

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL DECEMBER 12, 2017 7:30 p.m.
MEETING MINUTES**

Members Present:

*Mark Ford
Brian Murphy
Richard Murphy*

Also Present:

Robert Galvin, Town Counsel

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Mr. Ford called the meeting to order and advised that the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were being recorded. Mr. Ford stated that he would be the Hearing Officer and that other members were signified by their nameplates. Mr. Ford also explained that there would only be three (3) members in attendance which meant that the Board did not have a quorum. He advised that they could not hear the application for a Special Permit because of the lack of quorum. He also explained that they could hear and vote on the two (2) applications for Site Plan with three (3) members. He proposed to both applicants that they proceed if the applications were not controversial and they could move forward with three (3) Board members. He also stated that if it looked like all three (3) members were not on board, they could continue the hearing (s) until they had a full complement of five (5) members.

#17-75: Haddads Restaurant: The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to repair and improve the existing loading dock on the south side of the building by installing six (6) 12" diameter piles, to expand the dock by four feet (4') in length and enclose the dock with walls, a roof and a sealed overhead door loading bay and add a dock bumper on the property located at **293 Ocean Street**, which is further identified on the Assessors' Maps as being on parcel M07-03-13A and is located in an B-4 zoning district.

The Petitioner elected to proceed with the hearing and Mr. Ford read the petition into the record. Darren Grady represented Chuck Haddad, who was also in attendance, and explained the project which is expansion and improvement of the existing loading dock. They would like to put the loading dock on piers to stop the settling; they would also like to expand the dock by four feet (4') and enclose it. Mr. Grady said that there would be no impact to drainage and no change to the landscape, parking or access. There were no questions from the Board or the public. Mr. Ford made a motion to close the hearing which was seconded; all were in favor. Mr. Ford made a motion to grant Site Plan approval which was seconded; all were in favor.

#17-76: Francis and Rachel Sturgis: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 12' x 20' deck on the front of the existing single family dwelling to replace the previous deck on the property located at **246 Canal Street**, which is further identified on the Assessors' Map as parcel M04-03-12 and is located in an R-3 zoning district.

Mr. Ford apologized to the applicants and advised that the Board could not hear their application as they did not have a quorum. He explained that they could continue the hearing until the next meeting which would be on January 9th, 2018. The applicants agreed to continue the hearing. Mr. Ford read the petition into the record and continued the hearing until January 9th, 2018.

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#17-77: Dana Junior: The Petitioner is seeking Site Plan approval in accordance with §305-13.04 and §305-12.02 of the Marshfield Municipal Code for the proposed road improvement of Hingham Avenue as per the plan entitled, "Proposed Road Improvement", dated April 25, 2017 to achieve vital access as determined by the Fire Department on the street located between Assessor's Lots I11-03-06 and I11-13-15 from the intersection of **Hingham Avenue and Norwell Road** southward approximately 100 feet which is located in an R-2 zoning district.

Mr. Ford read the petition into the record. Mr. Junior said that his plans will show the road improvement plan that has been discussed in the past; Mr. Ford asked what has happened since then. Mr. Junior said that he had the plans back then and just filled out the application and paid a fee. Mr. B. Murphy asked if this was a lot of record; Mr. Junior said that it was a grandfathered lot approved by Town Counsel as a residential lot of record. He said that he went to the Planning Board years ago for what was required back then for the overlay storm water district; they had certain requirements such as you couldn't exceed clearing land by X amount on a certain size lot. Mr. Junior said that he did plans per the overlay regulations and got approved from the Planning Board in the overlay district; it was recorded back then, eight (8) or ten (10) years ago. Mr. Junior said that since then they don't have the same regulations. He said that perc tests have been done with the Board of Health and he has a Board of Health permit for a septic system. The lot is ready to go but he needs physical access to the lot. He will be eligible for a foundation permit if he can provide vital access as needed by the Fire Department. He is asking for approval to improve from Norwell Road south 100' on Hingham Avenue.

Mr. Ford said that he and Mr. B. Murphy were at the location in the rain. His recollection is that Mr. Junior presented the plan to Mr. O'Neill and you were advised to seek Site Plan approval so notice would be given to the abutters. Mr. O'Neill had concerns about runoff. Mr. Junior said that he was told by his attorney that as a landowner he is allowed to make improvements to provide access to his lot as long as he is not hurting anyone else. He said he put 100-150 yards of material, started filling in the road and that is what Mr. Ford and Mr. B. Murphy looked at. Someone called and told Mr. O'Neill what Mr. Junior was doing and Mr. O'Neill issued a cease and desist order. He appealed the order and the Board upheld Mr. O'Neill's decision and that required him to go through the Site Plan approval process. He said that Mr. O'Neill was concerned with runoff to the Tedeschi property across the street. Mr. Junior's plan is to super elevate the road so all the runoff goes to his own lot. He has met with people across the street and they are not adverse to this; they think it will help them. Mr. Junior does not see how this falls under Site Plan approval. He wants to finish filling in the road and put a guardrail up at the end. He is just doing gravel with no drainage and no catch basins; he needs to get to a point to get into the driveway and wants to be allowed to continue to fill the road per his plan so that he can see vital access approval from the Fire Department.

Attorney Galvin said that he does not think that this belongs before the Board. The determination should have been made by the Building Inspector's office and he agrees with Mr. Junior in that regard. It is a residential lot of record so he does not need to deal with things on the lot. With respect to roadway improvement triggers, certain performance standards would

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have to be demonstrated to prove to the Building Inspector that post-development runoff does not exceed pre-development runoff. There is a new policy with the Planning Board, the Fire Department and the DPW regarding vital access and what they think is minimal. Mr. Junior said that he has heard about that but does not think that it applies to him; this is a voluntary street improvement process. Attorney Galvin said that they shifted gears a few years ago on these types of lots; the new policy regarding vital access reflects what the Fire Department thinks is minimally necessary. He said that the Fire Department had been the most liberal of the departments. He said that with Canoe Tree Way the Fire Department wanted a turnaround area so they may want to do that. He said that Mr. Junior doesn't need Site Plan approval from the Board, he needs it from the Building Inspector.

Mr. Junior said that what he is asking for is to continue to build the road. Mr. Ford said that he understands they are not making a vital access determination; that Mr. Junior wants to basically build out the road so that he can seek vital access determination. Attorney Galvin said that the Building Department should look at performance standards to the extent that they relate to the roadway and not the lot. With respect to the roadway, Mr. Junior needs to demonstrate that any changes he makes that will create runoff will not exceed pre-development runoff; he needs to show that to the Building Inspector. He said that they have some discretion to impose sediment and erosion controls when he is building this so he should probably show them on the plan. Mr. Junior said that would be lip service; it's already filled, already done. Attorney Galvin asked if it was cut to the next 50'; Mr. Junior said that most of the materials are already in there and there is nothing to cut, no trees in that area. Attorney Galvin thought Mr. Junior had said that it was already constructed to a certain point and then he needed to get to an additional point. He said that to the extent that Mr. Junior is changing the physical characteristics of the roadway, he will need a statement, probably from a Professional Engineer, that says post-development runoff will not exceed the pre-development runoff. He should probably put some erosion control measures on there and then he thought Mr. Junior would be there. He said this is a Building Inspector thing and not a Board thing; it's not because this Board has the right to say yes or no, this is what the Building Inspector applies.

Mr. Junior said that he is not asking for a permit. Attorney Galvin said that he does with respect to the roadway improvements which are not lot improvements; the lot is grandfathered. Mr. B. Murphy asked Attorney Galvin when he says road improvements, is that because of the storm water protection? Attorney Galvin said that he does not have vital access now; he is going to make some improvements to the roadway that fall under the Stormwater Overlay District (SWOD). Mr. B. Murphy asked if that is what triggers this; if this was not in SWOD, could he just do this? Mr. Junior said that the cutting of trees within the roadway is exempt from the overlay district. He said that it specifically says that but he cannot say what chapter and verse; he said it's a huge deal cutting trees on your lot. Attorney Galvin said that he has it in front of him; one page but he doesn't see it. Mr. Ford said his recollection of the history was that Mr. O'Neill wasn't comfortable with something and almost directed a site plan; Mr. Junior said he was worried about runoff. Attorney Galvin asked Mr. Junior if Mr. O'Neill was not satisfied that he had given him that information. Mr. Ford said that this could potentially adversely affect Tedeschi. Mr. B. Murphy said that we had to hear from Tedeschi. John Tedeschi said that he

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was representing his brother. He said that he is a building himself; he looked at the plans, has no concerns and Mr. Junior has addressed the issue. He said that he is there to support Mr. Junior. Mr. Tedeschi said that his only question is, could this be a potential issue to the people down below. He started to say that he knows Mr. Junior has to pave the frontage but Mr. B. Murphy said that he did not because there is vital access so there won't be pavement. Mr. Tedeschi asked Mr. Junior if he would be doing gravel. Mr. Junior said yes, that he was just asking to fill the area, cut the grade down and continue another 50' or so and put gravel on top. Mr. B. Murphy said that Mr. O'Neill only opposed this for the Tedeschi lot and asked if Mr. Tedeschi was here to say that it was okay.

Mr. Ford asked if they could enter a finding that it does not adversely impact abutting property owners. Attorney Galvin said that they should deny the Site Plan because it is not required and make the finding that the proposed work would not adversely affect abutting properties. Mr. B. Murphy asked if it triggered the Bylaw; Attorney Galvin said no, the Bylaw is triggered but it is not an activity that is prohibited. Attorney Galvin stated that he did not believe the Board has the authority to grant Site Plan approval here. Mr. Ford said that based on the evidence presented, including the applicant's discussion about runoff and the abutters representative's discussion, he did not see any evidence that this proposed plan would adversely affect any abutting property owners, let alone the Tedeschi lot or any other lot. Mr. Ford said that if they enter that finding, Mr. Junior can proceed as he normally would and then be on to vital access. Mr. Ford said that they should deny the Site Plan as moot because it is not required. Mr. Junior said that a Cease and Desist was in place and asked the Board if they could lift it or ask the Building Department to lift it. Attorney Galvin said that it had to be appealed; Mr. Junior said that he already appealed it. Mr. B. Murphy said that they upheld it only because they did not have this answer. Attorney Galvin said that now Mr. Junior has made the presentation that allowed the Board to make the finding that it does not adversely affect the neighbors. Mr. Ford said that there was no Cease and Desist in effect that would stop Mr. Junior but he said that he has a letter that says Cease and Desist. Attorney Galvin said that was because Mr. O'Neill did not think that the Stormwater Overlay District standards had been met. Mr. Junior could say that if this has any bearing on the Cease and Desist order the Building Department may consider releasing the order. Mr. Junior said or they could be directed to release it; Mr. Ford said they cannot do that. Mr. B. Murphy said what he thinks the Board is saying is that Mr. Junior can continue working which would make this not exist. Mr. Junior said that the letter says get Site Plan approval and a Special Permit from the Zoning Board. Mr. B. Murphy said they are making a finding tonight; the Board reviewed the previous decision that upheld the Building Commissioner's decision

Mr. Ford asked Mr. Junior if he filed §305-13.04(F) which stated input was required from four (4) separate Boards and commissioners regarding carrying out its purpose of minimizing adverse impacts within the overlay district. Mr. Junior said that he did not do any of that; he only came here with the form, the fee and the same plan. He said that he was sure the Planning Board would have something to say about it. There is no conservation within a heartbeat of any of it; the Board of Health has already approved it. Mr. Ford said that it went to 13.04 so Mr. O'Neill determined that it may adversely affect... Mr. B. Murphy said that was the trigger. Mr. Ford said that any activity listed in Section 4 requires copies to be submitted. Attorney Galvin said

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that the Planning Board, Conservation Commission, Board of Health all have to get this and they have 21 days to make comments to the Building Inspector. If no comments, the Building Inspector can proceed with issuing the permit. Mr. Junior said there is no permit to be issues; he isn't asking for a permit. Attorney Galvin said that his advice is that the Board make a finding that there is no adverse impact effect on abutting property owners and deny the Site Plan as moot. He said the Board was not making any finding as to vital access at this point. And to the extent that this finding has a bearing on the Cease and Desist order, the Building Inspector may release that based on the Board's finding. Mr. Ford said that they will adopt that. He made a motion to close the hearing which was seconded; all were in favor. He made a motion to adjourn which was seconded; all were in favor.


Meeting adjourned at 8:10 P.M.

Respectfully submitted,

Nanci M. Porreca
Zoning Administrator

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

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

Signed:  Date: June 1, 2018