

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

Members Present:

*Joseph Kelleher, Chairman
Mark Ford
Francis Hubbard
Lynne Fidler
Heidi Conway
Brian Murphy, Associate
Richard Murphy, Associate*

Also Present:

*Jerry O'Neill, Bldg. Commissioner
& Code Enforcement Officer*

Mr. Ford called the meeting to order and announced that the meeting was being recorded on MCTV. He stated that he would be the hearing officer and the other members are identified by their nameplates.

CONTINUED HEARING:

#16-72: Stephen Lynch, Michael Tobin, John Clancy/63 Central Street Trust: The Petitioners are seeking a Variance in accordance with Article X, Section 10.11 of the Marshfield Zoning Bylaws for relief from the conditions set forth under Article II, Definitions, which defines a Half Story "the floor area of which does not exceed two-thirds of the floor immediately below" to allow an approximately 20'x50' space that is approximately one-third of the footprint of the building on the property located at **63 Central Street**, which is further identified on the Assessors' Maps as parcel N06-05-06 and is located in an R-3 Zoning District.

Mr. Ford stated that the first matter in consideration was case #16-72 for Stephen Lynch. He said that the Board has heard all of the evidence and that this is closed. Mr. Ford said that he could summarize the situation accurately but that he should be corrected if he is wrong. He said that most believed that relief was warranted but the Board wanted to further deliberate on how the relief should be shaped. The way that Mr. Ford sees it is that there are two (2) avenues that the Board could pursue. One was to construe the definition of "half story" to capture this situation because it is a unique situation where the second story is nowhere near the length of the building. He stated that alternatively, the Board could grant relief by granting a Variance which is more complicated. Mr. Ford asked the Board if they had a chance to think about this and said that he would open it up for discussion and see if the Board had a different view or thoughts about whether to grant relief at all. He asked if everyone was on the same page of whether it is an interpretation issue or a Variance issue.

Mr. B. Murphy said that to him it was cut and dried. In the spirit of the law it should be done, no problem. He said that there just isn't a second floor in this part of the house where there could be one, so then the floor below would be the first floor. Mr. Ford said asked if Mr. Murphy thought if it was the way that they interpreted this provision, that this wasn't contemplated when the Town voted on "immediately below". Ms. Conway said that with a 20' garage door, it makes a difference. Mr. Hubbard asked Mr. O'Neill where the definition of "half story" could be found; Mr. O'Neill replied in Article II, Definitions, page 16 and displayed the definition on screen. Mr. Hubbard said that he understands the situation, that one part of the building projects a three (3)

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story aspect and on the other, you have a two (2) story aspect. He feels that the Applicant has to choose which story he wants to pick from because he doesn't think that the definition gives the Board a choice to pick both stories or both floors. He said that the other thing is with a Variance, one of the things the Board would have to find for a Variance is that the unique conditions and circumstances are not the result of actions taken by the Applicant. Mr. Hubbard said that Mr. Lynch designed the building the way that he did for a purpose, but those were actions that he took. Mr. Ford said that he thinks the obvious thing is that it has to be based on shape, topography. Mr. Hubbard said that even if he just focused on that one, probably none of which would be met for a Variance but that one in particular can't be met. He said that Mr. Lynch designed the building for business but now wants to use the third floor for personal use.

Mr. Ford asked Mr. Hubbard if he had a problem with the broader interpretation that Mr. B. Murphy articulated. Mr. Hubbard said that he did because there are two (2) different stories, two (2) different sections of the building; one part is a three (3) story building and the other is a two (2) story building. Mr. Hubbard said that he didn't know if anything in that definition allows the Board to join those two (2) aspects of that floor. Mr. Ford asked Mr. Hubbard how he would vote. Mr. Hubbard said that he would say he could keep the section above the second story for personal use and keep the rest of it undeveloped. Mr. B. Murphy said that Mr. Lynch was only talking about the third story above the second story.

Ms. Fidler said that she had a problem with the definition where it says "immediately below". So that the ramification for the Board to grant that particular...this scenario with Mr. Lynch would open up other options for folks to put space above their two-thirds (2/3) and use whatever the Board says today to allow that vehicle to continue. Ms. Fidler said she has a problem with that but she also has a problem with a Variance. She said that she thinks the Variance is also an issue so she is really struggling with this particular situation. Mr. Ford said that this was so unique because the second story is so small. Ms. Fidler said that she would be more inclined to do a Variance; Mr. Hubbard said that there was no way on earth that he could support a Variance.

Mr. Ford said that part of him thinks that the drafters did not contemplate this scenario when they said the floor "immediately below". If this were a situation where the second floor was two-thirds (2/3) the space or three-quarters (3/4) the space of the first floor, he thinks that is probably what folks had in mind. Mr. Ford said that here where it's not even really a full floor, it sort of hinders his ability to use the property as most people would. Mr. Ford said that there is no good avenue here because of the limitations and how the Board grants Variances, but he thinks that an unfair result would be to not grant relief. So the better of two (2) avenues for him would to say that this situation is so unique that he didn't think the drafters contemplated this and therefore he would be comfortable saying that a Variance is not required.

Ms. Fidler asked if Mr. Ford would be inclined to re-interpret the definition and make this scenario work by ignoring the word "immediately". (Mr. Kelleher arrived at 7:40 PM.) Mr. Ford said that by saying what they meant by floor immediately below, they weren't contemplating this situation. Mr. Kelleher said half floor and Mr. Ford said even less than a half floor; Mr. Hubbard

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said it was one-third. Mr. Ford said that it was difficult to predict what people meant when they voted for "stuff" but he doesn't think they interpreted or believed "floor immediately below" to be applied literally. Mr. Fidler said that Mr. B. Murphy has a different view. Mr. B. Murphy said that he feels that the volume of this building, if it were used in the way it is being used, you could have easily built an entire second floor the same size as the first floor, then this wouldn't even be a question. He said that the headroom is there, everything is there to do that. It's not going overboard, to use common sense and interpret this to say the spirit of this law was designed because they didn't want more than two thirds (2/3) of the existing building on that third floor and he is definitely not doing that.

Mr. Ford said that he thought they had enough of the particulars of the situation to say that it is unique. This wasn't contemplated and therefore in this context we don't construe a half story to literally mean that piece right under the addition; so therefore no Variance is required. He said that they don't have to contort themselves to try to meet this. Ms. Fidler said that she agreed with Mr. Hubbard's position on the Variance. She said that maybe based on what Mr. B. Murphy said and Mr. Ford's argument, this may be a situation where the interpretation falls in favor of the Applicant and it wouldn't have any long term effects on the Building Department.

Mr. B. Murphy said that if you look at it from the point of view that if you build a house this size, who would steal the room out of the second floor? What would be the benefit of that; they would just be losing space; it would be living space that is gone. He said that this is a unique situation and you would only be hurting yourself; that it would be a very rare occasion where you would see another house apply under this rule where he could have had, if this was a home, the third floor wouldn't even be in question now. Ms. Fidler said that it was over-framed for living space and Mr. B. Murphy said, absolutely. Ms. Fidler said that based on what she saw of the truss, the whole system, she didn't know if that was accurate as far as Mr. O'Neill was concerned. Mr. Ford said that he thought Mr. O'Neill's view is that this is unique. This is not a situation that arises so he did not think that they would be opening the floodgates. He said that if the Board describes in the Conditions the unique situation of this particular use, he feels that they will leave themselves with flexibility going forward to be able to limit over application. Mr. R. Murphy said that he agreed. He said that as Mr. B. Murphy said, if this same situation came through as a house or residence but he doesn't see that coming down the pike. He said that Mr. Lynch built it to run his business out of it; the framework of the Bylaws doesn't work for Mr. Lynch's business.

Mr. Ford said that the literal construction leads to absurd results therefore the Board must apply and look to the spirit of the law and apply it in this context. Mr. Kelleher said that as Mr. Ford was saying, they didn't envision a scenario like this. Ms. Conway asked what if another business came with this scenario, would the Board continue to handle it this way and would they see it coming? She said that somebody might, knowing the decision. Mr. B. Murphy said that it would be one at a time and they would look at each one. Ms. Conway said to try to rationally look at this and try to picture this as a house. Mr. B. Murphy said that if someone had a massive garage because they liked to work on cars and they have a smaller section in the house, you wouldn't

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want to take away their ability to have a third floor. Ms. Conway said that she understands that but if another business comes and does the same thing, wouldn't they have to condition that it is not livable?

Mr. O'Neill said that to Mr. B. Murphy's point, a more reasonable comparison would be a two (2) story foyer. He said that they do deduct that out of the floor immediately below when calculating the half story. Mr. Hubbard said that changes his mind because he was inclined not to give Mr. Lynch the Variance and not give him the half story definition. He said that if the existing practice of the Town is that you would exclude certain things like a two (2) story foyer.

Mr. B. Murphy said that it helps to define it. Mr. Hubbard said that he was very uncomfortable because he was very wary of what may come down the road. Ms. Fidler asked Mr. O'Neill for a description of a two (2) story foyer. Mr. O'Neill said that when you open the door you would be able to look up to the second floor. Ms. Fidler said so this space (arm movements) would not be included. Mr. Hubbard said he was very leery of granting something so unique. He said as Mr. Kelleher stated, it is fact-specific and that is how they would have to treat it. Mr. B. Murphy said that there was no benefit to this, that you would be losing area and that he doesn't understand where the fear is. Mr. Hubbard said his fear is that he doesn't know what the next multiple is. Ms. Conway said that was what her question was, about another business doing this. Mr. Ford said that if the next situation turns a twist on this that makes this result seem unfair, the Board will have the ability to think through that and get to the fair result then.

Ms. Fidler said that since they are on the subject, did she think that this definition fits the Board in this current day, should it be tagged or not. Mr. B. Murphy said that he thinks it should be addressed, that it's the tip of the iceberg. Ms. Fidler said that she was thinking for the future.

Mr. Ford said that he thought they Board was good. He said that this is a request for a Variance which the Board would deny as moot. Mr. Kelleher said to deny without prejudice. Mr. Ford said to deny without prejudice and the decision will be that they will make clear that a Variance was not required. Mr. B. Murphy said that it was determined as a use of right. Mr. O'Neill said that it should say that it was not precedent setting. Mr. Kelleher said to put it as fact and Mr. Hubbard agreed it should not be precedent setting. Mr. Kelleher said that since he was late that he would not be voting although he agreed with what the Board was saying. Ms. Conway asked to put a condition to make sure that it was not living space up there.

Mr. Kelleher said that the Conditions should include: no living space and no renting out the space. Mr. Hubbard stated, so it can't be rented out and said that he remembered asking that. Mr. Kelleher said that Mr. Lynch had said that at the other hearing and Ms. Conway said that she wanted to make sure. Mr. Kelleher asked Ms. Porreca to include those Conditions and just what Mr. Lynch said during the hearing.

Mr. Ford made a motion to deny the request for a Variance without prejudice as moot and decide that the requested use is something that the Applicant can do subject to the use of right and subject to the Conditions and limitations that the Board talked about and Mr. Lynch conceded.

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The motion was seconded. Mr. Ford, Ms. Fidler, Mr. Hubbard, Ms. Conway and Mr. B. Murphy were all in favor; nobody was opposed. Ms. Fidler asked if they had to vote on the other one and Ms. Conway asked if they had to take an actual vote. Mr. Ford said no, the Board was saying that he doesn't need a Special Permit and that will be in the Decision. He said that this is based on the Board's interpretation of "half story" to the facts of this particular case. Mr. Ford said that Mr. Lynch did not need any relief from the Board.

Mr. Ford said that the only other thing they had to do was consider a request for an extension. Mr. Kelleher said the Applicant, Mr. Maglio, was developing plans for the Building Department and requested an extension of six (6) months. Mr. Kelleher made a motion to grant the extension and Mr. B. Murphy gave the second. Mr. Kelleher, Mr. Ford, Ms. Fidler, Mr. Hubbard and Ms. Conway were all in favor; nobody was opposed.

Mr. Kelleher asked if there was any other business and there was not. He made the motion to adjourn and Mr. Ford gave the second.

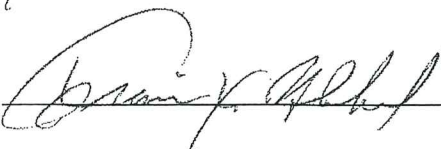
Respectfully submitted,

Nanci M. Porreca
Zoning Administrator

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

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

Signed:

 Date: June 1, 2018