

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

MARSHFIELD TOWN CLERK
RECEIVED
2018 MAY 23 AM 11:52

Members Present:

*Lynne Fidler
Heidi Conway
Brian Murphy
Stephen Feeney*

Also Present:

Robert Galvin, Town Counsel

Ms. Fidler called the meeting to order and said that she would be the Hearing Officer. She said that there have been a few changes to the Board; Mark Ford resigned and the Selectmen appointed Stephen Feeney as an Associate Member. Mr. Feeney is here this evening and the rest of the Board are signified by their nameplates. Ms. Fidler said the Board will have the capability to reach out to another full-time Board member via phone conference in approximately twenty (20) minutes. She reminded the audience that MCTV was at the meeting and voices and images were being recorded. Ms. Fidler said that the Board has seven (7) new hearings on the Agenda and four (4) continued hearings; the continued hearings were read into the record as new hearings at the last meeting on March 27, 2018.

Robert A. Shelmerdine, Esq./Webster Point Village: Attorney Shelmerdine would like the Board to review a request to substitute a Restriction Covenant for the Conservation Restriction and that the substitution be deemed an insubstantial change.

Ms. Fidler went to Item F on the Agenda and read the petition into the record and turned it over to Attorney Robert Shelmerdine for Frank Gioso who is the owner, operator and manager of Webster Point Village. Ms. Fidler said that they had a busy Agenda this evening and they will allot five (5) minutes to Mr. Shelmerdine; she said that she had a couple of hours to go through what his thought process was in this. Mr. Shelmerdine said that he can do that. He said that he has a packet that looks think but it is six (6) sections that they will work through and he provided summaries. He said the first section that is clipped is merely the request for an insubstantial change; the second packet s three (3) pages and is the permit that requires a second private conservation restriction. The third section is the conservation restriction draft signed by Mr. Gioso and the president at that time of the MDNA; all pursuant to a private agreement that made its way as a condition in the decision for the Comprehensive Permit. He said it was also the subject of a settlement agreement that his client had with the abutters and the MDNA. Mr. Shelmerdine said the fourth item is a drafted restrictive covenant they are asking to substitute in place of the conservation restriction. He said the reason they are asking is in the fourth packet; there is a memorandum re: that are not able to find a grantee for the conservation restriction. The conservation restriction has to have a grantee and the grantee has to be approved by Environmental Affairs. He said there are some benefits to do a conservation restriction but they cannot find a grantee. They have contacted the Wildlife Trust and Mass. Audubon; they have met with the Marshfield and Duxbury conservation agents and contacted the Jones River Watershed. Mr. Shelmerdine said that there were emails from those people behind the packets and memorandum that relates to the conversations they have had. He said that this was all attempted before and he did not know it at the time in 2015 that there are two (2) restrictions on this property. What they are talking about is a 14.9 acre parcel identified in the grey area on the

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

screen. This 14.9 acre parcel was described by an NHP (Natural Heritage Program) as a conservation management permit which is already recorded at the Registry of Deeds. That is a restriction that runs with the land. Mr. Shelmerdine said that conservation restriction they are talking about is supposed to overlay; it's a private restriction and is supposed to overlay on top of the 14.9. Mr. Shelmerdine said the last packet shows that in 2007 when they were trying to find in the NHESP, a state agency that protects wildlife and native species, wanted a similar conservation restriction that runs the Secretary of Environmental Affairs...and at that time they couldn't find a grantee for that restriction either. So Heritage (NEHSP) relented and they decided they would allow the Homeowners Association to be the grantee of that restriction. So that is how they got to where they are; they want to substitute. If they are required to file a conservation restriction pursuant to Chapter 84, Section 31-33 and get Secretary of State approval, in his opinion it is impossibility; they tried that back in 2007. Mr. Shelmerdine said he was not aware of that effort because he did not represent them until 2014.

Ms. Fidler said that Natural Heritage was part of their discussion; she doesn't have the pile of information they went through but she does remember it was part of the discussion. She said that she remembers reviewing the monetary significance of all of that; she would like to hear from the neighborhood group. She advised Mr. Shelmerdine that this was substantial, not insubstantial, and she has some knowledge about that. Mr. Shelmerdine asked for another thirty (30) seconds and Ms. Fidler said that they had a lot of folks here. Mr. Shelmerdine said the purpose of the hearing tonight was not to talk about the substance of the two (2) restrictions or the viability of one (1) or the other. He said the sole purpose of the hearing was to determine if the request to make the substitution was substantial or insubstantial. He said that Ms. Fidler has indicated to him that it is the Chair's opinion that it is substantial. Mr. Shelmerdine said that he knows in CMR they have categories and he does not think this change rises to the level of what CMR would state is a substantial change. Ms. Fidler said she felt there may be other factors at play as to why they were unable to get a grantee. She said she would like to give him the opportunity to do so and she wanted the opportunity for the public to respond. Mr. Shelmerdine said where this leads is that if the Board determines that it is insubstantial then it is approved tonight; if they determine that it is substantial then they have a thirty (30) day period to have a Public Hearing; Ms. Fidler said that they were aware of that. She said Mr. Shelmerdine did a good job on his five (5) minutes although he went a little over; she then turned it over to the neighborhood association.

Dennis Murphy from Hill Law represented the MDNA. He said that there are a lot of folks from Prince Circle and from Duxbury on whose behalf he will be speaking. He said the Board has identified the issue tonight – if this is substantial or not. Mr. D. Murphy said just by the weight of the paper alone, it should tell you that this is going to require some digging; it might also be better done with a full Board. One of his clients said that they only found out about tonight is because his neighbor knocked on his door. Mr. D. Murphy said another pitfall of not finding this a substantial change is if you say it is insubstantial then it is deemed amended. The permit is now recorded at the Registry; there is no practical mechanism to change that. So for no other reason, there ought to be a Public Hearing and a decision written if the Board agrees to change that. Ms. Fidler said this was all a learning process. In light of what Mr. D. Murphy just said, it is possible to amend the stream of paperwork for the benefit of doing this and asked if that was

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

correct. Mr. D. Murphy said that it was. Ms. Fidler said it would require checks and balances for that cumbersome jog for the Board and for the Town; Mr. D. Murphy said it would be very difficult. He said the typical process if they were to have a hearing is that it would be noticed and then there would be evidence and testimony and the opportunity to issue a decision based on that. He said with this procedure, where it isn't necessarily a Public Hearing, the Board doesn't have in front of them a form to amend the Comprehensive Permit. It becomes very cumbersome to actually record a new Comprehensive Permit with that amendment. The other point he made, and he has not seen what Mr. Shelmerdine just handed to the Board, is the CR (Conservation Restriction) that is item 3 in Attorney Shelmerdine's packet. Mr. Shelmerdine called it a draft but it is actually signed; it's the executed CR. The permit doesn't say they have to record "a" CR; it's this one that is attached and has already been fully executed. He said another point for those who are new to the Board, is a few years ago this exact issue was brought to the Board and the Board elected not to make the change. That was appealed and the appeal was eventually withdrawn. He said this is a technical legal argument but he would say, once you had your bite of the apple, you don't get a second bite. That is a lawyer's way of saying the issue is concluded. In a more vernacular way, he channels what the folks from the neighborhood say – a deal is a deal. Mr. D. Murphy said they had a deal, the same deal they have had for fourteen (14) years and they wish the developer wouldn't renege on the deal. But if he is going to then they ought to be able to at least say what they want at a Public Hearing.

Ms. Fidler said that because this was not a formal hearing, the public was not invited to speak on this matter; she asked Ms. Conway and Mr. B. Murphy if they had any questions. Mr. Shelmerdine pointed out that in a different forum he would respond to some of Mr. D. Murphy's comments. Ms. Fidler said that as they could see, the Board has three (3) members in attendance and she wanted to confirm that three (3) members were sufficient. Ms. Fidler made a motion which stated, "I, Lynne Fidler, move that the Board vote to determine the proposed change is a substantial change in the details of the proposed project." The Clerk will notify the applicant of the Board's determination in a letter sent immediately by the Board's designee and the Board should schedule a Public Hearing to commence within thirty (30) days on the proposed change to the Comprehensive Permit. Ms. Fidler made a motion that this should be considered a substantial change and asked if all were in favor; they were. She advised Mr. Shelmerdine to follow up with Ms. Porreca. Ms. Porreca advised that the next available hearing would be on May 8th and the advertisement for that meeting needed to be submitted the next day or at the latest, on Thursday. She also advised that there would not be a second meeting in May because of the Special Town Meeting; Ms. Fidler advised that Special Town Meeting interferes with the Zoning meeting. Mr. Shelmerdine asked when Special Town Meeting was and Ms. Porreca replied that it was on May 21st. Mr. Shelmerdine asked if they had to set the date now and Ms. Fidler said that where the parties were in the room now, they might want to do that rather than following up the next day. Ms. Fidler stated that she was not putting any pressure on them. Mr. Shelmerdine asked if the Board would allow them to converse and get back to the Board. Mr. Shelmerdine said that in the past this Board has gone out of its way to get a meeting; this may be a discussion or it may not be or it may be resolved. Ms. Ford said absolutely and informed Mr. Shelmerdine that Ms. Porreca said that the meeting on May 8th would be thirty (30) days unless they extended it.

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

#18-18: Timothy and Penelope Boyd: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 22' x 24' garage under the raised structure to allow for parking, add a 15' x 17' deck with stairs to grade and a 17' x 7' second floor balcony at the rear of the dwelling, and a 6' x 6' landing with stairs to grade to the right side entrance, and a Variance in accordance with §305-10.11 for relief from §305-6.01 Applicability of Dimensional and Density Regulations, §305-6.02 and §305-Attachment 2 Table of Dimensional and Density Regulations to reposition the house to be 5.10' back from the front setback and 5.10' from the left setback to comply with fire code standards on the existing single family dwelling on the property located at **31 Island Street**, which is further identified on the Assessors' Maps as being on parcel N06-03-11 and is located in an R-3 zoning district.

Ms. Fidler said they would take a short adjournment; Mr. Feeney was reviewing the previous meeting on MCTV. Mr. B. Murphy said that if Mr. Feeney has looked at Island Street then they should bring him in and hear that; Ms. Fidler stated that Mr. Feeney needs to sign the (Mullin) form. She asked if Tim and Penelope Boyd were in attendance and they were along with Dick Rockwood. Mr. Feeney joined the meeting at 7:55 and Ms. Fidler advised that he would be a voting member tonight; she also advised that she was the Hearing Officer for case #18-18. She said that they had heard the case before, left it open, and the request for the additional information has been satisfied. She asked the Board if they had any questions and there were none and there were no questions from the audience. Ms. Fidler made a motion to close case #18-18 which was seconded and all were in favor. Ms. Fidler stated that this was a Special Permit and the Board does have four (4) members and advised the Boyds that it was their choice to have a vote. The Boyds stated that they wanted to proceed. Ms. Fidler made a motion to grant the Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code which was seconded; all were in favor. She said that they also had a Variance that applied to this property and asked the Board if they had any questions; they did not. Mr. Rockwood asked if they had moved the Variance; Ms. Fidler said the Variance supersedes the Special Permit. She asked the Board if they would vote on it as moot and Mr. B. Murphy replied, yes. She made a motion to grant the Variance which was seconded; all were opposed. Mr. B. Murphy said they should vote it as moot so if the Boyds needed it they could come back; Ms. Fidler asked Mr. Feeney if he was on board with that suggestion and he replied, yes. Ms. Fidler made a motion to vote the Variance as moot; all were in favor.

Ms. Fidler advised Mr. Feeney to watch case #18-17 and Mr. Feeney left the meeting.

#18-20: Direct Granite Realty Trust: The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code for a 43' x 120' 5,160 square foot addition with a loading dock and a Special Permit in accordance with §305-10.12 to construct the addition and loading dock on the rear of the existing structure on the property located at **600 Plain Street**, which is further identified on the Assessors' Map as parcel E10-02-08 and is located in a B-2 zoning district.

Ms. Fidler asked if Direct Granite was in attendance and stated that case #18-20 was a continued hearing. She said they are here because at the previous hearing the applicant had not been to the

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

Planning Board and she is curious about what they Planning Board had to say. Bob Crowell of Crowell Engineering said that they met with the Planning Board and their biggest concern was with water resource. They had concerns about the fence around the perimeter and with ADA compliance. Ms. Fidler asked if they had arbor vitae; Mr. Crowell said they did but they had changed them. She asked if they had a landscaping plan and stated what they had was thin. Mr. Crowell said that it looks good now; he has it in a PDF file and has a paper plan. Ms. Fidler said they would like to see that but there is a lot going on tonight. She said that according to Greg Guimond they are now ADA compliant; they moved the parking space that was designated for handicapped. The only thing that Mr. Guimond included was the landscaping should have additional buffering. Ms. Fidler asked if he had that to give to her and asked Ms. Porreca to bring Mr. Guimond's letter up. She asked if there were any questions from the Board or audience and there were none. She made a motion to close the hearing which was seconded; all were in favor. She made a motion to grant Site Plan approval per Sheet 5 with a revision date of April 10, 2018 which was seconded; all were in favor. It was stated that the Planning Board's biggest concern was water resources. After the Petitioner left, Ms. Fidler stated that they had walked out on the Special Permit and they would have to continue that. Ms. Porreca asked if they could continue it to the end of the meeting and have Mr. Feeney finish that; Ms. Fidler said they could do that. She said that what they have so far is a 3-0 vote for Site Plan approval and they will circle back at the end of the meeting after Mr. Feeney had reviewed it.

#18-17: Francis and Rachel Sturgis: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 18' x 12' addition to the front of the existing single family dwelling on the property located at **246 Canal Street**, which is further identified on the Assessors' Maps as being on parcel M04-03-12 and is located in an R-3 zoning district.

Ms. Fidler asked if Mr. Feeney had reviewed case #18-17, Francis and Rachel Sturgis. Ms. Porreca advised that the Petitioners had asked to continue the hearing and signed an extension agreement. Ms. Fidler read the Petition and said the Petitioner had requested to continue the hearing until June 12, 2018. Ms. Porreca said that they had requested to continue the hearing to May 8, 2018 but since there was not a second May meeting scheduled she suggested that they continue it to June 12th.

#18-22: Eric Tatten: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to replace an existing porch with a new 24.1' x 9' porch on the property located at **19 First Road**, which is further identified on the Assessors' Maps as being on parcel L09-16-07 and is located in an R-3 zoning district.

Mr. Tatten said that he wanted to tear down is old, rotted porch and put on a new porch and roof. When he does this, he wants to build the porch out three (3) more feet but the problem is the property is a little kitty cornered so it is nonconforming. In order to stay within the existing nonconformity, the wall would be jugged over a little bit. Ms. Fidler stated that he was

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

nonconforming on both sides and the rear and the is 10.2' from the right property boundary and 10.6' from the left boundary but it will not be any more nonconforming. Ms. Fidler asked if there were any questions from the Board or the audience and there were none. She made a motion to close case #18-22 which was seconded and all were in favor. Ms. Fidler made a motion to grant the Special Permit in accordance with §305-10.12 which was seconded; all were in favor.

#18-23: Stephen Wildes: The Petitioner is seeking a Special Permit in accordance with §305-11.09 of the Marshfield Municipal Code to create a Residential Accessory Apartment within the existing structure on the property located at **15 Foxhill Circle**, which is further identified on the Assessors' Maps as being on parcel C16-02-31 and is located in an R-1 zoning district.

Mr. Wildes introduced himself and said he was looking for a Special Permit for an in-law apartment. He built the house in the early 2000's; he has a walkout basement and he ran rough plumbing under the slab. He used it as a family room; it has a fireplace and plenty of room. His in-laws have come back from Florida, were living at Winslow Village and their health is failing. He has not added anything on to the dwelling and they do not drive. Ms. Fidler stated that she sees that it is under 40% and that he has sufficient acreage. She asked if there were any questions from the Board and there were none. She asked if the house would remain the same when viewed from the street and Mr. Wildes said it would. Mr. Wildes said that there would be no extra parking; there is a turnaround driveway but his in-laws do not drive. Ms. Fidler asked if there was egress; Mr. Wildes said there are two (2) egresses in the back on the lower level. Ms. Fidler asked if there were any questions from the Board or the audience and there were none. Ms. Fidler made a motion to close the hearing which was seconded; all were in favor. Ms. Fidler made a motion to grant the Special Permit which was seconded; all were in favor. Ms. Fidler asked Mr. Wildes if he knew the rules and regulations regarding an accessory apartment and advised that he should reach out to Ms. Porreca if he did not.

#18-24: Stephen Webber: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 14' x 14' addition on the rear of the dwelling on the property located at **98 June Street**, which is further identified on the Assessors' Maps as being on parcel M07-15-25 and is located in an R-3 zoning district.

Ms. Fidler read the petition into the record and aid she was looking at the Millbrook Survey dated January 6, 2016. Mr. Webber said that they were bumping out the back where it says "addition"; they are nonconforming on the left side. Ms. Fidler asked Mr. Webber if he had a sketch and he said he had a floor plan. She advised that the Building Department will need a rendering; Mr. Webber said he has been through all of that. Ms. Fidler said that the plan has a proposed garage and asked if that was part of this application; Mr. Webber said it was not. Ms. Fidler said that the shed is not endorsed by the Board and stated that both decks are existing. She asked if the egress was the French door and Mr. Webber said that it was. Ms. Fidler asked about the space between the addition and the deck and Mr. Webber advised it was a patio. Ms. Fidler

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

asked if there were any questions from the Board or the audience and there were none. Ms. Fidler made a motion to close #18-24 which was seconded; all were in favor. Ms. Fidler made a motion to grant the Special Permit which was seconded; all were in favor.

#18-25: 87 Edmund Road Realty Trust: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to expand and renovate the existing shed with a shed that is 20' x 20' on the property located at **87 Edmund Road**, which is further identified on the Assessors' Maps as being on parcel D20-01-06 and is located in an R-1 zoning district.

Ms. Fidler read the petition into the record. Patrick Hattigan of 110 Riverside Circle said that he was there to present for the Stiles; they are asking for a Special Permit to rebuild an existing shed. He said that they have already been before the North River Commission and they have approved this. Mr. Hattigan explained that the existing shed was in the left picture and the new shed was in the right picture. He said that he is an abutter and that it is rare that an abutter would appear on behalf of the applicant and present; he is here with Mr. Moss, another abutter, and they are in favor of the project. They want to rebuild the existing shed that is on the lot line which is why they were here. Ms. Fidler apologized for interrupting and started to say to Mr. Feeney that if he was going to recuse himself from the hearing when Mr. B. Murphy said that he couldn't. Ms. Fidler said they would hear this out and negotiate the logistics later. Mr. Hattigan pointed out where the shed would be and said that it will not encroach any more than what is there now and will follow the same lot line. Ms. Fidler asked if they had been to North River and Mr. Hattigan said that they had received approval from them and from the Conservation Commission. Ms. Fidler asked if there were any questions from the Board or the audience and there were none. Mr. Fidler moved to close the hearing which was seconded; all were in favor. Ms. Fidler made a motion to grant the Special Permit which was seconded; all were in favor.

Ms. Fidler said that Mr. Galvin was on the way. Mr. B. Murphy asked what they had and Ms. Fidler said Timothy and Catherine Lohe. She said they could take a short recess and let Mr. Feeney do a little homework. She said she would like to skip #18-26 until Attorney Galvin is in the room. She said they would move to #17-70 and then take a short recess.

#17-70: Michael Solimando: The Petitioner is seeking the Board's opinion as to whether the fact that the dwelling is ½" to ¾" further into the setback than what was approved at the 11/14/2017 ZBA meeting would be considered a minor modification or would a Variance from the Table of Dimensional and Density Regulations be required. Once the dwelling was framed, it was determined that the setback will be 4.7' and not the 5.1' that was on the original plan.

Ms. Fidler read the petition into the record. Michael Solimando was in attendance with Dick Rockwood. Mr. Solimando said that the original house had a 4.7' setback and they were moving it to 5.1'. There had been a lot of floods on the property and somehow the batter boards moved; everything else was dead on. Ms. Fidler said that it was still encroaching; Mr. B. Murphy said

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

that it was within the original setback and Mr. Rockwood agreed. Ms. Fidler stated that before they moved to the next plan, was the 20' R.O.W. an easement; Mr. Rockwood said it was a Right of Way. Ms. Fidler asked if Mr. Solimando had ownership of the Right of Way and Mr. Rockwood said that he did not. Ms. Fidler asked to see the proposed structure. Mr. Solimando pointed out the original building at 4.7' and said that they had requested to go to 5.1'. Ms. Fidler asked if something had happened in the piling system; Mr. Solimando said that he had engineers out there twice and this never should have happened. Mr. B. Murphy said that from the original footprint and where Mr. Solimando is now, is he equal or less? Mr. Rockwood said it still would have been allowed by Special Permit. Ms. Fidler said it was a learning process when they are in the process of putting in the pilings and to have the frame on the pilings. She said that she knew there was a little leeway with the Building Department. She asked if that was part of the problem and is that what gave way to this situation. Mr. Rockwood said that any houses he would do in the past, if he was doing a twenty foot (20') house he would draw for 19'8" and would give himself a few inches. Ms. Fidler stated they were doing it on pilings; Mr. Rockwood said they keep their fingers crossed; Ms. Fidler said they have to check themselves again and again because it was very difficult. Mr. Solimando said there had been a few floods but he was not using that as an excuse. He said when you do the pilings and you're up high and the Flood Elevation is high... They made sure they set them on chalks; they were dead on on all but that corner; they don't have an excuse; they had the surveyors come back out to check. Mr. Solimando said that he put batter boards in as well.

Mr. B. Murphy said that before they elongated the situation, Mr. Solimando started with a Special Permit and tore down the existing building. He said that Mr. Solimando was still, technically, within the original footprint; he hasn't gone outside it. He asked if Mr. Solimando was asking for a minor modification of what he had applied for. Ms. Fidler stated that he was not making it any more nonconforming and was not going over the property boundary line. Mr. Rockwood said the surveyor has to sign off saying that it meets zoning; Rick brought this up and he needs some documentation; they have to do an affidavit when they do a survey. Mr. B. Murphy said that they have the room to do it; this was the existing and this is what he built within the existing footprint. Ms. Fidler said her first reaction was that they would need a Variance but after they have explained it, it is not any more nonconforming. She wasn't sure if this was something that Mr. Galvin would need to weigh in on. Mr. B. Murphy said they could leave it to the end; they were just looking for the language. Ms. Fidler wanted to clarify and asked Mr. Rockwood to show the specific point of reference. She said they can't take out the sheathing and they can't move the beams; Mr. B. Murphy said they didn't have to. Ms. Fidler said they were in a situation where this particular project is not any more nonconforming but doesn't meet the original proposed plan. Mr. Galvin arrived and said that by way of disclosure, he has done work for Mr. Solimando in the past but not for several years. Ms. Fidler said that the Board does not see this request as an issue. Mr. B. Murphy explained the situation for Mr. Galvin; they wanted to go 5.1 feet and now it is 4.7 feet; it swayed during construction but it is still within the original setback. Mr. Galvin asked if they were any closer to the side lot line than they were before and Mr. B. Murphy said they were not. Ms. Fidler asked how they would do this and Mr. Galvin said to approve it as a minor modification. Mr. Rockwood asked if they could put verbiage in that says it is within zoning to satisfy the surveyor; he needs something so he can do his affidavit. Ms. Fidler said they have done it in the past; Mr. Galvin said that the

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

Zoning Board would just give a letter. Ms. Fidler stated that case #17-70 would be considered as a minor modification and asked for approval from the Board; all were in favor. She said they would draft a letter as described and asked if they would use that specific dimensional change. She said they should reference the Site Plan with the As Built.

Ms. Fidler made a motion to take a short recess and stated that they had closed Direct Granite but still had to do a Special Permit. Ms. Fidler called the meeting back to order after a seventeen (17) minute recess.

#18-19: Suzy Abbott and Ann Phillips: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to raze the existing barn, remove the two (2) existing shed rows and construct a 73' x 67' cats-only boarding facility using the existing barn footprint on the property located at **43 Union Street**, which is further identified on the Assessors' Maps as being on parcel C11-01-03 and is located in an R-1 zoning district.

Ms. Fidler asked if Ms. Abbott was in attendance and Attorney Michael Hayes said that she was. He introduced himself and said that he was representing Suzy Abbott. He said the last time they were road blocked with Ms. Abbott changing an existing barn and stable into a cat boarding house. She lives in the home also so there is a problem with two (2) uses in a residential district. Mr. Hayes said he did some homework and the easiest alternative would be to subdivide the property but there isn't enough frontage. He said the property was originally owned by the Magoons, it was a 350 acre parcel. Mr. Alan Bates lived in a shack and ran a logging business out of there; Mr. Alan Bates II ran a limo business there in the 1980s. The property was sold in 1990 and was a stable until Ms. Abbott bought the property. Mr. Hayes said that he would read two (2) letters and then give them to Ms. Porreca for the file. One letter was from the Mullen family who are abutters, who said that there had been a business there. The other letter was from Jane Corliss of 40 Union Street who said there had been a limo business there and a stable. Mr. Hayes said the use of the property has been preexisting nonconforming since the 1940s. It has been used as both a residence and business and is preexisting nonconforming. He said if the Board believes that is the case they should make that finding and he asked that under §305-10.12, the Board grant Ms. Abbott a change of use to a cat only boarding facility. Ms. Fidler asked Mr. Hayes to repeat the change of use they are requesting. Mr. Hayes said they are requesting a change of use from boarding and stable of horses to a cat only boarding facility.

Ms. Fidler asked if there were any questions from the Board. Ms. Conway asked if up until the time Ms. Abbott bought the property, were the previous owners actively boarding horse and asked when Ms. Abbott bought the property. Ms. Abbott said they closed in September and moved up in December. Ms. Fidler said that Ms. Abbott had done a lot of work in regards to the suites for the cats. The issue that her attorney identified is the use. The fact that the previous owner had a limo service doesn't make it right. That is out of the realm of why they are here tonight. Ms. Fidler said Mr. Hayes gave them a lot of information and had done a good job explaining their side of the story and giving them a little history. She asked if the Board or audience had any more questions; there were none. Ms. Fidler asked if the Board felt they had an adequate amount of information to close the hearing; Ms. Conway and Mr. B. Murphy said

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

that they did. Ms. Fidler made a motion to close #18-19 which was seconded; all were in favor. She said that in light of everything that has gone on tonight, she would like to deliberate, either now or vote on Direct Granite and come back to this. Ms. Fidler thinks that this case will require some time to talk about and suggested they let it sit for a little bit and see where they stand at the end of the hearings. Mr. Hayes thanked the Board for their time and consideration.

#18-26: Timothy and Catherine Lohe: The Petitioners are seeking Special Permits in accordance with §305-10.12 and §305-13.02 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 90' pier with a removable 4' x 24' gangway and 15' x 10' float and to construct a 25' x 30' two (2) story addition on the north side of the existing structure on the property located at **1354 Union Street**, which is further identified on the Assessors' Maps as being on parcel B19-02-01 and is located in an R-1 zoning district.

Ms. Fidler said that they were flip flopping tonight to work with a quorum. She said that case #18-26 had previously been read into the record but no testimony was taken. Brendan Sullivan from Cavanaro Consulting was in attendance with Mr. and Mrs. Lohe. He said there are two (2) aspects to the project, one being the preexisting nonconforming structure with respect to the front yard setback and rear yard setback of the main dwelling. Mr. Galvin asked if this was the yellow house and Mr. Sullivan said that it was. Mr. Sullivan said that the current rear yard setback is 37.6 feet and will be going to 38.8 feet. It's an existing one story structure and they are proposing a smaller footprint and move it away a little bet from the rear setback line; the square footage within the setback is half of what they are proposing. The other aspect of the project is the square footage on the side area is a little bigger but the volume is less.

Mr. Sullivan said they are also proposing a dock, pier, ramp and float and they need a Variance to cross the side yard setback. They have been approved by the Conservation Commission and the North River Commission. Mr. Galvin asked if they were approved for a Chapter 91 Waterways license and Mr. Sullivan said they will apply for it; they were just approved by Conservation last week. Ms. Fidler asked to see the architectural information and Mr. Sullivan pointed out the house and different points of view. She asked if there was anything in the packet, in relationship to the Variance, that showed the dock, the height of the dock, the specific framing platforms for that, the lighting on the dock and things of that nature. Mr. Sullivan said just what was on the Site Plan; Ms. Fidler said there was no actual framing; she said the paper plan has it. She was looking for the length of the pier, 4' x 24' plus 15' x 10' float. She asked Mr. Sullivan if Ms. Porreca had this plan; he said that she did not but he would get a copy. Ms. Fidler said this was what she was looking for – no lighting or solar lighting of that nature. She asked if the Board would like to see the plan or if they had any questions; they did not need to see the plan and they did not have any questions. Ms. Fidler advised Ms. Porreca that the plan she was looking at was Sheet 1 of 1, dated March 19, 2018, Notice of Intent Proposed Site Plan by Cavanaro Consulting. Mr. Sullivan advised Ms. Porreca to keep that plan; he just had some notes on it. Ms. Fidler asked if there were any questions from the Board, any questions on the architectural changes as identified on the Site Plan, or from the audience. There were none. She made a motion to close the hearing which was seconded; all were in favor. Mr. Galvin said the

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

Board of Appeals procedure for applications in the Coastal Wetlands District is "the Board shall not take final action on the Special Permit until it receives a report from the Building Commissioner". Ms. Fidler asked Ms. Porreca if this went to the Planning Board and she said she remembers talking to Mr. Guimond about this. Ms. Fidler asked if the protocol was to send the application to the Planning Board, Conservation, Board of Health and the Building Department. Mr. Galvin said Conservation Commission gave an order of Conditions so it should be fine; it doesn't happen often. Ms. Fidler made a motion to close the Special Permit which was seconded; she also made a motion to close the Variance for the pier, gangway and float which was seconded; all were in favor. Ms. Fidler stated the hearing was closed and the Board would deliberate and get the results to the applicant. Mrs. Lohe asked if they needed any other information and Ms. Fidler said that because the hearing was closed they could not take any more information. Mr. Sullivan said that they would send a PDF of the plan.

Ms. Fidler said that it was 9:39 P.M. and said it was up to the Board if they wanted to continue. Ms. Conway said that they should go ahead. Ms. Fidler said that since their heads were on Lohe they should start there. She asked the Board if they had any questions about the Special Permit; there were none. Ms. Fidler made a motion to grant the Special Permit which was seconded; all were in favor. As for the Variance, she said she wanted to talk about the pier, a movable gangway, a 15' x 10' float as described on the sheet that was submitted tonight. She said the North River Association has been involved and she feels they have covered the bases as they did with the others. Ms. Porreca displayed a previous decision for docks, etc. and Ms. Fidler read the conditions. She said it was secluded in the back of the property, they should have a safety net but a gate may be excessive. Mr. Galvin said it would be up to the applicant if they wanted to do the gate but he thinks it's a good idea to have the safety net out on the docks and something to indicate that it was private. He said it was a pretty popular area and kids tended to jump off the bridge; he wouldn't want them thinking that they could use the dock. Ms. Fidler said that in an emergency situation the dock would be accessible. Ms. Conway asked if the conditions were normal conditions and Mr. Galvin said that they were typical. He said that it doesn't hurt to include a condition for creosote. Ms. Fidler said the plan that was submitted tonight was a Notice of Intent (NOI) and asked if that was what they referred to when they go for the Waterways license. Mr. Galvin said it was not; they submit a copy of their order of conditions and they will submit whatever permit the Board grants them. They will have their own application for the Waterways license which is good for about thirty (30) years and can be extended another ten (10) years. Ms. Fidler asked if there was anything specific they didn't want as a condition; maybe it would help the applicant if they were more specific on #3 and have it posted that it is private property. Mr. Galvin said that if they give the applicant all of those choices they can pick one; so they don't have to have a safety net and a fence and a gate; they could have a sign. Ms. Fidler made a motion to grant the Variance with the conditions identified which was seconded; all were in favor.

The Board then deliberated on **43 Union Street**. Ms. Fidler stated that the applicant and her attorney expressed concern over the previous owner being allowed multiple uses, both residential and business. Mr. B. Murphy asked Mr. Galvin if this would be allowed in that zone. Mr. Galvin replied that it would not; it is a Residential-1 district and you can only have one principal

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

use on the lot. You can have a residence or you could have some type of community facility. A commercial kennel is a permitted use by Special Permit but that would have to be the only use of the property; you couldn't have a house. You could have horses and farm animals but those are a little different than domestic animals which are treated as kennels. You can have a non-commercial kennel as an accessory use but you can't have a commercial kennel as an accessory use. Kennels usually refer to dogs but can be cats, too. It sounds like this will be a commercial use and it is not allowed as a principal use.

Ms. Conway said that the Board had another kennel a few weeks ago in an R-1 district; Mr. Galvin stated it was Main Street. Ms. Fidler said that was denied. Mr. Galvin said that the only way to grant this is to grant a use Variance and allow two (2) uses on the lot. He said that further up on Union Street, the owner asked to have a kids' camp. The neighbors sued and won so people couldn't have both a residence and a camp for kids; there were five (5) other camps in residences for kids but those predated zoning. Ms. Fidler said they were grandfathered in. Mr. Galvin said the Board granted the Variance to allow the camp but the neighbors appealed in court and won. It was the Erickson camp about 5-7 years ago. Mr. B. Murphy said that there doesn't seem to be a way to get to what the applicant wants. Ms. Fidler said they didn't have to vote tonight but they should vote. She explained the Bylaws to Mr. Feeney and stated that it was his first vote on the ZBA and that they respected his opinion; he should take his time because his vote is valuable. Ms. Conway said the applicant bought the property thinking that this was what they were going to do; Mr. Galvin said it was marketed that way to the homeowner; Ms. Conway said that was another issue for them to take up. Ms. Conway asked if there was any other way to do this and Mr. Galvin said they could grant a Variance to allow a secondary principal use on the lot. Ms. Fidler made a motion in the affirmative to grant the Special Permit in accordance with §305-10.12 which was seconded; nobody was in favor and all were opposed. Ms. Abbott said her Plan B was to go to litigation. Ms. Fidler apologized and said Ms. Abbott's application was well thought out, prepared and she knew she had spent a lot of time on it.

The Board then went to **600 Plain Street** to finish the Special Permit for Direct Granite Realty Trust. Ms. Fidler said that Mr. Feeney had listened to the tape and will be the fourth vote this evening. Ms. Porreca stated that she had the Mullin form signed by Mr. Feeney. Ms. Fidler asked if the Board would like to deliberate on the Special Permit for the addition and the loading dock; they did not deliberate. Ms. Fidler made a motion to grant the Special Permit which was seconded; all were in favor.

Ms. Porreca gave the date for the second May meeting; she explained that there was only one (1) meeting in April because of Town Meeting and that Special Town Meeting is scheduled for May 21st which means that the Board's second May meeting will need to be rescheduled; the available dates are May 15th, 16th, 17th and 29th. Ms. Porreca does not think the Board wants to go two (2) months in a row with only one scheduled meeting a month. The Board determined the date of the second meeting would be May 29th. Mr. B. Murphy asked how everyone felt about a 7:00 P.M. start; he said most Board meet at 7:00 and some at 6:30. Ms. Fidler asked Ms. Porreca if she would hear from Attorney Shelmerdine the next day; Ms. Porreca said she could wait until Thursday morning to submit the notice for the May 8th meeting and when it is submitted it will

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 10, 2018 7:30 P.M.
MEETING MINUTES**

state the 7:00 start time. Mr. Galvin said that they need to make sure that the Public Hearing is opened within thirty (30) days; Ms. Porreca said that is why they have the May 8th meeting. Ms. Fidler asked Mr. Galvin about protocol – if the May 8th meeting didn't work for Mr. Shelmerdine, would he have to give the Board an extension in writing? Mr. Galvin replied Yes.

Ms. Fidler stated that the Board will need to do voting for officers but should wait until Mr. R. Murphy was in attendance; Ms. Porreca stated Mr. Hubbard as well. Ms. Fidler made a motion to adjourn the meeting which was seconded; all were in favor.

Meeting adjourned at 10:00 P.M.

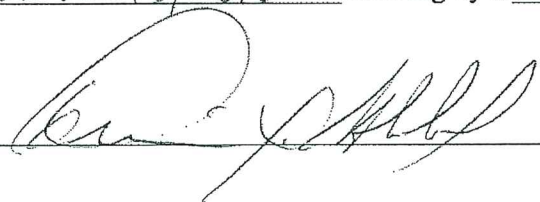
Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

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

November 13, 2018 meeting by a 5-0 vote.

Signed: 

Date: 12/13/2018