on the stairs. He said they are looking for a Variance for egress; that is typically granted in the Flood Zone but this is not in the Flood Zone. Mr. Stewart said there is potential to design this differently but it is up to the Board. Mr. Murphy said with a staircase they generally allow 42" into the setback for egress without a Variance. Mr. Galvin said there is a deck there now. Mr. Stewart said the deck was built into the setback and it is higher than 4 feet. Mr. Murphy said they have done this with a bunch of homes; they come down and had to turn it left to hold the 42 inches; he asked which egress this was. Mr. Stewart said he would have to look at the architectural drawings to refresh and asked Mr. Leing to display them. Mr. Murphy said they were allowed to have a walkway.

Ms. Fidler said she agreed with Mr. Belezos when they are looking at the renderings; Mr. Belezos asked Mr. Leing to go to page A3 which had the best view. Mr. Stewart said the internal staircase is the main egress; the second one does not connect to the other side of the house. Mr. Belezos asked about the placement of the stairs and Mr. Stewart said he believed it was 32' from the rear; Mr. Belezos said they were dealing with the side setback. Ms. Fidler asked Mr. Murphy and Mr. Stewart for other options. Mr. Stewart said it may be possible for the staircase to go into the setback. Ms. Conway asked if the garage was on the bottom half and was there extra space on top. She said instead of having this on the side this could be another option.

Ms. Fidler asked to look at the overhang of 13' from the front lot line and said she had no concerns or issues with the front. She said it was on the side and asked if the Variance applied in this case. She asked the Board if there were any comments on Form 2B (Variance). Mr. Murphy said he had no comment and Mr. Belezos was struggling with #2; Ms. Conway asked how #2 made sense. Ms. Fidler read #2 which says, "That a literal enforcement of the provisions of the Zoning By-law would involve substantial hardship, financial or otherwise, to the undersigned for the following reasons". The answer submitted states, "The literal enforcement of the provisions of the Zoning By-law would inhibit improvement of the locus property as an additional (sic) of smaller scope would be financially impractical."

Mr. Keane asked if they could hear from the public and discuss after that. Attorney William Egan from Whitman represented Brian and Susan Donlan, abutters. He said that looking at all of the documents filed it was pretty clear that want to add another unit with a new kitchen, etc. They are adding a 2,000 square foot addition which takes away from the integrity and character and is detrimental to the neighborhood. He said that this goes against the Bylaw and adding bedrooms will affect water and sewer; he said they noted they would have a discussion with the DPW and they should have done that before. They are adding a bedroom bathroom and kitchen with a garage underneath and this wasn't filed under an accessory apartment. Mr. Egan said he knows the Board is discussing the staircase but the bigger issue is adding a second dwelling. He

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does not think that they meet the ten (10) requirements. Ms. Fidler said the Board appreciates his input.

Jackie Davis of 19 Sekonnet Avenue, an abutter, thanked the Board for allowing her to speak. Ms. Davis said there were errors on the plan; the first error was with the lot frontage – it says 80' and the plan shows 75'. The lot depth is 100' and the plan shows 115'; the proposed structure will be 25'8" and the existing structure scales to 26'7.5". Ms. Davis questions the open space and building coverage need to be reviewed; 22'x40' is 880 square feet and the building coverage on the plan is 1415 square feet. She stated the Board mentioned that they don't endorse sheds. Ms. Davis said she can't properly determine what the frontage is and requested the Board to get a written instrument from the surveyor.

Ms. Fidler said the Variance Form 2B is requesting relief from §305-6.10 for front and side yard setbacks and after review, the Board finds that all five (5) conditions apply. She asked Mr. Stewart to put §305-10.11 on the screen. Ms. Davis said this "unique to the lot"; all lots are pretty uniform and the applicant's lot is not unique; the plot plan shows the uniformity in a checkerboard pattern. She said that they don't address #1, the applicant just restated the proposal. Ms. Davis said the addition is larger than the existing structure. She said that she will be financially impacted. The setback is about 2.5' and if you cut off the addition it will still be larger than the primary residence. Ms. Davis went through #2 through #5. She said the site plan is dated May 2021 and the architectural plan is dated December 2020. Ms. Davis said the information submitted leads to an accessory apartment; the application doesn't indicate §305-11.09 and she contends the Board can't address this until there is an application for an accessory apartment.

Mr. Egan asked if the Board would take an initial vote on the Special Permit and Variance. Ms. Fidler said she was inclined to continue the hearing. She suggested he put concerns in writing and they can reiterate it. Mr. Egan said he would give to Mr. Galvin and ask him to give to Mr. Leing. Ms. Porreca said he should send the information to her. Ms. Fidler asked if there was anything specific the Board wanted to see for the next hearing and advised the abutters to reach out to Ms. Porreca if they had questions. Ms. Fidler made a motion to continue the Special Permit and Variance. Ms. Davis asked if the Board found the application complete; Mr. Murphy said they would discuss it. Ms. Davis asked if she could still submit information and Mr. Fidler said yes because the case was still open. She asked Mr. Leing if he had any comments or questions before they continued this to another date and he said that he would reach out to Ms. Porreca. Mr. Murphy and Ms. Davis had a discussion about the second story. Ms. Fidler said the accessory apartment would be addressed. She made a motion to continue the hearing to June 22nd at 6:30; this was seconded and Fidler, Murphy, Conway, Feeney, Keane and Belezos were in favor.

#21-42: Richard and Susan Vail: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to raze the existing structure and construct a new 24' x 46' two and a half (2½) story single family dwelling on the property located at **53 Concord Street** which is further identified on the .Assessors' Maps as being on parcel K12-05-31 and is located in an R-3 zoning district.

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Ms. Fidler read **Case #21-42** into the record. Dick Rockwood said he was representing that applicants and Ms. Fidler asked him to explain the project. Mr. Rockwood said this is in the Flood Zone so they have to elevate; it will be 2½ stories which is a little bigger than what is there now. It will still be nonconforming but no more than the existing dwelling. It will adhere to the 2/3 regulation and is similar to other projects the Board has approved. Ms. Fidler asked the Board if there were any questions and Mr. Belezos asked Mr. Stewart to display the site plan. Mr. Belezos said that it appears the house next door has the same bump-out and asked Mr. Stewart if there were any issues. Mr. Stewart said there wasn't a particular issue; when elevating in a Flood Zone the Board has allowed the stairs. Mr. Belezos asked if there were any public safety issue with the other stairs; Mr. Stewart said it is a legal nonconformity. Mr. Murphy said they have had to approve additions that are on a neighbor's property. Ms. Fidler said she went to the site and it's a cute little cottage; she does not have any problems with this project. She asked if there were any questions from the public and there were none. Mr. Rockwood said it was pretty clear what they are asking for and there is not a deck in the backyard. Ms. Fidler asked if the shed would be remaining and Mr. Rockwood said yes; Ms. Fidler stated the Board will not endorse the shed. She made a motion to close the hearing which was seconded; Fidler, Murphy, Conway, Feeney and Belezos were in favor. Ms. Fidler asked if the Board felt that #1 through #10 in §305-10.12 had been met; Fidler, Murphy, Conway, Feeney, Keane and Belezos said yes. Ms. Fidler made a motion to grant the Special Permit with the condition that the Board does not endorse the shed. The motion was seconded and the Board voted 5-0 with Fidler, Murphy, Conway, Feeney and Belezos voting in favor.

#21-43: Christopher and Sara McNeil: The Petitioners are seeking a Special Permit in accordance with §305-11.09 of the Marshfield Municipal Code to create an approximately 150 square foot Accessory Apartment within the addition to be constructed on the property located at **110 Eames Way** which is further identified on the Assessors' Maps as being on parcel F15-01-08 and is located in an R-1 zoning district.

Ms. Fidler read **Case #21-43** into the record; Dick Rockwood said he was representing that applicants. Ms. Fidler asked if he had filled out the application for the Accessory Apartment and he said yes. Mr. Stewart explained that this is just for the apartment; they will build the addition and put the apartment in. Ms. Fidler said they were adding 27% which is less than the 40% and Mr. Keane asked if there is a timeline for them to wait. Mr. Stewart said the crux of this is #6 and read from the Bylaw, "The dwelling must be in existence, and not substantially altered, for a period of three years prior to the filing of the application for special permit". Mr. Murphy said that is the important language – prior to the filing; so before the filing you can't make the alteration. They are filing the application tonight and the alteration has not happened. Ms. Fidler asked Mr. Stewart if any building permits had been issued for the project and Mr. Stewart said they were waiting to get this first. Mr. Murphy said it was the language of that that is in dispute – they filed prior. Mr. Belezos said it was a Catch-22 the other way. Ms. Conway said they have talked about this before and Ms. Fidler said this needs to become a priority. Mr. Stewart said if they built it and then came for the apartment they would have to wait. Mr. Belezos asked why they needed to vote and Mr. Murphy said they need a Special Permit. Mr. Stewart said they would need a Special Permit now because if they go ahead and build it then it's a substantial alteration. Mr. Belezos asked why a Variance and Mr. Murphy said a Special

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Permit.

Ms. Fidler asked Mr. Galvin for comments and he said that he gave comments but it doesn't sound like anyone wants to hear them. He said the Bylaw is very purposeful although it doesn't sound like that. He said if you looked at the beginning of the Bylaw apartments are allowed in the existing structure; they didn't want people to extend their homes and get larger accessory apartments. So they put the three (3) years in so people wouldn't expand their homes and go get the apartment. Ms. Porreca asked if they would need a Variance and Mr. Galvin said they should. He said this has been legal counsel's opinion for the past 35 years. Mr. Belezos said there is a size limit already. Mr. Galvin said the accessory apartment shall occupy no more than 40% of the total living area of the dwelling. If the total living area of a dwelling is 2500 square feet and you expand it to 4500 square feet then you can have a much larger apartment because the 40% would be larger. He said it's in there so people don't expand their homes and then immediately convert it to a larger accessory apartment; the intent was to slow it down purposefully. Mr. Belezos asked if it would be 40% of the existing and Mr. Galvin said the Bylaw needs to change.

Ms. Fidler said that's the dilemma – if you have 2500 and add 2000 now it will be 40% of 4500 not 40% of 2500. Mr. Galvin said if you look at the purpose of the Bylaw, section A, it's to create an apartment in the existing owner-occupied dwelling. He agrees that there is an existing dwelling but the part they are proposing is not part of it. He said it is what it is and that he sat on that side for 30 years and lost every time; this Board has decided differently and he has said his piece. Mr. Stewart said the Board will allow an addition with the intent of doing an apartment and the Building Department will issue the permit. They have done everything except put in the stove and they will do that after the Building Department leaves; he said nobody goes back after three (3) years to make sure they filed for a Special Permit to legalize it. He said he agrees with Mr. Galvin – until there is a Bylaw change it should be within an existing owner-occupied dwelling. Mr. Stewart feels that this needs a Variance to get past the purpose of creating a substantial improvement. They will have to prove why it is necessary for them not to wait the three (3) year period. If it's a special circumstance with the family the Board has allowed that in the past. Mr. Galvin said the best way to get the Planning Board's attention is by granting Variances. Mr. Galvin said the Board isn't doing any favors because when they go to sell it and it wasn't granted in the proper way. If you grant a Variance you have given them something that permanently runs with the property. Ms. Conway said she has had financing not go through because it wasn't done properly; Mr. Galvin said nine (9) times out of ten (10) the closing attorneys don't pay attention to zoning compliance. Mr. Murphy said they are here for a sick family member and Mr. Galvin said the Board should give them the opportunity to file for a Variance. Ms. Fidler asked Mr. Rockwood if he had heard the Board's and Mr. Galvin's comments; she said the gist is that they continue the hearing and leave the application open. Mr. Galvin said the Board was inviting Mr. Rockwood to apply for a Variance. Mr. Rockwood said he could get a building permit tomorrow for the structure. He said this is the way of the world and he had done these all over town the past twenty (20) years. He said they meet all setbacks and requirements other than the viewpoint of the three (3) years. Mr. Rockwood has heart that the house has been in existence, not the addition. He was hoping this came up at Town Meeting and said Marshfield was the only town with this zoning. He said he will build it and they will

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live in it. Ms. Fidler made a motion to continue this to July 13, 2021 at 6:30 P.M.; this was seconded and Fidler, Murphy, Conway, Feeney, Keane and Belezos were in favor.

Mr. Fidler made a motion to adjourn which was seconded; Fidler, Murphy, Conway, Feeney, Keane and Belezos were in favor.

The meeting adjourned at 8:20 P.M.

Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

These minutes were approved by the Board on May 24, 2022 by a

5-0 vote.

Signed:  Date: 5/24/22