

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,  
MARSHFIELD TOWN HALL OCTOBER 9, 2018 7:30 P.M.  
MEETING MINUTES**

*Members Present:*

*Francis X. Hubbard  
Brian Murphy  
Lynne Fidler  
Heidi Conway  
Richard Murphy  
Mark Stiles  
Stephen Feeney*

*Also Present:*

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

MARSHFIELD TOWN CLERK  
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At 7:05 P.M. Mr. Hubbard advised that he would open the meeting shortly and he opened it at 7:09 P.M. He introduced himself and said that the other members were signified by their nameplates and that the meeting was being recorded by Marshfield Community Television (MCTV).

**#18-68: Kevin C. McDonough:** In accordance with §305-10.09 of the Marshfield Municipal Code, the Petitioner is seeking an Appeal of the Building Commissioner's decision that stated in a letter dated August 30, 2018 that he could not issue a building permit for the proposed new dwelling because the lot is located in the Stormwater Overlay Management District, a road improvement plan is required and water and drainage connections through the Department of Public Works on the property located at **61 Hingham Avenue** which is listed on the Assessors' Map as parcel I11-03-07 and is located in an R-2 zoning district.

Mr. Hubbard read #18-68 into the record and turned the floor over to the applicant or his representative. Mr. James Creed of Creed and Formica represented Mr. McDonough and began by saying that there were certain facts in the case that were not in dispute. He said that the parcel of land identified as I11-03-07, 61 Hingham Avenue, was comprised of lots 92, 93, 94, 95, 96 and 97 as shown on the plan titled Marshfield Estate Plan. Mr. Creed said that on June 27, 2017 the Marshfield Fire Department issued a determination of vital access to parcel I11-03-07 and the parcel was located on the corner of Hingham Avenue and Hanson Street. Mr. Creed stated that on July 10, 2017 Town Counsel determined the parcel qualified as a lot of record and was qualified for the "grandfathered" protection by the Zoning Act, MGL Ch. 40A, Section 6, paragraph 4, first sentence and as set forth locally by the Marshfield Municipal Code, edition 3, Article 9, "Nonconforming Uses, Structures and Lots", §305-9.03 Residential lot of record. On August 17, 2017 the Building Commissioner issued a building permit for the single family dwelling and that record was included in Exhibit D. On December 15, 2017 the DSR Group conveyed the premises to Kevin McDonough by a Quitclaim deed which was dated December 14, 2017 and was recorded at the Plymouth County Register of Deeds at Book 49308, Page 114. Subsequently the permit lapsed and Mr. McDonough applied for a new building permit to construct a single family dwelling. On August 30, 2018 the permit was denied by the Building Commissioner for reasons set forth in that letter; Mr. Creed said that he would not repeat them because the Chairman had accurately read it into the record. The Marshfield Zoning Bylaw was amended at the 2006 April annual Town Meeting to include the section currently identified as §305-13.04, Stormwater Management Overlay District; this was subsequently amended on April

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27, 2015.

The Marshfield Municipal Code §405-7, "Street Determination/street improvement plan" requires that grandfathered lots, residential lots of record in all cases must submit to the subdivision control plan. Mr. Creed said that the application of the Stormwater Management Overlay District, the street determination policy on subdivisions and what he takes as the unlawful refusal to allow water connection is all unlawful as a result of this lot being a grandfathered lot under the Zoning Act. In addition MGL Chapter 187, Section 5 provides for the installation of telecommunications and energy services and gives owners abutting a Private Way the right to extend the utility lines within that right of way. Specifically the pertinent part of the statute reads, "owner or owners of real estate abutting a private way have by deed existing rights of ingress and egress upon such a way or other private ways, shall have the right by implication to place, install or construct in, on, along or under said private way.

The Appeals Court in the LeBlanc case on page 5 sets forth the difference between the Zoning Board standard and the Planning Board standard in light of such lots. The argument being made here that the Planning Board standard of adequate width, grade and construction should be applied to a residential lot of record or a grandfathered lot under the Zoning Act. Specifically the Appeals Court said this argument fails to recognize the purposes of MGL Chapter 41, Section 81P, the subdivision control law and MGL Chapter 40A, Section 6, the Zoning Act are different. The zoning provision was concerned with protecting a once valid lot from being rendered unbuildable for residential purposes assuming the lot meets the minimum area of at least 5,000 square feet and frontage of at least 50 feet. On the other hand, the principal object of the subdivision control law is to ensure sufficient vehicular access to each lot in the subdivision. This is not a subdivision; no line of demarcation or separation is drawn on any plan that has been submitted to the Building Commissioner. Nothing in Chapter 40A, Section 6 requires the exclusion of Section 81L, again part of the Subdivision Control Act be the only method of ensuring adequate access to the lot. This residential lot of record, undisputed that it's a grandfathered lot is entitled to the benefits of that perpetual exemption. Specifically, the SWOD deals solely with lots and Mr. Creed said that he included an explanation using the 5,000 square foot lot as an example. He said that it limits the building envelope for undersized lots and the sole purpose as best he can discern of the overlay district, it doesn't regulate any lot that meets the zoning requirements. Mr. Creed said that if you have a 20,000 square foot lot there are no requirements or restrictions on what you can build; only undersized lots are regulated with performance standards; there are no performance standards for a 20,000 square foot lot or larger lot. One would think that considering it's a SWOD that the bigger the lot, the bigger the house, the more the drainage. The only lots regulated are lots that are undersized, nonconforming lots and grandfathered lots. He said that a 5,000 SF lot limits you to 16% of the lot size as a building area; that's 800 SF. A typical standard size starter Cape home is 34x24 generally speaking or 816 SF which can't be built on this lot. The only purpose of the SWOD is to limit the size of the building envelope. Mr. Creed said that it is a dimensional requirement and he distributed copies of the Table of Dimensional and Density regulations which shows the percentage of buildable area. The percentages listed in SWOD are less than that therefore those performance standards are a dimensional requirement that is more restrictive than what was available in 1915. Marshfield's first zoning bylaw was adopted in 1926 and proposed side setbacks at 7.5 feet. This



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lot was laid out in 1915 and even by 1926 was in an unrestricted district; unrestricted means you can build anywhere on the lot; can build up to the footprint of the lot. Mr. McDonough doesn't plan to do that because he wants to sell the house that he builds on that lot so it will be built for the purchaser to get a mortgage.

Mr. Creed continued by saying that the next item the Building Commissioner cites is road improvement but what Mr. Creed thinks that Mr. Folkard meant to say was the subdivision provisions of street determination that requires and he read it because he thinks it's an incredible statement. In §405-7 on page 10 it says, "Street determination/street improvement plan. Preexisting private paper streets and all roads on streets in pre-1956 recorded subdivisions. Section 1C says, "lots shown on a subdivision plan that predates the adoption of the Subdivision Control Law". The kicker is C4, B2, "applicants seeking to develop existing lots must file a subdivision plan meeting the minimum standards and procedures outlined below". There is no authority cited for this; there is no authority that exists for this to convert a grandfathered lot to a subdivision.

Finally, with regard to water, his client and others, because there are others being denied the right to extend water lines in the Town of Marshfield, until such time as they improve the street to the standards of the Planning Board. He defied the Board to look and find in the SWOD, which only mentions streets and says if you have to build a street you can cut trees without running afoul of the SWOD and the street determination policy. There's nothing that gives any authority for the Building Commissioner or anyone else to prevent an owner of property abutting it to improve by installing utilities on a Private Way. Mr. McDonough abuts a Private Way; he has access and egress by that Private Way. He has vital access not that it is important to extending the water line but Chapter 187, Section 5 guarantees him the right, subject only to the reasonable regulations with regard to the method which he installs the water line. The DPW, not the Building Commissioner, can determine where the line has to be dug, the type of sand or other material to use but they can't deny it. The best that Mr. Creed can tell is that there is a cabal between the Planning Board, the DPW and Town Counsel to require that in any case triggered by a water connection in this overlay district that the streets be improved and drainage installed. He said there is nothing that allows for that to happen with regard to a grandfathered lot; it's unlawful; what it amounts to, like in the Jenks case, is a confiscatory taking.

Mr. Folkard said he would like to go through a few things. He said a building permit was never issued, it was a foundation plan only; he found a plan that says proceed at own risk, a phase approval. Mr. Folkard said that a building permit for a single family dwelling has never been issued; he wanted to clear that upfront. He said the permit had already expired; Mr. McDonough asked Mr. Folkard if he did or did not speak to him about the red stamp. Mr. Folkard said the permit had expired when he talked to him; it was issued in August of 2017 and is good for 180 days. He said that Mr. McDonough came to him in July, it had lapsed by six and a half (6½) months. Mr. Folkard said that Mr. McDonough had never talked to him before it lapsed. He said his problem is the runoff; they have people at the bottom of the hill. Mr. Folkard had pictures of Hingham Avenue; he said they are burying trees to make a roadway; Mr. McDonough said it wasn't his project. Mr. Folkard asked Mr. McDonough to let him finish; he said this is the lot next to Lot 61 and this is what happens when somebody thinks "I have a lot of record so I can



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pretty much do what I want". The runoff on this goes down to South River Street. Mr. Creed objected; Mr. Folkard said that he had let Mr. Creed talk; Mr. Creed said this was guilty by association because Mr. Folkard is using a different property that his client doesn't own; he has nothing to do with that. Mr. Folkard said it was Hingham Avenue and Mr. Creed asked if it was 61 Hingham Avenue; Mr. Folkard said it was right in front of 61; Mr. McDonough said that was downhill from 61; Mr. Folkard said it wasn't. Mr. McDonough said that Dana's (Junior) lot was behind his lot. He said the only reason trees are cut down is that Mr. Folkard told Mr. Junior that he had to start construction or he would lose his permit. Mr. Folkard said that he absolutely did not say that; Mr. Junior had a Cease and Desist on that road that was in front of 61 and 49. Mr. Creed said he wanted to focus on the Building Commissioner's denial of August 30<sup>th</sup>. He cites three (3) reasons and he wants to hear Mr. Folkard's explanation on how these apply to 61 Hingham, not anything else: 1) Stormwater Overlay District (SWOD); 2) road improvement policy of the Planning Board; 3) water connection. Mr. Folkard said it is in the SWOD so that applies to 61 Hingham.

Mr. Folkard said the Planning Board has newer policies approved by the other Boards as to what sufficient frontage and vital access and streets must be brought up to that standard. Mr. Creed asked whose policies those were; Mr. Folkard said Planning Board, DPW. Mr. Hubbard asked Mr. Folkard if he were reading from a Planning Board regulation and he said he was reading something from Town Counsel. Mr. Creed said he didn't have what Mr. Folkard was reading; Mr. Galvin said it was a memorandum to the Board. Mr. Hubbard asked if they had it and Mr. Folkard said he had talked to Mr. Galvin earlier tonight. Mr. Creed said that since it was read into the record it is now a public document now. He said on September 24<sup>th</sup> he delivered a Public Records request to Mr. Duross; Mr. Galvin should be familiar with Public Record requests with regard to Mr. Junior on September 24, 2018. He said his client was in a meeting with Mr. Folkard, the Planning Board and the DPW and they asked for any policies, regulations or statutes relating to the installation of water connections or extension of waterlines. Mr. Creed said Mr. Duross did not respond so he hand delivered a request on September 25<sup>th</sup>.

Mr. Folkard said that he wanted to ask the applicant a question; there was an Appeal of the previous Commissioner's decision in 2017 because a permit was denied. He said that he was not involved in that hearing so he is more than willing to have it explained further by the Board members who did participate. The Board ordered the Building Commissioner to issue the building permit so it was issued. Mr. Folkard asked if anything was done to the property as far as improvements or building based on that permit. Mr. McDonough said this came up when he went to find out the protocol to set up the water lines; he said he was first told to draw it on the Assessors Map to show how it was supposed to go and then do it; he said nothing has been done on the lot. Mr. Hubbard asked if Mr. Junior had done anything and Mr. McDonough said that he did not. Mr. Hubbard asked if there was a foundation and if the trees had been cleared. Mr. McDonough said no and the street was not filled. Mr. B. Murphy said that he, Ms. Fidler and Deputy Chief Cipillo went to the location to determine vital access on a couple of these lots and Mr. Ford had also done a site inspection; they agreed there was vital access and he doesn't know why they are back here. Mr. Stiles said there was vital access and a 5,000 square foot Residential Lot of Record with fifty feet (50') of frontage; he said there is a letter from Mr. Galvin to show he has done due diligence so he isn't sure what they are doing here. Mr. R.



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Murphy said they have proved it to be a Residential Lot of Record and it has vital access. Mr. Hubbard asked Mr. Feeney if he had any questions; he said he was getting up to speed and was in agreement with what he is hearing. Mr. Hubbard asked if the Board had any more questions before he opened it up to the public. He asked Mr. Folkard if he had seen the complaint from Linnell and Mr. Folkard said that he had seen it. He asked Mr. Folkard how many properties in proximity to 61 Hingham had cut down trees and Mr. Folkard said just 49 Hingham. There were no questions from the public and Mr. Hubbard moved to close the hearing. Mr. Creed mentioned the end of a memo and Mr. Hubbard asked the Board if they read it and had any concerns. He moved again to close the hearing which was seconded and all were in favor. He made a motion to grant the request to overturn the Building Commissioner's decision and they will incorporate the following – 1) That the Premises is a grandfathered/residential lots of record, held in single ownership; 2) That the Premises has vital access on a private way, Hingham Avenue; 3) That grandfathered/residential lots of record, held in single ownership, and with vital access, are exempt from later enacted, more restrictive zoning requirements, as set forth in the Zoning Act, G.L. c.40A, §6, ¶4, first sentence, including, but not limited to the provisions of the Stormwater Management Overlay District, Marshfield Municipal Code, Division 3, Article XIII, §305-13.04; 4) That such lots are not subject to the Street Determination provisions of the Marshfield Municipal Code, Division 4, Article III, Subdivision of Land, §405-7 Street determination/street improvement plan; 5) That the provisions of G.L. c.187, §5 apply to the installation of utilities in private ways, and that Hingham Avenue is such a private way, and therefore, the Petitioner has the right to extend the municipal water line in Hingham Avenue to provide water service to the Premises, subject to the provisions of G.L. c.187, §5. The motion was seconded and all were in favor.

**#18-69: Steven A. Johnson:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 18' x 10' deck at the rear of the dwelling on the property located at **34 Cricket Lane** which is further identified on the Assessors' Maps as being on parcel K11-09-07 and is located in an R-3 zoning district.

Mr. Hubbard read the petition into the record and turned it over to the applicant. Mr. Johnson began by correcting the measurements to 17'6" x 10'. Mrs. Johnson said that they want to be able to put a table on the deck but right now it is too small. Mr. Hubbard confirmed that they will not be any more nonconforming on the side and rear setbacks; Mr. Johnson said that he has 47' in the back. Mr. Stiles asked if they were here because the preexisting front setback was short and Mr. Johnson replied, Yes. Mr. Stiles said that this goes back to needing an amendment to the Bylaws and Ms. Porreca advised there is Town Meeting in the spring. Mr. Hubbard asked how many feet off the ground the deck would be and Mr. Johnson replied 20 feet. He said that the deck was there and they couldn't build it out any further at the time. Now they want to extend it so he and his wife can sit out if they can't get to the beach. Mr. Hubbard asked Ms. Porreca to note for the record the change in dimensions – 17'6" in width and 10' in depth. He said that the plan that was submitted is inaccurate because it is showing 18'. Mr. Johnson said that he submitted an architect plan and the one they were discussing was one that he had scribbled. Mr. Hubbard asked if there were any questions from the Board and there were none.



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He asked if there were any questions or comments from the public and there were none. Mr. Hubbard made a motion to close the hearing which was seconded; all were in favor. Mr. Hubbard made a motion to grant the Special Permit which was also seconded; all were in favor.

**#18-70: Town of Marshfield:** The Petitioner is seeking Site Plan approval in accordance with §305-12.02 and a Special Permit in accordance with §305-13.02 of the Marshfield Municipal Code to construct a temporary accessory structure which measures approximately 40' wide by 60' long with a 44' wide by 62' long concrete slab to shelter Town vehicles that are currently parked outside and exposed to the elements on the property located at **200 Joseph Driebeek Way**, which is further identified on the Assessors' Map as parcel M07-03-01 and is located in an R-3 zoning district.

Mr. Hubbard read the Petition into the record and turned it over to the applicant. Tom Reynolds, DPW Superintendent, said that would like to put up a canvas structure on a concrete foundation to house some equipment that is currently outside; they just refurbished some equipment and would like to get it under cover. He said that this will also give the DPW employees the opportunity to work under the shelter. Mr. Hubbard polled the Board and asked if they had any questions; there were none and then he asked if the public had any questions. Brian McHugh of 89 Cherry Street said that he owns Lots M06-09-08 and 07 and said that he was a rookie at this. He received a notice in the mail but looking at the information, it doesn't mention canvas and doesn't say how high. He said he had a number of questions and Mr. Hubbard advised him to direct the questions to the Chair. Mr. McHugh said that was a large lot and he doesn't know where on the lot the structure will be positioned. He said the lot runs from the bridge all the way up to the Brant Rock Supermarket. Mr. Reynolds said that it will be in the East/Southeast quadrant between the aeration tanks and the airifier tanks and off a paved area between those two (2) locations. Mr. McHugh asked if there were any questions and Mr. Reynolds said that he had an old Site Plan in his office and would get it if Mr. McHugh wanted him to get them. Mr. McHugh had some pictures of the area and Mr. Hubbard asked if Mr. McHugh had additional copies of the picture. Mr. McHugh advised that if you go to the Town website, they are GIS pictures. There was a discussion between Mr. Reynolds and Mr. McHugh and Ms. Fidler asked them to share discussion. Mr. Reynolds said that the pictures don't show the area and he pointed out the location on the displayed GIS map. Mr. McHugh was familiar with the location and said he had only one more question which had to do with the structure being temporary. Mr. Reynolds said that it is a canvas building on concrete block walls and it can be taken down and moved to another location; that is why it is called temporary and not a permanent structure. Mr. McHugh said that he doesn't know how long, if it will be one (1) year or two (2) years. Mr. Reynolds said that one of the reasons for doing this type of construction is that if they were to build a block foundation they would have to drive piles in order to support the weight. This isn't as heavy as a fully constructed structure. Mr. McHugh asked how many vehicles and Mr. Reynolds replied three (3) inside and that they were now all outside.

Mr. Hubbard stated that Mr. Reynolds did not include a Site Plan with his application showing where the location was going to be. Mr. Reynolds said that he was told that he did not need one.



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Mr. Hubbard said that he would take advice of his fellow Board members but this could be a condition if the Board grants this. Mr. Hubbard also said that when he read the Petition into the record it says an application for Site Plan approval but the application says Special Permit. Ms. Porreca said there is also an application for Site Plan; Mr. Hubbard said he sees the Findings of Fact for Site Plan; Mr. B. Murphy said there was Site Plan approval and Special Permit. Mr. Hubbard confirmed that it was for both and asked if there were any questions or comments from the Board or the public. Mr. R. Murphy asked Mr. McHugh where his house was located. Mr. McHugh pointed it out on the GIS map and Mr. B. Murphy said it was close to the Town pier. Mr. Hubbard asked again if there were any questions and there were none. He moved to close the hearing which was seconded; all were in favor. Mr. Hubbard made a motion to grant the Special Permit with the Condition that a Site Plan is submitted by the applicant with the location of where the temporary structure will be. The motion was seconded and all were in favor. Mr. Hubbard then moved to grant Site Plan approval with the same Condition that the Site Plan show the location of the structure. The motion was seconded and all were in favor.

**#18-71: VRT Corporation:** The Petitioner is seeking a Special Permit in accordance with §305-11.03, a Variance under §305-10.11 for relief from §305-7.01 and 7.05 and Site Plan approval under §305-12.02 of the Marshfield Municipal Code to erect a 14' x 48' electronic message board, which will be no more than 70' above the ground level with the column, within the required street setback (Route 3) as an accessory use to a 12' x 44' field office on the property located at **0 Enterprise Drive**, which is further identified on the Assessors' Map as parcel D09-01-39 and is located in an I-1 zoning district.

The Petition was read into the record and Mr. Hubbard recused himself. Attorney Walter Sullivan was in attendance with Brian Taylor and Mr. McRory for the applicant. Mr. Taylor walked the Board through the Site plan and said the abutters were Tim Connors, an unmanned Bay State Gas building and Kirwan Enterprises. They would like to construct a 12' x 600' long driveway and would provide three (3) parking spaces; this is more to satisfy zoning requirements because they do not anticipate any parking. The building can be accessed by a handicapped accessible walkway; they have done test holes and the entire perimeter of work has been staked. There is a railroad style gate proposed and Deputy Chief Cipillo will provide a lock box. There will be a 250 foot timber guardrail; the guardrail will be terminated where the slope evens out. Mr. Taylor said that there are ZBA notes in the bottom right corner; they researched Kirwan and if this is approved, they can cite those as conditions. Mr. McRory spoke about the sign; it will be a standard digital billboard, it will be in the trees and no Marshfield resident or business will see it. He spoke to the Marshfield and South Shore Chambers and will offer deep discounts. There will be seven (7) slots and the State mandates ten (10 seconds). A key will be provided to emergency personnel and emergency information can be uploaded quickly; with Amber Alerts all advertising will be stopped for 45 minutes. He said about 80% of the sign sells out and they are mandated to give out hours and hours to messages about texting, drunk driving, etc.

Mr. Sullivan addressed the Variance. He said the lot is odd shaped and only the rear of the property can be developed because they don't have frontage; it would be expensive to develop and there is an electric line that goes through the property; it would be a tremendous hardship for



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the owners. This is an ancillary use and will not be a detriment. The State mandates that these signs cannot be seen by abutters; it will be visible from Route 3. They will have a hosting agreement that was submitted with their information and there are licensing fees. He said they acquired the property from Mr. Connors for this purpose. Mr. Sullivan said that they disagree with Mr. Baird from the Planning Board who says that this is not eligible for a Variance.

Ms. Fidler asked about going to look at the site and Mr. Sullivan said she should talk to Mr. Taylor and it was a unique site. She asked about the use of the office and how it pertains to the billboard. Mr. Sullivan said it doesn't have to do with the billboard, it's an ancillary use. Ms. Fidler said when they describe an ancillary use, the office and the billboard make this happen. Ms. Conway asked if this would be an office to manage the park; Mr. Sullivan said when people want to see the park they can show them an office; Mr. Taylor said like the gas building next door. Mr. Stiles asked if it would be visible to Modera and Mr. Sullivan said it is heavily vegetated; Mr. McRory said they wouldn't see it even in winter.

Ms. Fidler asked if there was any kind of concerns or research about the distraction. Mr. McRory said 34 states did safety studies; Massachusetts took three (3) years and in heavily congested areas – intersections and stop lights – and they have to do pre and post analysis. The State has done extensive traffic studies. Mr. McRory said there is a long arm on the side of the billboard, a small metal tube that is a camera. They have to provide "proof of play" to the state; it monitors and they could key in when they run emergency notices. The State mandates that there be two (2) people on call for the manufacturer; the issues might be remote and it won't catch on fire. There are two (2) dozen requirements you have to meet and this site meets all of them. Ms. Fidler asked how long it would take to put up an emergency message from the Police Chief. Mr. McRory said there are two (2) ways to do it; Emergency Management would have slot and the code to enter the message; the Chief could go in and override what is on there and it would be done as fast as he could type. Ms. Fidler said she thought a site visit would help.

Rob Mitchell, an abutter, asked about the level of illumination of the sign and how it compared with the one at the Hanover Mall. He said they are showing a dark background but he has travelled Route 3 late at night and he has been blinded by the white light. Mr. McRory said the lighting requirements are strict and stringent; Hanover Mall is illuminating other things other than the electronic message; not a lot of advertisers use a white background because a dark color is recommended. Jeremy Devaney, Vice President of the Chamber of Commerce and Chair of economic development said they didn't have time for VRT to come before them but he was here to personally support the project. Mr. Connor has adjoining property and it won't affect him at all. Mr. B. Murphy asked Ms. Fidler if she wanted to hold the record open so she could do a site visit; he asked Ms. Porreca when the next meetings were; Ms. Porreca said October 23<sup>rd</sup> or November 13th; Mr. B. Murphy said they would continue it to October 23<sup>rd</sup>.

**#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.



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Mr. B. Murphy asked the audience if anyone was here for **The Jetty** and advised the Board would not be hearing The Jetty case this evening; Ms. Porreca said that they just said that they wanted to continue. An abutter said this was the fourth meeting; he was here in July, his neighbors were here in August and he was here in September and now he is here again. He said it is frustrating. He likes The Jetty; it's a great place but the outside seating will really affect the quality of life of the people who live in that area. It's morning to night from 9:00 to 1:00; they have great bands and it's a great establishment but the outside seating will really increase the noise from morning through 9:00 PM and at 9:00 PM the band starts. They are asking the Board to consider their quality of life. Mr. Hubbard said that they do consider it and are considering it; he thinks The Jetty is trying to work things out but they have not put those things together yet so the applicant asked for more time to try and do that. The abutter said that Mr. Hubbard needs to understand his frustration and Mr. Hubbard said that he does understand it. Mr. B. Murphy asked when The Jetty will be coming back and she replied that it would be November 13<sup>th</sup>. He advised the abutter to call Ms. Porreca and Ms. Porreca asked the abutter for his phone number so that she could call to let him know about the meeting.

**#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. B. Murphy asked about the other case the Board would not be hearing tonight and Mr. Hubbard said they were not hearing **0 Careswell Street**. Mr. B. Murphy asked if anyone in the audience was here for this case and there was no response. The Board took a brief recess.

**#18-72: Propertyvelopment, L.L.C.:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to raze the existing single family dwelling and construct a new two and one half (2½) story dwelling which will be approximately 22' x 34' and will be elevated above the Base Flood Elevation and less nonconforming than the existing structure, with a two (2) car garage located under the dwelling on the east side and an 11' x 6' deck on the west side with adjacent stairs on the property located at **1173 Ferry Street** which is further identified on the Assessors' Maps as being on parcel I15-11-09 and is located in an R-3 zoning district.

Mr. Hubbard called the meeting back to order and read the Petition into the record and then turned it over to the applicant or his/her representative. Mr. Robert Crawford was with Oscar Escobar representing Propertyvelopment and Vahe Ohannessian, Project Manager. Mr. Crawford said that this was a very irregular shaped single story house on a very small lot of only 1883 square feet. They propose to construct a new single family 2 and a half (2½) story dwelling which will be at least five feet (5') from the front and two (2) side property lines and greater than 30' from the rear which is the minimum. The existing house is eleven feet (11') from the front



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property line. They have taken the average of the setbacks of the dwellings within the block and the existing houses within that block are about 4.7' and the minimum provided is 5.4'. Mr. Crawford said that they were putting the dwelling up on piles with a garage underneath similar to 1180 Ferry Street across the street. Mr. Hubbard asked if they were making it more nonconforming in the front and Mr. Crawford said that they were using the average setback in the front according to the Bylaws. Mr. Hubbard said that they didn't go by that; each property is handled individually. Mr. Crowell said that the Zoning Bylaws allow you to take the average setback within the block. Mr. Hubbard asked which section of the Bylaw and stated that he had never heard of that. Mr. Michael Solimando, an abutter, said that Scituate has it; Mr. Hubbard said that we don't have that in Marshfield. Mr. B. Murphy asked what the current existing setback is and Mr. Crowell said the minimum is 10.8'; Mr. B. Murphy asked if they were looking to go to 5.9' and Mr. Crowell replied 5.4'. Mr. B. Murphy said they would need a Variance for that and Mr. Hubbard said that they could move the whole house back; Mr. B. Murphy said they could shift it back to the 10.8'.

Ms. Fidler asked Mr. Crowell to explain the existing dwelling and the proposed dwelling. Mr. Crowell said the existing was the shaded area and the proposed is the bold line. He said they were 5.1' away from the side and the proposed is 5.91'. Mr. Crowell pointed out a jog which is 5.15' away and parallel to the side line. Mr. B. Murphy said they were allowed that because they are over the lot line on that side at 0' so they can come over; but the front setback needs to be the existing setback of 10.8'; they would have to shift the house back that far. Mr. Stiles said they could ask for a Variance. Mr. Ohannessian asked Mr. Crawford if there were any restrictions in the back that would prevent them from pushing the house back. Mr. B. Murphy said they were allowed to build in that footprint. Mr. Galvin said it narrows the house as it goes back and he thought the applicant had spoken to Mr. Folkard. Mr. Folkard said that he did; he was just talking to Mr. R. Murphy and there is something about "average frontage" but he doesn't have it with me; Mr. R. Murphy said there was something in the Bylaws but he can't find it. Mr. B. Murphy asked the applicant if they wanted to continue the hearing until they find the Bylaw or continue with this hearing; Mr. Ohannessian wanted to keep this hearing going because of time constraints. Mr. Crawford said he could provide copies of the mathematics used to determine the setback. Mr. Hubbard said he would check with Town Counsel but he just went through the whole section and could not find it.

Mr. Hubbard asked if there were any questions from the Board or applicant and there were none; he asked the public if they had any questions. Patrick Carberry of 1190 Ferry Street asked how high the piles would be and where the bottom of the first floor was. Mr. Crawford said the piles would be 15 feet high so it would be approximately eight feet off the ground. Michael Solimando of 1180 Ferry Street said he was all in favor of the plan. Mr. Carberry said he was 75 feet from Mr. Solimando and he has a hard time getting out. But he supports the project because the house is run down, there are mice, trash and it's not good to look at. There were no other questions so 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 they move the front so it is no closer than 10.8 feet from the street; the motion was seconded and all were in favor. Mr. Hubbard also said there would be a condition for them to submit revised plans.



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**#18-73: Ferry 1181 Realty Trust:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to raze the existing single family dwelling and construct a new 29' wide x 45.5' deep two (2) story dwelling which will be elevated above the Base Flood Elevation and less nonconforming than the existing structure, with a two (2) car garage located under the dwelling on the east side, a 14' x 4'6" front deck on the southeast side and a 7' wide x 2' deck extension on the west side on the property located at **1181 Ferry Street** which is further identified on the Assessors' Maps as being on parcel I15-11-11 and is located in an R-3 zoning district.

Mr. Hubbard read the Petition into the record and then turned it over to the applicant or his/her representative. Mr. Crawford said this was similar to the previous situation except the lot is a little bit bigger, 3,163 square feet. They have increased the setbacks on the sides; the elevation of the lot will be the same as the previous petition. Ms. Fidler asked what type of siding they would be using; Mr. Escobar said they were working on it. He said they were trying to make it comparable to Mr. Solimando's house color and style but they are working with different price points. Ms. Fidler said it seems that the neighbors were in favor. Mr. Hubbard asked if there were any other questions from the Board; there were none and opened it up to the public. Michael Solimando of 1180 Ferry Street said that he was in favor of this and he would recommend moving it back because it is tough backing out. He said he wanted them to be successful; Mr. B. Murphy said he is already into the setback in the rear. Mr. Hubbard asked if there were any more questions 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 seconded and all were in favor.

**#18-74: PropertyVelopment, L.L.C.:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to raze the existing single family dwelling and construct a new 24' x 42' two (2) story dwelling which will be elevated above the Base Flood Elevation and less nonconforming than the existing structure, with a two (2) car garage located under the dwelling on the east side, 24' x 2-5' attached first and second story open decks on the east side, an 11' x 4' first story deck on the northwest corner and a 13' x 8' second story deck on the west side on the property located at **1185 Ferry Street** which is further identified on the Assessors' Maps as being on parcel I15-11-12 and is located in an R-3 zoning district.

Mr. Hubbard read the Petition into the record and then turned it over to the applicant or his/her representative. Mr. Crawford said this was the exact same size and shape as the previous one and it is right next door and has a similar elevation. They will be increasing all setbacks. Mr. Hubbard asked if there were any questions from the Board; Mr. Folkard said that it looks good; Mr. Hubbard then opened it to the public. Mr. Carberry of 1190 Ferry Street lives across the street from this address and would like to thank the applicants for bringing the neighborhood back and he fully supports this. Michael Solimando of 1180 Ferry Street said that he was also in favor. Mr. Hubbard made a motion 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.



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The meeting adjourned at 9:30.

Respectfully submitted,



Nanci M. Porreca  
Zoning Administrator

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

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

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



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

9/10/19