

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL APRIL 12, 2022 6:30 P.M.
MEETING MINUTES**

Members Present:

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

Also Present:

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

Ms. Fidler called the meeting to order at 6:30 P.M. and introduced herself. She explained that Zoom was provided as a courtesy and the meeting will not be suspended if there are technical issues. She gave the meeting ID information and advised callers to use *6 to mute and unmute. Ms. Fidler asked the Board to identify themselves and stated the Board had a quorum with five (5) members and one (1) associate member.

#21-90: Gabriel and Helene Gomes: The Petitioners are seeking a Special Permit in accordance with §305-13.02.C.01, §305-10.10 and §305-10.12 and a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-6.07 to construct a 4' x 390' dock/walkway and associated ramps and floats on the property located at **76 Carolyn Circle** which is further identified on the Assessors' Maps as being on parcel D20-01-25B and the abutting parcel D20-01-43 which are located in an R-1 zoning district.

Ms. Fidler stated that **Case #21-90** has previously been read into the record and continued. The Petitioner is requesting to continue to May 24th while they continue to work with the Conservation Commission. Ms. Fidler made a motion to grant the continuance to the date certain of May 24, 2022. The motion was seconded by Ms. Conway and the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor.

Ms. Fidler stated that the Board would start with **#22-08B**. She stated that she was running for Select Board and will not hear any cases that may be continued; she will not vote on the Kilcoyne case or solar; Mr. Murphy will be the Hearing Officer for those.

#22-08B: Maureen C.G. Cook: The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-6.02 for 2.2' of the proposed 6' wide deck that would extend beyond the allowable 13' setback for a deck over 4' high and would have a landing and stairs at each end of the deck on the property located at **125 Surf Avenue** which is further identified on the Assessors' Maps as being on parcel K11-24-07 and is located in an R-3 zoning.

Ms. Fidler read **Case #22-08B** into the record and stated that **Case #22-08** and **Case #22-08A** have already been read in and continued until tonight. Richard Servant from Stenbeck & Taylor represented Ms. Cook and said that they are here for a Variance for the deck. They have revised the deck from eight feet (8') to six feet (6') and are seeking relief from 2.2' from the allowable

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13'. He stated that there is a wet area near the steps and that the deck was approximately 8½ feet off the ground. Mr. Servant said that previous work had but done and because the dwelling is in a Flood Zone, it had to be elevated. The deck would meet the requirement for the setback if the house was not elevated because it would be less than four feet. Mr. Belezos stated that there was a handicapped person and Mr. Servant said that the mother uses a walker and Ms. Cook said she has a special needs sister who is not steady on her feet. Mr. Belezos mentioned that the stairs would be affected by water. Mr. Servant said they would be further off the road than where the existing stairs are. Mr. Keane confirmed that this was necessary because of the substantial improvement determination. Mr. Servant said that they reduced the deck from 8' to 6' and it wasn't feasible at 5'. Ms. Fidler confirmed that the shed was still there and advised that the Board would not endorse the shed. She then asked if there were any Board or public comments or questions and there were none. The Board felt that the case had been discussed pretty well and they did not need to deliberate. Mr. Stewart said this was the end of a long process; there were 4 hearings; and the Stop Work order was not Ms. Cook's fault.

Ms. Fidler made a motion to close #22-08 which was seconded by Ms. Conway. The Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor to close. Ms. Fidler made a motion to close #22-08A which was seconded by Ms. Conway. The Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor to close. Ms. Fidler made a motion to close #22-08B which was seconded by Ms. Conway. The Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor to close. Ms. Fidler went through the Variance requirements for Case #22-08B and made a motion to grant the Variance with the acknowledgement that the land in the rear of the property is wet and the motion was seconded by Ms. Conway. The Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor to grant the Variance. Ms. Fidler made a motion to grant the Special Permits for Case #22-08 and #22-08A in accordance with §305-10.10, §305-9.02.B, §305-9.02.C and §305-13.01.C.1 which was seconded by Ms. Conway. The Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor. It was noted that the Board did not endorsed the existing shed.

#22-31: Andrew Ochs: The Petitioner is seeking a Special Permit in accordance with §305-9.02.C and §305-10.12 of the Marshfield Municipal Code to construct a 12.5' x 18.3' and 30' x 18' two (2) story addition, a 10' x 21' deck and a 4.8' x 9.0' covered entrance on the property located at **1 Seaview Avenue** which is further identified on the Assessors' Maps as being on parcel G16-07-01 and is located in an R-1 zoning district.

Ms. Fidler read **Case #22-31** into the record and turned the hearing over to Scott Fanara from Grady Consulting who was representing the Petitioner. Mr. Fanara explained that this was a three (3) bedroom, nonconforming dwelling. They are proposing a two (2) story addition which will not be any more nonconforming. Ms. Fidler asked if the existing shed would be removed and Mr. Fanara said that it would remain; the Board did not endorse the existing shed. The Board determined that the Petitioner met the requirements of §305-12 (10). Ms. Fidler made a motion to close the hearing which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor to close. Ms. Fidler

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made a motion to grant the Special Permit which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor.

#22-32: James J. Kilcoyne, Jr.: In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioner is appealing a decision of the Building Commissioner concerning enforcement of the Town of Marshfield Zoning Bylaw and involving unpermitted development activity, asserted violations of the Zoning Bylaw, and asserted violations of existing zoning permits and approvals in the Floodplain, Coastal Wetlands, and Inland Wetlands Zoning Districts on the property located at **51 North River Drive** which is further identified on the Assessors' Maps as being on parcel E20-03-06 and is located in an R-1 zoning district, the Coastal Wetlands Overlay District and Inland Wetlands Overlay Districts.

Ms. Fidler was recused from this case; Mr. Murphy was the hearing officer and read **Case #22-32** into the record and turned the hearing over to Attorney Adam Brodsky who was representing the Petitioner. Mr. Brodsky said that Mr. Kilcoyne, the Petitioner, was concerned that he has been singled out and not treated like other residents. He said that if there is an issue the property owner is informed and given an opportunity to address; Mr. Kilcoyne believes his situation went right to a violation. He said that Mr. Kilcoyne has spent years getting the necessary permits and has obtained licenses and permits from the North River Association and authorization from the Army Corps of Engineers.

Mr. Brodsky said that first, the allegation re: the Wetlands Protection Act is not under the Building Commissioner's jurisdiction and Mr. Kilcoyne has already addressed that. This should not be the subject of a notice or violation. Second, they are looking to the Board to see if they need to file for a building permit for the ramada; it's a roof on a 5' x 5' structure which is on a pier and was installed in 2016. The timber walkway was done in 2015. Mr. Brodsky said that he was here alone because Mr. Kilcoyne was home ill. They don't think they need building permits for these; the ramada has no walls and provides shade. He said that Mr. Kilcoyne will comply if he needs a building permit; he wants to make sure that others need to get building permits. Third, they want confirmation that Mr. Kilcoyne doesn't need to modify his Special Permit. When Mr. Kilcoyne installed the ramada in 2016 he thought the FEMA Elevation was AE9. The Building Commissioner has brought to their attention the map change in November 2016 which put it at AE16. Mr. Kilcoyne does not have the exact date this was installed. Mr. Kilcoyne is prepared to seek a modification of his Special Permit but Mr. Brodsky does not believe he needs to do so. Mr. Brodsky said that with respect to the floodplain permit, it says they need to go to the Building Commissioner for the permit but he doesn't believe it has been done in the past. The ramada is not walled and he doesn't think that it meets the definition of a structure. Mr. Kilcoyne has already addressed some housekeeping, located the original decision and has now recorded it at the Registry and has submitted an Ad-Built. He just wants to be treated like everybody else.

Mr. Stewart said that everything he has to say has already been entered into the record. As far as

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treating Mr. Kilcoyne like others, this is a notification to a resident. It's not a fine and is required by Chapter 40A and the Marshfield Bylaws. Mr. Stewart said he received a request for enforcement and investigated. He knows that Mr. Kilcoyne was aware of this for months before Mr. Stewart sent notification. This was just a notice, just like I do with everyone else; a notice establishes a timeline. The previous Building Commissioner may have started with a phone call or a meeting but no timeline would be established. He chose to follow the regulations – a notice and a way to appeal. Sometimes he will meet with people and something may be resolved. He said the Board had an application here tonight that started with a Stop Work order. Mr. Belezos asked what was needed to cure the violation. Mr. Stewart said that the first violation was with the Special Permit and Variance but he understands that the decision has since been recorded. He said this was up to the Board because technically it had lapsed because it was never recorded. Does he need to re-establish his rights? Second, he violated the Special Permit by altering the dock and not going back before the Board for modification. Third is the gazebo/ramada – he understands that they are saying it's not attached to the dock but on poles outside. Mr. Stewart said that this is a structure and requires a Special Permit by the ZBA in Coastal Wetlands. A Floodplain Permit Is for any development activity in a Flood Zone, not just structures. It is Mr. Stewart's job as the Floodplain Manager to ensure that all permits are obtained – local, state and federal. He said that the Town has put a big emphasis on CRS (Community Rating System) and we are the #1 town in Massachusetts; it's important because we have to follow through. Mr. Stewart said that per the Bylaw, he has to respond to a violation. Mr. Kilcoyne violated his Special Permit because he didn't seek a modification. Even a ramada with 5' x 5' posts would require an RDA with the Conservation Commission. Mr. Stewart said that he has to notify Conservation and the DEP when there is a violation; he isn't going to pursue fines but it's his duty to notify them when there is a violation of their standards or regulations.

Me. Belezos asked if there was a cure the Board needs to address with the floodplain or is it with Conservation. Mr. Stewart said there is nothing for them to address except the appellant is questioning his authority to even notify a violation. It seems to be what the appeal is but he asked for clarification from Mr. Brodsky; the question seems to be about his authority to question or notify about violations of Orders of Conditions in a Flood Zone. Mr. Brodsky respectfully disagreed and said the Building Commissioner has the jurisdiction and enforcement of the Floodplain Permit Bylaw; he disagrees with Mr. Stewart that the ramada is subject to that violation. He request that since the Building Commissioner says that this is a structure then it should not be considered an alteration of land. Mr. Brodsky said at the time this was purchased and installed the floodplain went from AE9 to AE16. Mr. Belezos asked about the date of the change and Mr. Brodsky said it would have been at Town Meeting. Mr. Brodsky said this is not located in vegetative wetlands and they aren't contesting that it is currently in a floodplain. He does not think the Building Commissioner has any authority to address wetlands. He said that Conservation has issued permits for de minimus activity and he believes this is de minimus. He said he is not challenging Mr. Stewart but this can't be retroactive. Mr. Stewart said when they are talking about going back in history, we have a 10 year statute of limitations; flood zones change all the time and across the board; it's not unique, people went from an AE to a V zone. Mr. Stewart said if you take out the flood zone stuff and look at it as strictly zoning, the pier needed modification because it was different from what had originally been approved by the Board.

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Mr. Galvin said to answer Mr. Belezos, the flood zone has been existing since 2006 and the changes were adopted. His opinion is that the Special Permit did not lapse. They have now been recorded and should have been recorded a long time ago; the As-Built has now been submitted so that has been exercised. He thinks that what is out there is different from what was approved; typically the Board would consider something a minor modification. Mr. Galvin said his opinion is that this required a building permit. It's probably not the first thing that has been built without a permit, there are a lot of sheds. Mr. Stewart asked if he had to go back because the previous Building Commissioner did not require a building permit. Mr. Galvin said that some will be grandfathered; go forward and don't look at past practices. He said that we have granted Special Permits for things worse than this; you need a Special Permit in the Inland Wetlands for a minor modification. Conservation issues are Conservation issues but it should be understood that Mr. Stewart is the Floodplain Manager because of the language of the Bylaw. He can bring something to someone's attention but can't enforce it. Mr. Belezos said, so we don't handle it; Mr. Galvin said Conservation; he has been told docks are stored above the seasonal high tide. Mr. Galvin disagrees with Mr. Stewart about what they have on the ground now and what was there then. If they added up the total of square footage of the posts it would probably be two (2) cubic feet. Once they get the wetlands permit they will need a building permit.

Mr. Stewart pointed out that the actual order is what Mr. Galvin and Mr. Brodsky said. He is not enforcing ConCom, he is asking that they go to ConCom. Mr. Brodsky disagreed and said they are not subject to reestablishing rights. Mr. Keane said that Mr. Stewart pointed out that he had requested guidance from Mr. Galvin. Mr. Brodsky said if Mr. Kilcoyne doesn't comply he will get fined; he didn't get a friendly letter. Mr. Keane said that nobody gets a friendly letter; as Mr. Galvin said, do the Special Permit modification and get a building permit. He thinks Mr. Stewart did a good job.

Mr. Tim Fitzgerald, 84 Booth Hill Street, Scituate, said he isn't sure if he has a conflict of interest because he worked with Mr. Galvin and he is here for Mr. Brodsky. He said he has heard a lot of inaccuracies; he is building something up the road and it's good to know that he doesn't have to comply. John Cusick, Waterman Avenue, said he filed this on November 5th and just so Mr. Brodsky understands, Mr. Kilcoyne responded to what he sent to ConCom and the Building Department on November 15th. Mr. Cusick got this as a public information request which he files regularly; one response was that he was not a member when this occurred. Mr. Cusick said he didn't want to listen to Mr. Kilcoyne's attorney saying that Mr. Kilcoyne needs special notice. He wants it noted that Mr. Kilcoyne was notified on November 5th and responded on November 15th. Ms. Conway said that we have a complete packet and they will move on. Beth Triner of Bay Avenue said that she was concerned the Building Commissioner didn't enforce docks. Mr. Galvin said that prior inspectors may not have required that; Jim Folkard was prior and he did not. Mr. Stewart said that Mr. Folkard did enforce but there was some changeover; Ms. Triner said she didn't know if the prior one did.

Mr. Galvin said there were three (3) issues: 1) he comes back to see if what was built is okay; 2) the ramada; 3) the building permit. He said if the Board left the record open Mr. Kilcoyne doesn't have to do anything until the Board makes a determination on his appeal. The Wetlands Protection Act has a policy to get all other permits before going to ConCom and he thinks the Board should close the case and decide the appeal. Mr. Brodsky asked if he was understanding

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Mr. Galvin correctly – they should seek to modify the existing Special Permit for the additional square portion of the walkway; a new permit for the Inland Wetland District for the ramada; and a building permit for the ramada. Mr. Cusick said that Mr. Galvin should recuse because he works for the Board of Selectmen; Mr. Galvin said he also works for the Board of Public Works of which you are a member and his job is to interpret the Bylaw which he is doing. Mr. Murphy made a motion to close the hearing which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Murphy, Conway, Feeney, Keane and Belezos voting in favor. Mr. Murphy asked if the Board wanted to deliberate now or continue and do it at the end of the meeting; the Board decided to do it at that moment. Mr. Galvin recommended that they affirm in part and deny in part; they should deny that the Petitioner needs to re-establish something because Mr. Galvin doesn't think that he ever lost it. Mr. Belezos said to confirm the three (3) things that Mr. Galvin mentioned and deny everything else. Mr. Galvin recommended that the Board affirm that the Building Commissioner was correct in that there needs to be a modification to the existing Special Permit and Variance; there needs to be an application for a Special Permit in the Inland Wetlands District and depending on that, a building permit for the structure. Mr. Murphy made that motion to affirm in part and also to deny in part any potential findings that there was a lapse of the original Special Permit and Variance which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Murphy, Conway, Feeney, Keane and Belezos voting in favor.

Mr. Murphy made a motion to take a five (5) minute recess at 8:00 PM which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Murphy, Conway, Feeney, Keane and Belezos voting in favor. Ms. Fidler called the meeting back to order at 8:05 PM.

#22-33: William T. Ryder: The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-11.09.C.6 and a Special Permit in accordance with §305-11.09 to create an Accessory Apartment in the previously approved 24' x 29' attached garage that will soon be constructed on the property located at **3 Preston Terrace** which is further identified on the Assessors' Maps as being on parcel I16-04-01 and is located in an R-3 zoning district.

Ms. Fidler read **Case #22-33** into the record and turned the hearing over to William Ryder, the Petitioner. Mr. Ryder said that when his garage burned down he had a contractor come in, paid him too much money. Ms. Fidler asked if he was not here for an Accessory Apartment and a Variance; Mr. Ryder said that was included in the Rockwood plan. Mr. Stewart said that was when we had the three (3) year rule; they were doing the addition to get ready to have an apartment. Ms. Fidler said the existing Special Permit will to go February 27, 2023 and asked if this was the same ownership; Mr. Stewart said it was. Ms. Fidler asked if there was any change to the design of the garage and Mr. Stewart said the layout was the same but they will put a dinette in the dining area and kitchen facilities; he has everything that is necessary – sanitary, laundry, bathroom, cooking, sleeping. Ms. Fidler said that the Board of Health reached out re: the septic and Mr. Ryder said he had new septic put in in 2000 (? Unable to hear date). Ms. Fidler asked if the system was enough to handle the accessory apartment as well as the other bedrooms and Mr. Ryder said it was. Mr. Stewart said there had been a permit to modify the

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existing dwelling to eliminate an existing bedroom so there would be two (2) in the house and one (1) in the other house. Mr. Ryder replied yes and said there would be three (3) bedrooms altogether. Ms. Fidler asked if Mr. Ryder understood why he needed the Variance; that the Bylaw had changed but had not been approved by the Attorney General as yet; she reviewed the apartment regulations. She asked Ms. Porreca if Planning had weighed in and she replied that they had no comments. Mr. Murphy asked if he needed the three (3) year rule since the Special Permit was from 2018; Mr. Stewart explained that he was just constructing it now. Ms. Fidler asked if the Board or public had any comments and there were none. She made a motion to close the hearing which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor. Ms. Fidler made a motion to grant the Variance while the Town waits for approval from the Attorney General. This was seconded by Ms. Conway and the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor. Ms. Fidler made a motion to grant the Special Permit which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor.

#22-34: Ralph and Kathleen Tedeschi: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an approximate 8'6" x 17' expansion of the existing covered deck and a new attached 8'8" x 7' deck with stairs on the property located at **160 Bay Avenue** which is further identified on the Assessors' Maps as being on parcel M05-07-03 and is located in an R-3 zoning district.

Ms. Fidler read **Case #22-34** into the record and turned the hearing over to Attorney Jeffrey William Ryder, the Petitioner. Attorney Jeffrey DeLisi represented the Petitioners along with Dana Altobello from Merrill Engineering. Mr. DeLisi explained this is a nonconforming lot. The Petitioners are proposing to extend the roof overhang into the deck area and are proposing stairs to grade with a deck below. They will not be any closer to the side setbacks and will not violate the rear setback. Ms. Fidler asked Mr. Stewart to outline the project and he did; Mr. DeLisi said they were making it better. Ms. Fidler asked the Board and public if they had questions. Beth Triner of 172 Bay Avenue had no objection to the plan but was concerned about encroaching and expansion of adjacent properties. Ms. Fidler said that they will actually be less nonconforming. Ms. Triner asked if other properties will do the same thing; Ms. Fidler and Mr. Stewart said that other properties have the right to ask in the future. Ms. Fidler asked if there were any other comments and there were none. The Board discussed conditions such as an As-Built Plan, Certificate of Occupancy, etc. and they found that the Petitioners met §305-10.12 (1-10). Ms. Fidler made a motion to close the hearing and it was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor. Ms. Fidler made a motion to grant the Special Permit which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor.

#22-36: Patrick Connolly: The Petitioner is seeking Site Plan approval in accordance

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with §305-12.02 of the Marshfield Municipal Code to construct a large-scale ground-mounted solar photovoltaic installation on the property located at **Commerce Way** which is further identified on the Assessors' Maps as being on parcel D09-01-36A and is located in the I-1 zoning district and the Planned Mixed Use District (PMUD).

Ms. Fidler recused from this case. Mr. Murphy read **Case #22-36** into the record and turned the hearing over to Patrick Connolly of Beals Associates and Mr. Faria of Galehead Development. Mr. Connolly explained the project and said that they look at land, opportunity and interconnections for projects. They will submit an interconnection with Eversource and it can take 1-2 years for that to happen. He said the site control will either be a lease option or a purchase option and they are now the owners of the property. Mr. Kenem said they target industrial areas and the energy demands in the area. They do not have the exact panels yet but the battery will not contain any liquid or contaminants. Mr. Faria said that the utility will give bill credits that show it's coming from there.

Mr. Keane asked what the life span of the project was and Mr. Faria said it is a minimum of twenty (20) years because of the Smart program after that they will enter into the merchant market and it could go up to thirty-five (35) years; they are looking at the higher end of 35. Mr. Keane asked what would happen at the end of 35 and Mr. Faria said they will put in a decommissioning bond which can be used to return the property back to its original lot or it can replace the equipment with newer technology. Mr. Belezos asked if it would be manned or unmanned and Mr. Faria said it would be unmanned with two (2) visits a year; it can be monitored remotely. Mr. Connolly said they will have a secondary access and the main entrance would be away from the Madison. They will request a waiver for the underground connection from Eversource. Eversource is requesting above ground and Mr. Galvin asked if they would do it on poles; Mr. Brennan said they would. Mr. Brennan said that the only source of light would be limited around the transformer. He said that the Town Planner had asked them to do a cross section which they did and it was reviewed.

Mr. Feeney asked if there would be any negative impacts to the town. Mr. Brennan said there would be an impact during construction; they won't move and will have minimal sound, no smell and a buffer to industrial uses. Mr. Faria said this is in contrast to wind turbines which can be seen from far away. Mr. Stewart said it will be an ESS system and asked for specs; Mr. Faria said it was in the package, a drawing called SRD; because it is a smart program it requires batteries.

Mr. Murphy said this will need peer review and Mr. Stewart said he wants the Fire Chief to review this. Ms. Conway asked who they could hire and Mr. Galvin said they could get an engineering firm and send it to the applicant with the scope of work. Ms. Conway said they should look at the Town Planner comments and Ms. Porreca said she sent the comments to the applicant. Mr. Faria said they were doing a glare study. Mr. Galvin said the peer reviewer will look at the Operation and Maintenance Plan. Mr. Galvin asked if they had met with the Fire Chief and Mr. Faria said they had not. He suggested that the hearing be continued thirty (30) days out so there will be time for peer review. Mr. Murphy made a motion to continue this to

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May 10, 2022 which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Murphy, Conway, Feeney, Keane and Belezos voting in favor.

#22-37: Leonard Snyderman: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an approximate 35' x 10' addition to the northerly side of the existing dwelling, an approximate 9'x 5' bathroom addition on the basement level and a 31' x 23' carport on the property located at **26 Littles Lane** which is further identified on the Assessors' Maps as being on parcel D20-01-21 and is located in an R-1 zoning district.

Ms. Fidler read **Case #22-37** into the record and turned the hearing over to the Petitioner. She asked if they were aware of the leeching field and Caroline Rees said that they had moved it back. Ms. Fidler asked if they had been through permitting with the Board of Health and Ms. Rees said that they had and they have been to ConCom. Mr. Stewart said that the Board of Health said the plan was on hold; Ms. Rees said she was filling in for Brendan Sullivan and asked if they could move forward. Mr. Galvin said anything with the Board of Health would be continued. Ms. Rees said they represent Leonard Snyderman, the owner, for an addition and a carport; she said she will look into the septic. She said the addition will be on the west side and the carport will be on the north side; all will be conforming.

Ms. Fidler asked if the Board or public had questions. David Armstrong of Littles Lane asked if there would be a three hundred foot (300') buffer from the addition. Ms. Rees said there is 350 for the North River Commission site lines and that ConCom approved two hundred feet (200'). Ms. Fidler asked when it was approved but Ms. Rees did not have the date. Mr. Armstrong asked if they had the North River approval; Ms. Rees said they did and apologized because Brendan Sullivan was in a separate meeting and she will heck with him. She said it was approved as an RDA back in 2021. Ms. Fidler asked Mr. Stewart for comments and he said the carport was moot for Zoning because it is conforming and goes through the Building Department. Mr. Armstrong asked if there would be a change in access to the house from the carport and Ms. Rees said they were trying to keep the drive under the carport; they won't be changing the driveway; Ms. Rees said the carport will be open on all sides. Mr. Stewart said they will be modifying the driveway but will not be changing access from the road. Mr. Armstrong asked what the setback was from the edge of the Right of Way to the nearest edge of the carport. Mr. Stewart said they were twenty feet (20') and accessory structures are required to be twenty feet (20') from the street and ten feet (10') from the lot lines.

Ms. Fidler noted that there was a shed in front and said that the Board does not endorse the shed; Ms. Rees said there wasn't a shed and to disregard what is on the plan. Helen Burgess of Littles Lane was concerned about the septic plan and said there was a five foot (5') section near her fence; she said a new plan was submitted today. Ms. Fidler said this plan was dated March 15, 2022; Ms. Burgess said she went to the Board of Health and saw a different plan. Ms. Fidler said she was curious about what happened with the Board of Health but she thought they could move forward. Ms. Fidler asked if there were comments from ConCom and Mr. Murphy said ConCom didn't have time for comments. She made a motion to close the hearing which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and

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Keane voting in favor. Ms. Fidler said the Board of Health would need to be brought up to speed and Mr. Stewart said there would not be a building permit without comments from the Board of Health. Ms. Fidler made a motion to grant the Special Permit which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor.

#22-38: Jason Lucchetti: The Petitioner is seeking a Special Permit in accordance with §305-11.09 of the Marshfield Municipal Code to create an approximate 850 square foot Accessory Apartment within the existing dwelling on the property located at **78 Earldor Circle** which is further identified on the Assessors' Maps as being on parcel D14-02-12 and is located in an R-1 zoning district.

Ms. Fidler read **Case #22-38** into the record and turned the hearing over to the Petitioner. Jason Lucchetti said there is a five (5) bedroom septic system and that the house was designed with an accessory apartment in mind; there is a separate entrance and parking. Ms. Fidler said that the Board of Health said the septic is for a four (4) bedroom but he is saying five (5); Mr. Lucchetti said the Town has it assessed as a five (5) bedroom; Mr. Stewart said the Assessor doesn't have anything to do with the Board of Health. Ms. Fidler said it might be prudent to leave the record open and come back. Mr. Lucchetti apologized and said he assumed that if it was assessed as a five (5) bedroom he would have a five (5) bedroom septic system. He was looking at resale value but maybe his parents could go in there. Mr. Stewart said that the proposed site plan and plans are different and advised that he had a paper As-Built in the Building Department paper files if he needed it. He said that he always looks at the properties and there has been pergola work and a deck and that building permits should have been applied for. Ms. Fidler made a motion to continue the hearing to May 24, 2022 at 6:30. The motion was seconded by Ms. Conway and the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor.

#22-39: Sarah Dennis Silva and Deacon Silva: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 31'6" x 25' two (2) story addition and a 6' x 8' one (1) story family room extension on the property located at **227 Webster Avenue** which is further identified on the Assessors' Maps as being on parcel M07-01-24 and is located in an R-3 zoning district.

Mr. Murphy read **Case #22-39** into the record and turned the hearing over to the Petitioner who was represented by Dick Rockwood. Mr. Rockwood said it will be a two (2) story addition on the left side and is nonconforming on the right; he said they also have an application for an in-law suite but he didn't get the application in. Mr. Murphy asked if there was 10,000 square feet and if the lot coverage was good; Mr. Rockwood replied yes to both. Mr. Murphy made a motion to close the hearing which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor. The Board agreed that the Petitioner met the 1-10 requirements of §305-10.12; an As-Built and Certificate of

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Occupancy were included in the conditions. Mr. Murphy made a motion to grant the Special Permit which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Feeney and Keane voting in favor.

#22-23: Elizabeth and John Lake: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to replace the existing 10.3' x 7.5' shed with a 12' x 16' shed which will improve the northerly setback and maintain the read setback on the property located at **69 Standish Street** which is further identified on the Assessors' Maps as being on parcel K11-09-15 and is located in an R-3 zoning district.

Mr. Murphy read **Case #22-23** into the record and turned the hearing over to the Petitioner. Elizabeth Lake said they are seeking a Special Permit to replace the existing nonconforming shed and submitted a proposed and existing shed plan; she said the setback will improve to 3 feet from 2.7 feet. Mr. Murphy asked if the Board or anyone had questions. Mr. Galvin asked if the shed was pre-built or would it be built on site; Ms. Lake said it would be coming in pieces; Mr. Galvin said it was kind of tight. Mr. Stewart said he looked at satellite imagery and the shed has been there for more than ten (10) years so it is pre-existing. Mr. Murphy made a motion to close the hearing which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Keane and Belezos voting in favor. The Board agreed that the Petitioner met the 1-10 requirements of §305-10.12. Mr. Murphy made a motion to grant the Special Permit which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Keane and Belezos voting in favor.

#22-29: Anthony Durkin: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 18' x 6' front dormer and a 9'3" x 10'10" rear dormer to create a half story on the property located at **75 Marginal Street** which is further identified on the Assessors' Maps as being on parcel M06-03-08 and is located in an R-3 zoning district.

Mr. Murphy read **Case #22-29** into the record again and turned the hearing over to the Petitioner. Steve Bjorklund was with Mike Farwell and said he was unprepared at the last meeting. He said part of putting the meeting off was to look at projects approved by the Board on Ocean Street for a three (3) story. He said he was under the impression that he needed a Special Permit for the addition and that he has done this 1,000 times. Mr. Bjorklund said that there were two (2) sections in the Bylaw that apply. The first is §305-6.02, Table of Dimensional and Density Regulations; the first eight (8) things listed: lot area is 10,000, width/frontage is 80', depth is 100', maximum height is 35', maximum stories is 2½, maximum building area and minimum open space. Mr. Bjorklund also referenced §305-9.02 – "Any nonconforming one- or two-family residential structure may be altered, extended, or reconstructed and the use extended throughout the extended, altered, or reconstructed portion provided that any resultant alteration shall not

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cause the structure to violate the maximum building area and yard regulations of the district in which it is located. Nonconforming structures may be altered or relocated on the same lot if it makes the altered or relocated structure more conforming with respect to the current building and yard regulations". Mr. Bjorklund said they will not be violating that with any resultant alteration and that the Town is allowed to be more lenient than the State. He said the Building Commissioner can grant a permit for everything except for the two (2) things in the By-law. He said that it's the Town's By-law that allows him to get a building permit. Mr. Galvin said that he disagrees and asked Mr. Stewart if it currently violates height; Mr. Stewart said no. He asked Mr. Stewart if it was his opinion that the three (3) stories would violate height and Mr. Stewart replied yes. Mr. Bjorklund asked Mr. Galvin to explain and he replied that the building currently conforms to height and adding the third story would be a new nonconformity. Mr. Bjorklund said the difference between him and Mr. Galvin is that he read everything on the page; Mr. Belezos said except for the last two (2) sentences and that he needed to read the two (2) sentences together. Mr. Bjorklund said that Mr. Stewart could issue a building permit right now and Mr. Stewart said no, he needs ZBA approval. Mr. Bjorklund said that he doesn't think the By-law says that and asked to see the page. Mr. Galvin said it is conforming to height and just because you have one nonconformity you can't make it more nonconforming. Mr. Bjorklund asked Mr. Galvin if he didn't think that was the intent of the By-law and Mr. Galvin said he didn't. Mr. Stewart said this was prohibited by the By-law and Mr. Bjorklund asked if it says it can't go over 2½ stories; Mr. Galvin said that was illogical. Mr. Bjorklund said that it allows Mr. Stewart to issue a permit for everything but those two (2) things and that it probably wasn't what Town Meeting voted. Mr. Galvin said he wasn't there and would have told them it's not for a new nonconformity. Mr. Bjorklund said it was up to the Board to say that it was done wrong; Mr. Belezos said it was up to the Board to read all of the rules. Mr. Galvin said that Mr. Bjorklund skipped a phrase that says, "reconstructed portion provided that any resultant alteration shall not cause the structure to violate the maximum building area and yard regulations". Mr. Bjorklund said that this Town passed a By-law more lenient than the State; Mr. Galvin disagreed and said it wasn't logical. He said he would agree if height was already an issue; he also agrees that this is under 35' but he has more than 2½ stories; Mr. Bjorklund said he would try another way. Mr. Galvin said he hadn't answered his question and said he could get to three (3) floors if he increased the front yard 14 feet. Mr. Bjorklund said he has 5000 square feet and asked if could get a permit; Mr. Galvin said no. Mr. Bjorklund asked if Mr. Galvin was saying he would need a Variance to get the three (3) stories and suggested the Town change §305-9.02. Mr. Galvin said they could do the Special Permit for the half story on the third floor but they can't do it as designed. Mr. Murphy said they could vote to give him a Special Permit but Mr. Bjorklund wants to continue. He said he needs the Board to tell him that the Building Commissioner should issue a permit and if the Board doesn't agree with that then he will move forward with the Special Permit. Mr. Galvin said they could decide that during a deliberation, not the Public Hearing. Mr. Bjorklund said he doesn't believe a Variance is needed for something like this and doesn't think the Board will grant it. He said he has plans for 516 feet and the allowable space is 520 feet. Mr. Galvin said the Board doesn't issue advising opinions and they deliberate when they close. Mr. Belezos asked Mr. Stewart if he agreed with the calculations and he said he had some questions about the utility room and wonders why the room wasn't calculated here. Mr. Farwell said they calculated like Ocean Street. Mr. Stewart said

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they are different because they are in a Flood Zone and that you need floor space to be calculated. He said the close and utility room weren't included. Mr. Murphy advised Mr. Farwell they will calculate and come back; Ms. Fidler said it was to the benefit of the applicant to have it correct. Mr. Murphy asked Mr. Stewart if he was okay with not having a plan; Mr. Stewart said he would be more comfortable with the Board deciding. Mr. Murphy said they will do it at two-thirds (2/3) and Mr. Stewart will enforce the code; Mr. Stewart said it's generally on the plans that are approved. Mr. Murphy asked Mr. Stewart if he wanted them to come back and he said that would be consistent. Mr. Murphy made a motion to continue the hearing until May 10, 2022 at 6:30 PM which was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Keane and Belezos voting in favor.

#21-57: Mark and Meg Anderson, 79 Marginal Street: Petitioners are requesting that the Board determine if adding two feet (2') to the kitchen area would be considered a minor modification. The Petitioners were granted a Special Permit at the August 10, 2021 meeting

Mr. Murphy read the information for 79 Marginal Street which was under "Other Business". Ms. Fidler said they were changing the footprint and Mr. Rockwood discussed the "yellow area"; Ms. Fidler asked if they were "skooching" the bulkhead and Mr. Stewart explained where it would bump out. Ms. Fidler said they use the standard that if the foundation is changing then it is not a minor modification if it's outside the original footprint. Mr. Stewart said if it were cantilevered it would be minor; the building area wouldn't change. He said the building area is the foundation; cantilever is part of open space. Ms. Fidler said it would be like a bay window projecting. Mr. Rockwood said they were just going in their backyard and Mr. Murphy explained that wasn't presented to the public. Mr. Rockwood said but you would give it to me. The Board determined that this was not a projection so therefore it would not be a minor modification and would require a public hearing.

#22-35: Domenic C. DeAngelo: The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-11.09.C.6 and a Special Permit in accordance with §305-11.09 to create an Accessory Apartment within the soon to be constructed 26' x 25' addition on the property located at **1230 Forest Street** which is further identified on the Assessors' Maps as being on parcel D16-03-02 and is located in an R-1 zoning district.

Ms. Fidler read **Case #22-35** into the record and made a motion to continue to May 24th, 2022 at 6:30 PM. The motion was seconded by Ms. Conway; the Board voted 5-0 in a roll call vote with Fidler, Murphy, Conway, Keane and Belezos voting in favor.

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


Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

These minutes were approved by the Board on 12-13-2022 by a

5-0 vote.

Signed:  Date: 12-13-22