

**ZONING BOARD OF APPEALS MEETING PLACE: ZOOM REMOTE MEETING,  
MARSHFIELD TOWN HALL DECEMBER 22, 2020 6:30 P.M.  
MEETING MINUTES**

*Members Present:*

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

*Also Present:*

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

MARSHFIELD TOWN HALL  
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Ms. Fidler called the meeting to order at 6:34 P.M. and advised everyone that if they were calling in to the Zoom meeting by phone they will need to use \*6 to mute and unmute. Ms. Fidler took roll call for attendance and all members were present on Zoom. All members confirmed that they were alone with the exception of Ms. Conway who was on speaker phone with Ms. Fidler and Mr. Murphy who was with Mr. Stewart.

**#20-68: Craig Ricciarelli:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 18' x 10' x 10' outdoor kitchen and storage area on top of the roof deck on the property located at **1203 Ferry Street** which is further identified on the Assessors' Maps as being on parcel I15-11-16 and is located in a B-4 zoning district.

Ms. Fidler said they would start with **Case #20-68**, 1203 Ferry Street, and said that Mr. Ricciarelli is represented by Attorney Jeffrey DeLisi who requested to continue the hearing until January 26<sup>th</sup>. Ms. Fidler made a motion to continue the hearing which was seconded by Ms. Conway. In a roll call vote, the Board voted unanimously to continue the hearing until January 26, 2020.

Ms. Fidler stated that the Board would hear **Case #20-89** which is a new hearing and then **Case #20-84** which was a continued hearing. They would then discuss **Case #20-59**, 1121 South River Street.

**#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. **Applicant has requested to continue until they complete the Planning Board process.**

She stated that they also had D.J. Sullivan who has requested a continuance. She said she wasn't sure what the Board felt and said that Mr. Sullivan came before them in September of 2019 and said she knows that he is working to figure out where everything fits. She asked if the Board objected to continuing this until after Mr. Sullivan finished the Planning Board process; she said

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they could give him another period of time, such as January 26<sup>th</sup>, to come before the Zoning Board. Ms. Conway asked the reasons for continuing it versus not continuing it and Ms. Fidler said she wasn't sure. Mr. Stewart said it might be better to save this until they reach it on the Agenda. Ms. Fidler said she isn't sure why they need to continue this until after the Planning Board and she wanted to ensure they discussed this before Mr. Galvin had to leave. Mr. Galvin said the reason why the continuance was requested is because the Bylaw has changed and Mr. Sullivan is working through it with the Planner. He said that if had a vote he would vote to continue it. Ms. Fidler said she understood that logic and made a motion to grant the continuance until March 23, 2021. The motion was seconded by Ms. Conway and the Board voted unanimously in a roll call vote to continue.

**#20-89: James and Judith Oriola:** 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 29' x 32' two (2) story dwelling on the property located at **37 Constitution Road** which is further identified on the Assessors' Maps as being on parcel K11-22-09 and is located in an R-3 zoning district.

Ms. Fidler read **Case #20-89** into the record and turned it over to the Petitioner. Mr. Leo Hennigan, the builder, was in attendance with James and Judith Oriola. Ms. Fidler asked Mr. Hennigan if he had filled out the application and he replied that he did with Ms. Porreca. The Board reviewed the deed and Ms. Fidler asked Mr. Hennigan to go over the Site Plan and explain the nonconformity. Mr. Hennigan said the lot is nonconforming but it meets the setbacks; Mr. Stewart said it was nonconforming due to the frontage and depth. Mr. Hennigan said the new dwelling will be considerably smaller except for the staircase. Ms. Fidler stated that the setback is currently 11 feet and they are proposing 15.5 feet with the new front setback at 16 feet. She asked for the architectural drawings to be displayed and asked Mr. Hennigan what would be in the basement/lower level. He replied that it would be a drive-in and he believed the elevation is 9.5 feet; the rear right corner will be a mechanics bench to bring the utilities above FEMA.

Ms. Fidler asked Mr. Stewart for comments and he said the bottom should be for access because of the Flood Zone. He pointed out an area that needed to be weather-sealed and stated that below would be storage and not habitable space. Ms. Fidler said they should be mindful of that with their building permit application and asked the Board and the public if they had any questions or comments. She stated that Mr. Galvin sent the Board a six (6) page email today stressing the importance of going through and crossing the "T"s and dotting the "I"s. She said that items one (1) to ten (10) identify the use requested and the Board should be very familiar with those. Ms. Fidler said the Board needs to confirm that they understand and she proceeded to take a roll call vote to confirm. Her motion was seconded and all members confirmed that they understood. James Cheney of 43 Constitution Road said that when he did his construction he was told by Conservation that he was on a barrier beach and he was wondering if anything had changed. He said he tore his house down a few years ago and was told a cement foundation was not preferred and he had to go up on pilings; he did have peat underground. Mr. Stewart said the Building Code dictates what can be used for the foundation. Conservation bases it off



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the soil conditions and topography and it's case by case. He said that will be left to Conservation and all the Zoning Board was ruling on are the setbacks, etc. There were no further comments. Ms. Fidler made a motion to close the hearing which was seconded and the Board voted unanimously in a roll call vote. Ms. Fidler stated that there were no special conditions other than complying with state, local and federal regulations and she made a motion to grant the Special Permit. The motion was seconded and in a roll call vote, the Board voted 5-0 to grant the Special Permit with Fidler, Murphy, Conway, Stiles and Feeney voting in favor.

**#20-84: Cleiton Lima:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 15' x 17' single story addition at the rear of the dwelling on the property located at **22 Musket Road** which is further identified on the Assessors' Maps as being on parcel K09-03-13 and is located in a B-3 zoning district.

Ms. Fidler went to continued **Case #20-84** and said that it had already been read into the record. She asked if the Petitioner was on the Zoom meeting and advised to use \*6 to mute/unmute if calling in. It did not appear that the Petitioner was on the Zoom meeting. She asked what the Board was waiting for and Ms. Porreca said the plot plan and said that they now have it. Ms. Fidler asked for the deed. She asked the Board how they felt about going forward without the applicant and she took a roll call vote to see who was in favor. Fidler, Conway, Murphy, Stiles, Feeney, Keane and Belezos were all in favor. Ms. Fidler stated that the applicant was in attendance at the last meeting and asked if anyone from the Board or public had any questions or comments; there were none. Ms. Fidler made a motion to close the hearing which was seconded. In a roll call vote, the Board unanimously voted unanimously to close the hearing. Ms. Fidler asked the Board if they agreed that #1 through #10 in §305-10.12 had been satisfied and the Board agreed that they had been satisfied. Ms. Fidler made a motion to grant the Special Permit with the condition that the Petitioner comply with all local and state laws and regulations; she stated that the Board did not endorse the existing shed. The motions was seconded and in a roll call vote the Board voted 5-0 to grant the Special Permit with Fidler, Murphy, Conway, Stiles and Feeney voting in favor.

**#20-59: Thomas Dickerson:** The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-11.09.C.7, required minimum lot size, and a Special Permit in accordance with §305-11.09 to create an approximately 500 square foot Accessory Apartment within the existing footprint on the property located at **1121 South River Street** which is further identified on the Assessors' Maps as being on parcel I12-01-14 and is located in an R-1 zoning district.

Before starting the next hearing Ms. Fidler reminded everyone that at the beginning of the meeting they had continued **Case #20-68** to January 26, 2021. She then stated that they would move to **Case #20-59**, 1121 South River Street, and that it had already been read into the record. Attorney Jeffrey DeLisi represented the owner of the property and said that Mr. Dickerson bought the property in June of this year; it is in the R-1 zoning district and the Water Resource Protection District (WRPD). He said the structure is pre-existing nonconforming on the right;



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somewhere in the Assessor's records is a snapshot of the home. There is an attached barn and the Assessor identifies it as two (2) units built in 1890. At that time this lot was eleven (11) acres owned by the same family until 1968 when the property was bought by the Williams brothers. In 1969 the brothers divided the property into six (6) lots. This parcel has the single family structure with the barn and it was 26,000 square feet in Zoning District A. At that time it met the existing zoning requirements. The barn has an existing kitchen, bathroom and bedroom. The new owner contacted Mr. Williams who said he has a clear recollection of that and wrote a letter to confirm the unit had been in existence for some time.

Mr. DeLisi went on to say that Marshfield changed zoning requirements in 1970; at that time the two (2) family use was grandfathered. He said to fast forward to 2020 and Mr. Dickerson wanted to make non-structural changes to the rooms in the barn. Mr. Stewart referred Mr. Dickerson to the Zoning Board of Appeals, probably to legitimize the apartment. Mr. DeLisi said the lot is too small under the current Bylaw. He said that Mr. Dickerson applied and then retained him. Mr. DeLisi thinks this is grandfathered as a two (2) family and he disagrees that they need a Special Permit and a Variance. He said that under §305-9.02 they are not altering any structural elements; it's all internal. He would like to ask the Board how to proceed and he will ask the Board to make a finding that this is a pre-existing two (2) family dwelling; or they could file a decision with the Clerk that they found that it is and a Variance is not necessary.

Ms. Fidler asked Mr. Galvin for his input. Mr. Galvin said the basis on which Attorney DeLisi is arguing is a statement by Mr. Paul Williams only. The Board should look at the Assessor records and Building Department records; Mr. Williams is not here. Mr. Galvin said he doesn't want to stop them but they have often looked at other Town records. Ms. Fidler said that she would like to find information that supports Attorney DeLisi's evidence that this is a pre-existing two (2) family dwelling. Mr. DeLisi said there is a 1968 plan showing that attached area; he knows it doesn't say the building was used that way. Ms. Fidler asked Mr. Galvin if there was an issue because it was abandoned; Mr. DeLisi said it is not abandoned. Mr. Keane said he looked at it when it was for sale and it was empty. He asked if it had to be a legal unit to be grandfathered. He also said he would like to see something from the Town. Mr. Galvin said he looked at the Assessor record and it shows the attached. He said they could rely on what Mr. Williams says but they have to be sufficiently convinced. Mr. Galvin said that Mr. Keane brought up if nobody was living there is it considered abandoned. He said it needs to be "unoccupiable", not abandoned just because nobody lives there.

Mr. Murphy said he went to school with the McCabes who live there and said growing up there was a unit attached. Mr. Galvin said they could rely on what Mr. Williams said. Ms. Fidler said he has been in town for a long time and would take his word as is. Mr. Keane said the discussion would be is this a legal two (2) family or an accessory apartment. Mr. DeLisi said the application before them is for an accessory apartment; the reason for the Variance is because they need 40,000 square feet. Through research, it seems to Mr. DeLisi that this is grandfathered in his mind as a two (2) family. Mr. Stewart said that when he was presented with the application to remodel this unit, it was obviously an accessory apartment. He said they can't remodel and then apply for the apartment; they would need to wait three (3) years. He suggested that they get the apartment and then remodel; then they realized that the lot size was too small. Mr. Stewart agrees that the district was overlaid on this property that made it nonconforming; he



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does not have a problem with the Variance or the Special Permit; they would need to update the records every year; even if grandfathered it needs to be legitimized as an apartment and then remodeled.

Mr. DeLisi said this is where he disagrees. Ms. Fidler asked Mr. Stewart to display §305-11.09 so they can see the argument for 20,000 square feet and 40,000 square feet. Mr. Galvin said this was only for new accessory apartments; he believes Attorney DeLisi is correct and they are not obligated to get a Special Permit to maintain a second unit on the property. Ms. Conway asked if they were taxed as a one (1) family; Mr. Galvin said according to the Assessor's record, they see it as two (2) units. Ms. Fidler asked Mr. Stewart if he saw the logic of what Mr. Galvin presented. He said that he did but that none of this was brought up originally. Ms. Fidler asked if it was an accessory apartment or a two (2) family. Mr. Galvin said they are two (2) units on this property; there was no concept of accessory apartments back then. Mr. Belezos asked if the Board had the right to restrict it as an accessory apartment; Mr. Galvin said no but they could make them get a Special Permit to alter it. Mr. Galvin thinks the Board has enough evidence to determine that these are two (2) units. If this information had been given to Mr. Stewart he would have gone to Mr. Galvin with this and Mr. Galvin would have agreed with Mr. DeLisi. Mr. Keane asked if they could sustain what they have. Mr. Galvin said it was only 480 square feet. Ms. Fidler said she thinks they have enough information. Mr. Keane said Marshfield was strict with two (2) families.

Ms. Fidler stated that there was a letter from Edward and Bette Mackey in opposition but she was not clear if they were in attendance tonight. She asked if there were any other public comments and then asked Mr. Murphy how he felt. Mr. Murphy said he is fine with everything and he understands why Mr. Stewart felt that way. Ms. Fidler asked if there were any other Board comments and there were none. She asked Mr. DeLisi to outline the specifics; she asked if the application was for a Variance and Special Permit and asked Mr. DeLisi if he agreed. Mr. DeLisi said he would ask the Board for a vote that the Board finds this is a pre-existing two (2) family dwelling with no proposed exterior alteration and that the Board finds that it is not necessary to act on the application. Ms. Fidler asked Ms. Porreca when the next meeting was and she replied it was January 12<sup>th</sup>. Mr. DeLisi asked the Board to close the hearing. Ms. Fidler made a motion to close Case #20-59 subject to the Board reviewing a sample decision. The motion was seconded and in a roll call vote the Board voted 5-0 to close the hearing with Fidler, Murphy, Conway, Stiles and Feeney voting in favor. Ms. Fidler said they would discuss this on January 12<sup>th</sup>.

Ms. Fidler made a motion to accept the minutes from the May 2, 2017, March 8, 2017 and February 1, 2017 meetings with Scrivener's errors. The motion was seconded and in a roll call vote the Board voted 5-0 to accept the minutes with Fidler, Murphy, Conway, Stiles and Feeney voting in favor.

Ms. Fidler asked if there was anything else and Mr. Stewart thanked the Board for their help with 1121 South River Street. He said he didn't have any of the information discussed tonight when he was first approached. He said he has been making decisions and telling people to appeal because that is how it is set up; he doesn't want to unilaterally make a decision.

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Ms. Fidler made a motion to adjourn. The motion was seconded and in a roll call vote the Board voted 5-0 to adjourn with Fidler, Murphy, Conway, Stiles and Feeney voting in favor.

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