

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,  
MARSHFIELD TOWN HALL AUGUST 14, 2018 7:30 P.M.  
MEETING MINUTES**

*Members Present:*

*Francis X. Hubbard  
Brian Murphy  
Heidi Conway  
Richard Murphy  
Stephen Feeney*

*Also Present:*

*Robert Galvin, Town Counsel  
Jim Folkard, Building Commissioner*

Mr. Hubbard opened the meeting at 7:01 P.M. and introduced himself and said that the other members were signified by their nameplates. He also stated that the meeting was being recorded by Marshfield Community Television (MCTV).

**#18-49: Timothy Krusell:** The Petitioner is seeking a Special Permit in accordance with §305-13.01.C.2 of the Marshfield Municipal Code to fill approximately 1204 square feet of an area of the Inland Wetlands District for a residential driveway and culvert on the property located at **0 Careswell Street** which is further identified on the Assessors' Maps as being on parcels L05-31-21 and L05-31-20 and is located in an R-3 zoning district.

Mr. Hubbard read petition **#18-49** into the record and stated that he had a letter dated August 9, 2018 from Timothy Krusell requesting that the hearing be continued to the next meeting on September 11, 2018; he then read the letter into the record. Mr. Hubbard moved to grant the extension which was seconded; all were in favor. Kyle Gavoni, an abutter, said that he also works on the water and has a schedule. He asked if Mr. Krusell could give an update on when he wants to have the meeting so that he and his girlfriend could know in advance. Sarah Brazao of 220 Careswell Street said that she is already scheduled to work on September 11<sup>th</sup> and was told by her manager that she cannot take the time off. This directly affects her house and Mr. Krusell has postponed five (5) times with the Conservation Commission. Mr. Gavoni asked if they could get a heads-up if he continues the hearing again; Mr. Hubbard advised that he could speak with Ms. Porreca. Mr. Gavoni said that he understands that Mr. Krusell has a lot going on but they do, too; they would like to be present. Ms. Brazao said they have been at all the other meetings and requested that this be continued to another meeting after September 11<sup>th</sup>. Mr. Hubbard said the meeting will be on September 11<sup>th</sup>. He advised that they also have the right to submit comments and concerns. Ms. Brazao said that she is concerned that if she doesn't come to the meeting it will go forward and she won't have the opportunity to voice her concerns. Mr. Hubbard advised that Ms. Brazao should speak with Ms. Porreca.

**#18-50: St. Mary & St. George Coptic Church:** The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code for a change in use from "Community Facilities #1, Church or other religious purposes" to "Community Facilities #2, Educational purposes which are religious sectarian, denomination or public", both of which are allowed uses, on the property located at **255 Furnace Street** which is further identified on the Assessors' Maps as being on parcel F10-05-04 and is located in an R-1 zoning district.

Mr. Hubbard read petition **#18-50** into the record and stated that he has an email from the

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petitioner stating that the Church of St. Mary and St. George would like to withdraw without prejudice the application scheduled for August 14, 2018. Mr. Hubbard moved to grant the withdrawal of the application without prejudice which was seconded; all were in favor.

**#18-51: Mark Kemp:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 and §305-9.02.C of the Marshfield Municipal Code to raze the existing single family dwelling and construct a new 24' x 40' dwelling with an 8' x 16' ell, a 20' x 24' ell and a 10' x 12' ell; a 40' x 6' farmer's porch in the front, a 28.5' x 10.5' screened porch, a 5.5' x 10' generator deck and a 7' x 14.5' grilling deck on the property located at **215 Island Street** which is further identified on the Assessors' Maps as being on parcel N07-02-10B and is located in an R-3 zoning district.

Mr. Hubbard read petition **#18-51** into the record and turned the hearing over to the applicant or the applicant's representative. Mark Kemp would like to demolish the existing home and build a new single family dwelling that will be within the setbacks. Mr. Hubbard asked if it would be in the existing setbacks or what is required now. Mr. Kemp said that it would be what is required on the sides and the front would be existing. Mr. Hubbard asked if there were any questions from the Board or the public and there were none. He moved to close the hearing which was seconded and all were in favor. He made a motion to grant the Special Permit which was seconded and all were in favor.

**#18-52: Kevin Hart:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 24.5' x 35' second floor addition to the existing single family dwelling on the property located at **15 George Street** which is further identified on the Assessors' Maps as being on parcel K11-09-20 and is located in an R-3 zoning district.

Mr. Hubbard read petition **#18-52** into the record and turned the hearing over to the applicant or the applicant's representative. Mark Kemp represented the Harts and said they would like to add a second story to the existing house to add three (3) bedrooms and they will not go outside the footprint. Mr. Hubbard asked if there were any questions from the Board or the public. Mr. Galvin asked if they were sure it was 15 George Street because it was not in the Assessors database. Ms. Porreca said that she found it by the parcel ID; Mr. Hubbard asked Mr. Galvin to go by that. Mr. Galvin said that he wanted to make sure because some lots on Island Street, and he knows this isn't Island, are also in the Coastal Wetlands District because they had one earlier this year. He said this one is up in Rexhame and is not in the Wetlands District; he does not see any issues. Mr. Hubbard asked if there were questions from the Board or public and there were none. He moved to close the hearing which was seconded and all were in favor. He moved to grant the Special Permit which was also seconded and all were in favor.

**#18-53: Thomas Roach and Melinda Johnson-Roach:** The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 14' x 20' side deck on the property located at **262 Standish Street** which is further identified on the Assessors' Maps as being on parcel K13-05-01 and is located in an R-3 zoning district.

Mr. Hubbard read petition **#18-53** into the record and turned the hearing over to the applicant or



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the applicant's representative; Thomas Roach and Melinda Johnson-Roach were in attendance. Mr. Roach is requesting permission to put a 14'x20' deck on the side of the house. Mr. Hubbard asked Mr. Galvin if he had looked at the plan; Mr. Galvin said he had and asked if it was in the R-3 zoning district and Mr. Hubbard said that it was. Mr. Galvin said that it was also in a Velocity zone (for flooding). He said the deck is sketched but is not to scale and said these are the ones that lead to issues when constructed and they don't meet the setback. He said the property has two (2) front yards and Mr. B. Murphy asked if both setbacks had to be fifteen feet (15'); Mr. Galvin said that had to meet both setbacks but could go half into the setback. If the Board approves this, he would recommend that they provide an adjusted certified plot plan prior to construction by a land surveyor certifying the distance is not closer than seven and a half feet (7.5') and an As-Built plan when built. Mr. Galvin asked Mr. Folkard if there were any issues due to the Velocity zone. Mr. Folkard said that it was less than four feet (4') of the ground so he did not have a problem with it; he had talked to the applicant about the seven and a half feet (7.5'). Mr. Hubbard asked if there were any questions from the Board or the public and there were none. He moved to close the hearing which was seconded and all were in favor. He moved to grant the Special Permit with the condition that prior to construction the applicant provide to the Building Department and the Zoning Board of Appeals a certified plot plan showing the deck will be no closer than seven and a half feet (7.5'). Mr. Roach asked if it was required before construction and Mr. Hubbard replied yes. The motion was seconded and all were in favor.

**#18-54: Dan Smith/D.H. Smith & Sons:** The Petitioners are seeking Site Plan approval in accordance with §305-12.02 and §305-8.01 of the Marshfield Municipal Code for the construction of a 14,000 square foot building for "Wholesale Transportation & Industrial, #3. Construction industry including suppliers" and an 8,000 square foot accessory building with parking and loading areas, utilities, storm water management and refuse/trash handling facilities on the property located at **887 Plain Street** which is further identified on the Assessors' Maps as being on parcel D10-02-03 and is located in an I-1 zoning district.

Mr. Hubbard read petition **#18-54** into the record and turned the hearing over to the applicant or the applicant's representative. Daniel Smith said that they would like to construct a 14,000 square foot front building for an office and storage for trucks. The back building will be heated by wood chips and will have a repair facility and eventually a sawmill. Mr. Hubbard asked about the setbacks; Paul Seaberg from Grady Consulting said twenty feet (20'), the closest will be twenty-one feet (21') and they will meet all setbacks. Mr. Hubbard asked if there were questions from the Board and Ms. Conway asked about plans for grinding noise. Mr. Smith said that it should be in the plan; there will be no change of use and they will be doing what they do now. She asked about a lighting plan and Mr. Folkard said that it was in there. Mr. Smith said there would be minor lighting with wall mounts on the rear building and four (4) on the main building. Ms. Conway asked about hours of operation and Mr. Smith said that they were currently open at 6:00 AM to 5:00 PM for landscape supply pickup. They do get early morning deliveries but they are not noisy; as far as use and activity not much will be changing. Ms. Conway asked about parking and Mr. Smith and Mr. Seaberg said there would be thirteen (13) spaces in the front. She asked if they needed Conservation approval and Mr. Smith said they did not because they were one hundred feet (100') from any wetlands. Ms. Conway asked about



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drainage and Mr. Smith explained how the building would be used.

Mr. Hubbard asked if there were any plans to improve the entranceway on Route 139 to make it more attractive. Mr. Smith said the curb cuts would be the same; they will landscape it like their Pembroke property. Mr. Hubbard asked if there were any plans to add shrubbery because it is kind of barren when you drive by now; Mr. Smith said there would be a mowed lawn with crushed stone. Ms. Conway asked if there was a landscaping plan. Mr. Folkard asked if it would be live parking or would there be overnight parking. Mr. Smith said there would be no overnight parking; they will unhook and grab a trailer. Mr. Hubbard asked for a landscaping plan and Mr. Seaberg said that it was mainly asphalt now but they would prefer to do grass. They want to do the building with masonry and don't want to bury it with bushes. Mr. Hubbard said that he wasn't sure about the rest of the Board but he sees piles of wood chips and logs when he drives by; Mr. Smith said they wouldn't see that; Mr. Hubbard said that he would like to see a landscaping plan. He said when you look at other properties on Route 139, they have made them attractive. Mr. Smith said they have a landscaping plan that is partially done; Mr. Hubbard said he would like to see them take their time and do a full one. Ms. Conway asked if the buildings were going to be metal buildings; Mr. Smith said they would be nice metal buildings painted red and pointed out the areas where customers would park to go into the buildings. There will be real stone masonry on the bottom three feet (3')

Mr. Hubbard asked if they had been to Conservation and Mr. Seaberg said that it was outside the one hundred feet (100'). Mr. Hubbard said he was wondering about the storage area and the landscaping. He mentioned comments from the Fire Chief re: combustible material on site should be sent to the Zoning Board; they should go to Conservation to see if they needed to apply with them. Mr. Smith said Ralph (did not get last name) from Conservation walked the site and is aware; Mr. Hubbard said Conservation could send the Zoning Board a letter. Ms. Conway asked about drainage and impervious surface and Mr. Seaberg discussed stormwater calculations and runoff. Mr. Hubbard said he wanted to mention an email that he received from Mr. John Moon and he read the email; Mr. Moon is in favor of the applicant's message and wanted to put that in the record. He would like to see the drainage calculations and Mr. Seaberg said they would provide them. Mr. R. Murphy asked about signage on the side of the building and the front and Mr. Smith said it would just be in front; Mr. Hubbard stated they could only have one (1) sign. He then asked for comments from the public. Mr. Brian Taylor from Careswell Street said they would be an asset to the community. Mr. Hubbard moved to continue the hearing until September 11<sup>th</sup> which was seconded and all were in favor.

**#18-55: Jesse Bottoms:** The Petitioner is seeking Special Permit in accordance with §305-10.10 and §305-10.12 of the Marshfield Municipal Code to relocate the existing 28' x 24.5' single family dwelling which is currently on a block foundation to a new elevated pile foundation along with an 8.5' deep x 20' wide porch and 28.5' wide x 5' deep front deck which will be above the base flood elevation on the property located at **98 Cherry Street** which is further identified on the Assessors' Maps as being on parcel N06-03-28A and is located in an R-3 zoning district.



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Mr. Hubbard read petition #18-55 into the record and turned the hearing over to the applicant or the applicant's representative. Dana Altobello of Merrill Associates spoke for Mr. Bottoms who was in attendance with his girlfriend, Jessica. Mr. Altobello said that 98 Cherry Street was eight hundred feet (800') down from the intersection of Central Street and is located in an R-3 zoning district; he said it is in flood zone elevation AE16 plain and the Coastal Wetlands Overlay District. The building was constructed in the early 1900s and a small portion of the lot is located in bordering vegetation. The entire lot is below elevation 11 and the elevation is between 5 and 7 during storms; the area is inundated with large storms in the winter. Mr. Altobello said damages are happening more often and the damage is becoming more severe. The structure does not meet many of the minimum dimensional requirements of the Bylaws; the lot size is 4,500 square feet and should be 10,000 square feet in an R-3 zone; it has sixty feet (60') of frontage but should have eighty feet (80'). The dwelling is currently over the property line on the northern side by almost eight feet (8'); on the southerly side the barn is within 11.6 feet; the structure extends into the front setback by 1.7 feet. They would like to elevate and relocate the dwelling and existing porch back on to the lot and the whole structure brought up to elevation 17 or above which is the Base Flood Elevation in this district. They would relocate the existing porch to the rear of the house and it will also be at elevation 17. Mr. Hubbard asked which porch and Mr. Altobello said the existing porch is a little too wide to fit next to the barn; they will rebuild it at the same elevation but narrower. He said by elevating the structure they can renovate the existing house before it falls into disrepair from storm damage.

Mr. Altobello said they met with Conservation and they issued an Order of Conditions. They will be allowed to grow back to its natural state; the existing features will be removed and will be planted with natural vegetation such as saltwater grasses, etc. Mr. Hubbard asked Mr. Altobello to explain the "proposed temporary" house relocation area. Mr. Altobello said they were currently off the property and they need to relocate it while they get the piles driven to elevate. Mr. Hubbard asked Mr. Folkard if the location of the proposed house and barn caused any code issues. Mr. Folkard said where it is existing, they are not making it any more nonconforming; he said they are moving to a temporary area to drive the piles and he doesn't see a problem with that. Mr. Hubbard asked Mr. Folkard if the thought the barn and what is going to be built would be too close to each other. Mr. Folkard said yes, they won't have the ten foot (10') space between the barn and the primary structure. Mr. Hubbard asked if they could approve that and Mr. Folkard said we have to do something or they will be connecting. Mr. Bottoms asked if he could attach it to the barn so that it is just one; Mr. Folkard said no because right now the barn is nonconforming to start with. Ms. Conway asked if they were rebuilding the barn and Mr. Altobello said they were not, the barn was staying. Mr. Hubbard asked how far away they needed to be; Mr. Folkard said ten feet (10'). Ms. Conway asked Mr. Altobello how far they would be and he said they would be less because they are losing square footage to move it back on the property; they are cutting it down just to bring it back on the property and make it more conforming.

Mr. Galvin said the existing house is on Town property, the layout of the street, an additional lot and partially on Conservation land; they would actually be helping the Town by moving it off the street and off the Conservation land. Mr. B. Murphy asked Mr. Folkard if the ten feet (10') was the fire code; Mr. Folkard said it was but if you look at Mr. Galvin's point they are taking it off



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the street and property. Mr. B. Murphy said they have the preexisting nonconforming status so they can stay within that. Mr. Galvin said the Coastal Westland District is a little funky; if it was just an R-3 there wouldn't be an issue; you're allowed to reconstruct or repair a damaged structure. There was the same issue with the Harbormaster building; no structure for human occupation is allowed. He is actually helping the Town by doing this and he is saving himself an enforcement action by the Town which is good for everybody; but we can't help with the fire code issue. Mr. Folkard asked if there would be any space between the two (2). Mr. Bottoms said no and asked what he had to do to make the barn conforming since it is existing. Mr. B. Murphy asked if he could be allowed to go the same distances of the preexisting nonconforming structure and he asked how far the barn was from the current house. Mr. Bottoms said about three (3) or four (4) feet; if he keeps three feet (3') he would potentially lose ten feet (10') from the house; where it says porch is also the bathroom. What would he have to do to attach to the barn; it's not habitable space. Mr. Bottoms asked if he could put flood vents on the bottom floor. Mr. Folkard said flood vents, a one (1) hour rated fire wall on the barn and the house. Mr. Bottoms asked if he puts the firewall in can they be connected; the bottom floor is just slab. He said the barn is similar to the house on Island Street they just built, slab on the first floor. If he connects these it wouldn't be a separation and asked if he could put in firewalls or whatever. Mr. Folkard said if he is within three feet (3') it will not only require a firewall and asked if he had windows and doors; it would be reducing the percentage of openings on those walls. Mr. B. Murphy asked if they were getting close to the barn; Mr. Bottoms said the first floor of the home will be equal with the barn and it would be ideal to connect them. Mr. B. Murphy asked Mr. Galvin if they do both buildings, does it fit under preexisting nonconforming. Mr. Galvin said because the lot is less than 5,000 square feet the Board has the authority to grant a Special Permit or Variance to allow projections into the required yard areas and open spaces; it's rare that you see this. Mr. B. Murphy asked if they could allow them to touch each other; Mr. Galvin said as long as there are no fire code issues.

Mr. Folkard said that it says "proposed" porch and they are saying existing. Mr. Bottoms said that it is a three (3) season porch but it will be insulated; so it was a three (3) season porch and now it will be year round and it will connect the first floor of the main house to the second floor of the barn. Mr. Altobello said it was an existing porch that will be reconstructed smaller. Mr. Folkard said they are saying it's a three (3) season porch but said if they get rid of that they would lose the bathroom. Mr. Bottoms said the three (3) season porch is segmented off and he pointed out where the bathroom would be. He said the problem is the porch is 2'x6' framing so in order to lift it they would have to install more piers; it's actually cheaper to rip off the bathroom and rebuild the house with fewer piers. Mr. B. Murphy asked Mr. Galvin if it would end the question of the ten (10) feet if they allowed them to touch. Mr. Galvin said technically they could give a Variance because they are making it closer than three (3) feet. Mr. Bottoms pointed out the back of the house and where the porch would be ripped off. Mr. B. Murphy asked if they would need a Variance in order to do that. Mr. Galvin said he would need to apply for a Variance for relief of what he is asking, to go from three (3) feet to one (1) foot; Mr. B. Murphy said or zero (0) feet; Mr. Galvin said if it's zero (0) feet that might solve it because it would be detached. Mr. Folkard said if it is attached it would be treated like a garage attached to a house. Mr. Galvin asked what would happen elevation wise. Mr. Bottoms said the floor would be concrete slab with flood vents like the house on Island Street. Mr. Galvin said it wasn't a



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Velocity zone, it was an AO zone. Mr. B. Murphy said that as long as it touches it takes it out of the ten (10) foot fire code. Mr. Galvin said it takes the accessory issue out but he thinks he will have different issues if he attaches it; he would need firewalls between the structures; Mr. Folkard explained different things they would need to do. Mr. Galvin said it was a construction detail and Mr. Bottoms asked if it would be touching. Mr. Galvin asked if it would be more aesthetic if he had it connected with something that was practical; with the one (1) foot, they can't even squeeze through; the Fire Department wouldn't like it. Mr. B. Murphy said they should just connect it; Mr. Galvin said they won't need a Variance if it's connected. Mr. B. Murphy said they are both preexisting nonconforming so they can work within that space. Mr. B. Murphy asked Mr. Bottoms if he would connect and he said yes. Mr. Galvin said the Board would need a revised plan showing the connection between the buildings. Mr. Hubbard asked Mr. Bottoms what his construction schedule was and he said as soon as possible; he has builders lined up, just waiting to get through this. Mr. Hubbard asked the Board if they had any objection continuing this to September 11<sup>th</sup> to give the applicant time to submit revised plans. He moved to continue the hearing to September 11<sup>th</sup>; this was seconded and all were in favor. Mr. R. Murphy asked if they could condition this now; Mr. B. Murphy asked if they could condition it on a submission; Mr. Folkard said then he could get moving on it. Mr. Hubbard said they could move to withdraw his motion. He then moved to approve the Special Permit with the condition that the applicant submit to the Zoning Board of Appeals and the Building Department a revised set of plans showing that the two (2) structures are connected and that flood vents are included on the plan for the barn; this was seconded and all were in favor.

**#18-56: Susan A. McDonald:** The Petitioner is seeking Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 16' x 32' first floor addition, a 24' x 32' second story addition, a 10' x 20' rear deck and an 8' x 7' covered porch on the left side of the dwelling on the property located at **62 Bayview Street** which is further identified on the Assessors' Maps as being on parcel K12-05-02 and is located in an R-3 zoning district.

Mr. Hubbard read petition **#18-56** into the record and turned the hearing over to the applicant or the applicant's representative. Dick Rockwell said he did the architectural plans for Susan McDonald for the one (1) story structure. He explained the addition and different views of the house; the front of the house and the right side are nonconforming but it will not become any more nonconforming; they are forty (40) something feet now and they will be about thirty-seven (37) feet; they will meet the side setbacks. Mr. Rockwood said that all were measured to the foundation because the Town has changed over the years from foundation to corner boards and back to foundation. He said the Town has always allowed no more than a four (4) inch build out of construction material. Mr. Folkard said that the purpose of the four (4) inches was to square something up not to give you another four (4) inches; it's not squaring something off if you are building a new structure so it doesn't apply. Mr. Rockwood said he wanted the Board's opinion about keeping the step in and said that this was not in the flood zone. Mr. Hubbard asked if there were questions from the Board or the public and there were none. Mr. Hubbard moved to close the hearing which was seconded and all were in favor. He moved to grant the Special Permit with the condition that the shed is not endorsed. Mr. Galvin said that they also need a certified plan by a surveyor; he said Mr. Crawford is a great engineer but he is not a surveyor. The



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motion was seconded and all were in favor.

**#18-41: Michael Solimando:** The Petitioner is seeking a Special Permit in accordance with §305-13.02.c.1 of the Marshfield Municipal Code to construct and maintain a 4' x 39.7' pile supported pier with an attached 3' x 32' long ramp to a pile held 12' x 20' float in the South River and a Variance under §305-10.11 for relief from §305-6.07, which requires a 10' setback from a rear property line for an accessory structure, to construct a 4' x 7' set of stairs to provide access to the pier on the property located at **1180 Ferry Street** which is further identified on the Assessors' Maps as being on parcel I15-24-17 and is located in an R-3 zoning district.

Mr. Hubbard said he would not read **Case #18-41** into the record because this has been continued and has already been read into the record. He and turned the hearing over to the applicant or the applicant's representative. Paul Seaberg from Grady Consulting said the site is located in an R-3 zoning district as well as the Coastal Wetlands District. The applicant proposes to construct a 39.7 foot dock with a 33.2 foot ramp to an 8'x16' float. They recently submitted a revised plan showing reduction in the float size. They are asking for a Special Permit because they are in Coastal Wetlands District; they are seeking a Variance to extend through the rear property line to construct the dock. Mr. Seaberg said they had received approval from Conservation as well as the Harbormaster. Mr. Hubbard asked if there were any questions from the Board and there were none. Mr. Galvin asked if they have the Waterways license already and Mr. Seaberg said that they did not and they will work on that next. Mr. Hubbard asked if any questions from the Board or public and again there were none. Ms. Porreca put the conditions for previous docks and floats on the screen. Mr. Hubbard asked if there were just thirteen (13) conditions and Mr. B. Murphy said there was another page. Mr. Hubbard asked Mr. Seaberg if he had read the conditions and he said yes. Mr. Hubbard moved to grant the Special Permit and said he would read it all and then again for the Variance; Mr. Galvin said he didn't need to read it twice, that they could incorporate it by reference. The Board discussed the conditions to determine which conditions applied. Mr. Hubbard read the following conditions: 1) The ramps, walks, platforms other structures shall not be extended or increased in height beyond what is shown on the plan; 2) The applicant shall comply with the Order of Conditions issued by the Marshfield Conservation Commission; 3) The applicant shall post and maintain a safety net, fence, gate, sign and /or other clear indicators that states it is private property so that it is not an attractive nuisance; 4) Subject to the issuance of a new Chapter 91 Waterways License; 5) There shall be no commercial use of this facility; 6) The site shall have no storage of fuel or fuel pumping facilities; 7) There shall be no open storage of refuse, no containerized storage of refuse and any refuse generated from the use of the site shall be removed from the site as it is generated; 8) Any excavation, transfer and disturbance of the marsh shall be kept to an absolute minimum; 9) No creosote, arsenic or related products shall be used or discharged into the river or marsh area; 10) If pressure treated lumber is used in the construction of this project it shall not contain arsenic and will be environmentally friendly; 11) There shall be no water, sewer or electrical service to the proposed project, as shown on the plan; if the applicants want to pursue that at a later date, it will be considered by this Board as a modification request; 12) That any modification of the plan cited above, which modification is substantially different from the plans presented at the public hearing, shall be submitted to the Board to be reviewed and accepted by the Board prior to any construction



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commencing. He then said that with these conditions, he moved to grant the Special Permit which was seconded and all were in favor. With those conditions outlined and incorporating into the Variance, he moved to grant the Variance which was seconded and all were in favor.

**#18-42: Jetty, L.L.C./Richard Vaughn:** The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to install an outdoor patio seating area that will contain 24 seats and a bag toss area to be located at the rear of the premises known as The Jetty Restaurant on the property located at **278 Ocean Street** which is further identified on the Assessors' Maps as being on parcels N07-01-34 and N07-01-35 and is located in an B-4 zoning district.

Mr. Hubbard said that Case #18-42 has already been read into the record and opened it up to the Board for comments and questions. Mr. R. Murphy said that he has been to the site a couple of time and heard the abutters and feels it is too close; there isn't enough room to put a buffer; they are right next to R-3 residents. He said that the direct abutters have spoken up and he has a hard time with this. He likes the restaurant and has met the owners a few times but he thinks the noise level for the comfort of the homeowners next door is paramount. Mr. B. Murphy said that the thing he struggles with is that he really likes the gabion wall because he would like to see the noise reduction but he will listen to his fellow Board members and see if they all agree on it. Mr. Hubbard asked Ms. Conway if she had watched the video and she said that she did. She said that she thinks it's a little too close; she wishes there was another location for it because she thinks it would be a great idea. Mr. Feeney said that he didn't actually look out back; the restaurant has been there since 1950; Jessica Vaughn said 1937; Mr. Feeney said he is not as opposed as the other members are. Mr. Hubbard said that it was too close to the neighbors; going from a B (Business) district to an R (Residential) district they would need a 35 foot buffer and that would take up all of the available space. They will need a Variance and the Board is only considering Site Plan approval; he is not inclined to vote for it. Ms. Conway said it has been there for a long time but people knew that when they bought there. They do run a good business and that should be accounted for. Mr. B. Murphy said that one of the things that he feels bad about is all of the other businesses have outdoor seating. Mrs. Vaughn said they are the only ones that don't. Mr. Hubbard said the other buildings aren't connected to residential lots; Mr. B. Murphy and Ms. Conway said that the Fairview is.

Mr. Taylor said that they did have some other offerings for consideration; Mr. Hubbard said that they didn't close the hearing, they just continued it. Mr. Taylor said that Conservation issued a negative finding on the Request for Determination of Applicability which means that they approved it. They agreed at the last meeting to modify the liquor license to provide an outdoor bar. He said they neglected to mention before the northwest corner where the band is will have the sound attenuation with the gabion wall; this will provide year round sound buffering. They decided to eliminate the camera which was an issue with the abutters; there will be outside dining only and they have eliminated the baggo game which was also an issue. They will modify the liquor license with the Selectmen and will just have a few high tables; they just want to be competitive with the other restaurants in town. They have agreed to limit their hours and there will be no outside entertainment. There should be significant noise reduction for the neighbors year round.



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Mr. Hubbard said there was still a problem with the buffer. Mr. Taylor said it was a preexisting site and has never had a buffer; it's been paved since before zoning; the gabion is the most effective buffer they can buy. Mr. Hubbard asked Mr. Galvin if they needed to submit a request for a Variance for the buffer; Mr. Galvin said they are not proposing any structures in there and he doesn't think the fence qualifies as a structure. Mr. Hubbard said the buffer exists whether you have structures or not, between a B zone and an R zone. Mr. Galvin said that he was surprised Conservation gave permission for a wall and he has talked to the Conservation agent. When you propose a wall the storm water that goes over gets diverted to abutting properties. Mr. Taylor said the gabion was like a stone lobster trap. Mr. Galvin said that there was a request to use this area before and it was denied. Mr. Taylor said that was for 56 seats and there was no sound attenuation at all. Ms. Conway asked how many seats are out there now and Mr. Taylor said 24. She said she does not have an issue with it; she thinks it has been there and everyone knew that. Mr. B. Murphy said that he liked the wall because it will buffer other businesses. Mr. Hubbard asked if they would need a Variance for the buffer. Mr. Galvin pulled up screening information in the Bylaws on his laptop and read from it: "Screening and buffers shall be required in any industrial or business district which adjoins a residential district as follows: this strip shall be at least 35 feet in width; it shall contain a screen of plantings in the center of the strip. The screen shall be not less than five feet in width and six feet in height at the time of occupancy". He said that is what exists; it's a square peg situation and we can't have that. Mr. Hubbard said that is why he is asking the question about the Petitioner needing a Variance. Mr. Galvin read from the Bylaws again and said that projections into required yards, open decks and terraces half into the required setback are allowed. Mr. Taylor said there would be no change in existing conditions. Mr. Galvin asked if there was prior approval for this area to be paved; Mr. Taylor said he did something for Billy Last and his father back in 1978. Mr. Galvin said that he remembered when this was permitted by the Selectmen and he thought the original deck out there was an open deck, then it was screened and then closed in. It was enclosed to create more year round area and there were a lot of neighbors opposed to having that area used as part of the restaurant unless it was enclosed. He does not remember anything for the far side; he knows there is an emergency access door but he doesn't remember if anything was permitted for improvements on the ocean side of the building. Mr. Taylor said it was paved all around the building; Mr. Galvin said he was not sure if it was paved with any approval from a Board; Mr. Taylor said it was probably paved before there was a Board. Mr. Galvin remembers it as The Breakers but he doesn't remember anything on the ocean side of The Breakers. Then Bill Last bought it and it was the Lobster Tale; then Matt Kaler bought it and it was the Irish restaurant. He said it was probably something that allowed emergency access to that door but he doesn't remember any paving in that area.

Mr. Hubbard asked Mr. Galvin if he had an opinion as to whether they need to request a Variance. Mr. Galvin said it doesn't comply with the buffer so if they are going to do it, they probably do require a Variance. Mr. Taylor asked even if there was no change to the structure. Mr. Hubbard said the structure doesn't matter; what matters is the thirty feet between the business zoned property and the residential zone property where they border. Mr. Taylor said he could see a Special Permit to extend the nonconforming or alter a nonconforming, not extend. Mr. Galvin said the question is, is it nonconforming. Mr. Taylor said the outside seating is conforming. The fact that the buffer is presently not extant and it hasn't been since he can track



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it back. He said they aren't altering the area other than putting in seating. He could see a Special Permit if they were putting a building in that buffer or adding to a structure within that area then he could see a Variance; otherwise he doesn't see how it trips beyond a Special Permit. Mr. Taylor asked Mr. Galvin what he thought and Mr. Galvin said that he thinks there is a buffer issue. Mr. Taylor asked if it could be addressed with a Special Permit; Mr. Galvin said they would have to prove that it was preexisting nonconforming. The Board hears what they are saying but he doesn't think there is any evidence. Mr. Taylor said he could get a 1948 aerial photo when it was gravel but he can take it back at least two (2) prior owners.

Timothy and Robin Hennigan of 9 Middle Street, direct abutters to the Jetty, had a statement to read: "Dear Board, we live literally next door to the Jetty restaurant on Middle Street in Brant Rock. The Jetty opened several years back and the owners and staff have been well received by the neighborhood and patrons. The owners, Rick and Tracey, have been respectful and diligent in the upkeep and operation of the restaurant and the property. We are happy for their success and wish many continued years of good business. We have one request and that is to keep the restaurant business and patrons at the restaurant and not on the neighbor's property. As it is now we have a regular flow of Jetty patrons accessing the seawall through our property and our neighbor's property. This is in spite of the Private Property signs that both we and the Jetty owners have put up to stop the traffic. The fact is that the proposed outside seating will only further invite Jetty patrons into the property of adjacent homeowners and put the Jetty's inside business literally into our yards. We request respectfully that the Town of Marshfield deny the proposed outdoor seating." Mr. Hennigan requested that the Board deny the seating plan. They agree that they knew what they were getting into when they bought there but they didn't buy with any knowledge that there was any preexisting or going to be an outdoor seating venue literally in their backyard or front yard. Mr. Hennigan passed out pictures taken from his daughter's window that overlooks the proposed seating area; he said it was literally 25 feet away. He said they love the applicants; they are their neighbors and they want them to do well but they don't need this business in our yards, a residential R-3 property. Mrs. Vaughn said that in doing this they thought it would 1) improve the appearance back there and 2) by adding a gate it would help prevent...As the Hennigans have seen they have addressed immediately any concerns about patrons who go out and try to get on seawall. They have put up signs to try and stop people from going in to the neighbors' yards, not just Jetty people but people coming from the Esplanade; they stopped using the camera but they can't control people. She has seen it herself and she feels for them; she believes the fence will prevent or diminish that and not increase it.

Ron Carstens of 13 Middle Street asked what they were going to do with additional parking; if the Esplanade is full people go to Middle Street and it is a zoo in the summer. He isn't saying it is the Jetty but he sometimes has trouble getting out; he is concerned about getting a fire engine in there if Middle Street is blocked off. Mr. Taylor said it was an enforcement issue. Mr. Feeney asked when people leave are they coming directly from the Jetty or do they see a difference; are some coming from the Jetty and some from the Esplanade. Mrs. Hennigan said she has seen both; some are definitely the Jetty. They used to have a camera that looks out on the seawall; they would send their children out through their yards to play on the seawall; they babysit with the camera. She has seen people climb on her husband's car for pictures. They sit on the seawall after dinner and drinks. Mr. Hennigan said they aren't blaming the Jetty for this,



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it is human nature; but this outdoor seating will exacerbate the situation. Mrs. Hennigan said they know they are building a fence with a door but the door has to open; they are saying it's an emergency door but now people can take their drink to the beach or seawall. Mr. Feeney asked the Vaughns if they would have someone outside and asked if a bartender had to be in the area. Mr. Vaughn said that for 24 eats they can't afford a fulltime doorman at two (2) entrances. The whole purpose of this was to provide some daytime, early evening dining. He said that as for parking, the Esplanade has been a ghost town with the beach being closed; maybe at night there are more cars out there but with the outdoor patio and closing at 9:00, they can't imagine it will increase the parking. The gate would be alarmed when leaving through the rear; the waitress can tell them they can't go out that way. He has seen countless people go up Middle Street to the beach and he has seen some go out the Jetty's front door and walk around. They have tried to get rid of the kid thing by shutting off the camera but you can't stop everyone walking up Middle Street from the Esplanade.

Mr. R. Murphy asked the Hennigans if it was a noise issue or a traffic issue because he hasn't heard any noise concerns from them. Mr. Hennigan said the traffic issue is significant; they understand it's a public area but their property is not. These folks aren't police; it's not their job to stop the traffic. Aside from that you can well imagine if this is your bedroom. How do you manage the noise with two (2) dozen people out there having a good time. Mrs. Hennigan said that you could practically touch {unknown}. Their neighbor was at the last meeting but couldn't come to this meeting; he doesn't get the people in his yard but he does get the noise; he has a major concern with the noise when there are bands. Mr. Vaughn said that at that point the patio would be closed before the band starts and people will be inside; it won't be adding to any noise problem. Mr. B. Murphy said that theoretically that wall should be stopping the noise. Mr. Vaughn said one time a band opened the window next to the stage and the police called immediately and said the noise was out of control. The police have been called twice and both times it was because someone opened the window near the stage; they put a sign up saying not to open.

Mr. Folkard asked if there would be activity after 9:00; Mr. Vaughn said they are trying to create more dining for people and they are not trying to create a patio where there is an acoustic guitar playing. It will hopefully be more of a morning/lunch thing and then fizzle out around dinner time; a very limited number of seats for a limited audience. Mr. Taylor said it was similar to Station Eight; tables are outside if you feel like dining outside on a nice night. Mr. Hennigan said that was a Business zone; Mr. Taylor said this is too; Mr. Hennigan said his property isn't. Mr. Hubbard said that it was next to an R zone and Station Eight is not next to an R zone. Mr. Vaughn said they were the only restaurant in town without outside seating. Mr. Hubbard asked if this was increasing their capacity of patrons and Mr. Vaughn said yes. Mr. Hubbard said they would have to get permission from the Selectmen to use the space to serve alcohol; Mr. Vaughn said that was correct. He said at some point the occupancy was reduced at the time of purchase by about thirty (30) seats because of a code that was enacted; they already have less seats than they had in 2013. Mr. Hubbard asked Mr. Galvin about the increase in seating and didn't know if they addressed this at the last meeting. Ms. Conway said there was municipal parking. Mr. Galvin said they would have had to modify parking but nobody down there has enough parking. He doesn't think parking should be an issue for the Jetty. They are allowed to use by right



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parking within 300 feet that's public and 500 feet by Special Permit; so he doesn't think they have a parking issue at all. He does have an historic picture from 2013 and they are welcome to look at it; he didn't interpret it but it doesn't look paved in 2013; there is a paved strip like a walkway.

Mr. Folkard said that aside from the noise issue, he was looking at safety issues as far as seating and parking; what are they going to do about cars hitting the tables. Mr. Taylor said there would be concrete barriers; Mr. Folkard said it says a four foot (4') fence; Mr. Taylor said a four foot (4') fence and the seating structures are concrete. He said they could put something there; they could put a bollard around it. Mr. Folkard said there was just something on the news where a girl's flip flop got stuck in the gas pedal and asked what would happen here if someone hit Reverse by mistake; that would be his safety issue.

Mr. B. Murphy asked what they needed for a vote, was it a super majority. Mr. Galvin said it would be a majority vote for the Site Plan but they may need a Variance. The allegation is that there is no buffer there; earlier photos from Google Earth are too blurry and you can't tell; he has seen old ones and it doesn't look like there is anything there. Mr. Taylor said he would search his archives. Mr. B. Murphy asked Mr. Galvin if he is saying that it looks like the fence is there. Mr. Galvin said if Mr. Taylor is correct and this was always paved and was paved on an approved plan, it's probably okay to keep it there. But if it wasn't then it's another issue altogether; just because someone paved something that wasn't permitted it doesn't mean you get grandfathered protection for it. Mr. Hennigan asked how the pavement factored into this. Mr. Galvin said if the area was paved and used as part of a facility and hadn't been abandoned then the buffer issue probably becomes a non-issue. The buffer that is required under the Bylaw is a vegetative buffer or a different type of buffer with approval from the Board. Mr. Hannnigan asked what the buffer requirement was; Mr. Galvin explained it was a 35 foot buffer strip between the Business zone and Residential zone properties; Mr. Hennigan said they don't have that. Mr. Galvin said they are claiming that it has been that way forever; they never had a 35 foot buffer ever but there may or may not have been a buffer of a lesser distance in the past. What Mr. Taylor is saying is there wasn't a buffer there at any point. Mr. Vaughn asked if the buffer fell solely on the business owner or was it on the residence owner as well. Mr. Galvin said the burden is on the business to prove that there was a buffer or not and what it was. They may have some relevant information to provide and Mr. Taylor should provide it.

Mr. B. Murphy asked if they should continue this and Mr. Galvin said he didn't think they should deny the applicant the opportunity to present information. If it was previously permitted under one of Mr. Last's plans or grandfathered, the Board should hear that and not close the meeting. Mr. Hubbard said he isn't going to close it and proposed to continue the hearing to September 25<sup>th</sup> at 7:00; this was seconded and all were in favor. Mr. Hennigan had one more question for the Board and said just because they are alleyway or driveway on the street or whatever it may be and may have been permitted in the past, does that automatically make it suitable for outside seating in that space? Mr. Galvin asked Mr. Hubbard if he wanted him to answer. He said that if the area is being used in connection with the business there is no buffer and the Board permitted it. They can permit a different use by Special Permit so that's how it relates. Say it was an area where you could drive and store vehicles but it was paved to do that;



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the answer is the Board can authorize a different use of a nonconforming...Mr. Hennigan said so they can choose to do that. Mr. Galvin said they can ask for permission to modify a use and that's what they are going to come back with, evidence of what it was used for and when. Mr. Hennigan asked if the Board would have to vote unanimously or by majority and Mr. Galvin said a Special Permit would require a super majority vote, a 4-1 vote or better; Site Plan approval only requires a majority vote, they could vote 3 in favor and 2 opposed. Mr. Hubbard said they approved continuing this to September 25<sup>th</sup> but the Board will need an extension because the deadline is September 9<sup>th</sup>. They would need to extend it to September 28<sup>th</sup> which is the Friday after the hearing. Mr. Taylor said okay and Mr. Hubbard advised that they should submit it to Ms. Porreca in writing and he will sign it. Mr. Hubbard also advised Mr. Taylor to submit a revised plan stating what he said verbally. Mr. Feeney said he had a question; he asked if there was any way that they could work together to come to some kind of agreement; are they willing to work towards that. Mrs. Vaughn said she was happy to; she doesn't know what else to do besides putting up another fence to prevent more people going up their driveway which seems to be the major concern. Mr. Vaughn said he thinks they partially share a driveway with them and everyone goes on both sides; he thinks their driveway is used by all parties. There is a telephone pole in the middle and they own to the right of it and they own to the left of it. Mr. Feeney held up a picture and Mr. Vaughn said the seating would be beyond the white shed; Mr. Taylor said it was down to the end. Mrs. Vaughn said the gate would be across; Mr. Vaughn got up and pointed it out on the picture for Mr. Feeney and said the shed is the neighbor's. Mr. Feeney said if they could do anything "up here" for aesthetics, anything would look better. Mr. Taylor went to the table to show Mr. R. Murphy something. Mr. Hubbard moved to close the meeting which was seconded and all were in favor.

Meeting adjourned at 8:55 P.M.

Respectfully submitted,



Nanci M. Porreca  
Zoning Administrator

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

the September 10, 2019 meeting by a 5-0 vote.

Signed: \_\_\_\_\_



Date: \_\_\_\_\_

9/10/19