

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,  
MARSHFIELD TOWN HALL FEBRUARY 26, 2019 7:00 P.M.  
MEETING MINUTES**

*Members Present:*

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

*Also Present:*

*Jeremiah Folkard, Building Commissioner*

Mr. Francis Hubbard opened the meeting at 7:00 P.M. and advised that the meeting was **not** being recorded by Marshfield Community Television (MCTV). Mr. Hubbard stated that he would be the Hearing Officer and that other members were signified by their nameplates.

**#19-16: Keith Rice:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 14' x 20' addition on the property located at **85 Seaview Avenue** which is further identified on the Assessors' Maps as being on parcel G16-07-08 and is located in an R-1 zoning district.

Mr. Hubbard read Case **#19-16** into the record and asked the applicant or his/her representative to present. Mr. Keith Rice said that he wanted to build an addition on the side for a family room. He said that he is in compliance with the setbacks on the side and rear, is nonconforming from the street but will not be any more nonconforming. Mr. Hubbard asked Mr. Folkard if he had any comments. Mr. Folkard said it was a building question and not a zoning question but wanted to know if the gable had windows or doors. Mr. Rice said that it would be windows to dress up the flat roof. Mr. Hubbard asked if there were any 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 made a motion to grant the Special Permit which was seconded and all were in favor.

**#19-17: Bradley and Shirley Fortier:** The Petitioners are seeking a Special Permit in accordance with §305-10.12 and §305-9.02.C of the Marshfield Municipal Code to construct a 10' x 23.5' screened porch on the property located at **1001 Ocean Street** which is further identified on the Assessors' Maps as being on parcel K10-19-06 and is located in an R-3 zoning district.

Mr. Hubbard read Case **#19-17** into the record and asked the applicant or his/her representative to present. Ms. Shirley Fortier stated that the house was at the intersection of Ocean Street and Leon Street. It's a nonconforming, small lot and they want to add a 10'x23' porch. They have moved the shed and a 6" tall composite platform. The porch will have a roof, asphalt shingles which will match the existing roof. The porch will have cedar shingles and long skinny glass windows. They are in compliance with all setbacks except the rear; the house is 6.5' away from the setbacks but will not be any more nonconforming. Mr. Hubbard asked if the shed was relocated with a permit. Ms. Fortier said they purchased the property in July; a previous Special Permit said that when the shed is relocated it will need to meet setback requirements. Mr. Folkard said the composite platform does not require a permit. Ms. Fidler asked how far over they were on the left side. Mr. Folkard said ½" and stated the Board had changed the frontage to

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Leon Street which gave the lot two (2) sides that conform. Mr. Hubbard stated that was for zoning purposes but not for mail purposes. He asked if there were any questions from the Board or the audience 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.

**#19-19: Bryant Smith:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 20' x 15' addition and an 8' x 8' deck on the property located at **74 Arleita Street** which is further identified on the Assessors' Maps as being on parcel M07-17-05 and is located in an R-3 zoning district.

Mr. Hubbard read Case **#19-19** into the record and asked the applicant or his/her representative to present. Mr. Dick Rockwood stated that he did the architectural work and that Mr. Smith was also in attendance. The addition will be 18'x15' and will be on the left side; the right side setback is 7.8' so it is nonconforming. This will be a one story addition for a bedroom. Mr. Hubbard asked Mr. Folkard, the Board and the public if they had any questions 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.

**#19-21: Daniel and Jessica Hassett:** The Petitioners are seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to change the use of one (1) of the units from pet groomer to restaurant which is an allowed use on the property located at **1871 Ocean Street**, which is further identified on the Assessors' Maps as being on parcel H07-05-06 and is located in a B-1 zoning district.

Mr. Hubbard read Case **#19-21** into the record and asked the applicant or his/her representative to present. Daniel and Jessica Hassett were in attendance and Mr. Hassett said that they had been before the Board for Unit 2 in his building to change the use from barber shop to restaurant and now would like to change the use of another unit from pet groomer to restaurant for a coffee shop. Mr. Folkard said that it previously was food to pet grooming; Ms. Fidler said she wanted to hear the argument. Mr. Hubbard said that they were just reverting back to food; that food use was on the property and in that particular unit. Mr. Hubbard asked if there were any questions from the Board. Ms. Fidler had a question about how the Board would know if one of the uses had been changed. Mr. Hubbard said they would go back into the records and see if that use was ever allowed. Ms. Fidler said that now the Town has a record and that she was just trying to understand the logic. Mr. Hubbard said that ten (10) years from now it could go back to pet grooming. Mr. Hassett said that he would move the coffee portion out of the approved restaurant and the restaurant will open at noon; there would be a net reduction in parking. He said that they now have the surf shop, pet groomer, restaurant and salon. They will have the surf shop, a coffee shop with different hours, a restaurant and the salon. He said that the coffee shop will be open from 7:00-12:00. Ms. Fidler asked if they had clarified the fence issue from before and Mr. Hassett said that they had. Mr. Hubbard asked if there any questions from Mr. Folkard, the Board or the audience. Ms. Fidler asked if there would be any changes to the front façade and Mr. Hassett said there would be no change. Mr. Hubbard said that he would change the sign. Ms. Fidler asked Mr. Hassett if he was still doing the handicapped parking and he said that it would be in front of Units 1 and 2. Ms. Fidler asked if there was an issue with making this



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(ADA) compliant and Mr. Folkard said that the changes would be less than \$100,000 so he would be okay. Mr. Hubbard again asked if there were any questions and there were none. He moved to close the hearing which was seconded and all were in favor. Mr. Hubbard made a motion to grant Site Plan approval which was seconded and all were in favor.

Mr. Hubbard asked for indulgence from the public and the Board took a five (5) minute break at 7:25 P.M.; he called the meeting back to order at 7:35 P.M.

**#19-20: Frozen 4, L.L.C.:** The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-12.05(C)(3) to decrease the distance requirements for a recreational cannabis dispensary from a licensed day care facility on the property located at **10 Lone Street** which is further identified on the Assessors' Maps as being on parcel C10-01-06 and is located in an I-1 zoning district.

Mr. Hubbard read Case **#19-20** into the record and said that before he turned it over to the applicant he wanted to summarize comments in an email from the Town Planner, Greg Guimond. Mr. Guimond said that the Board should consider the traffic impacts of Recreational cannabis dispensaries because traffic is a major concern in other communities; he stated that there is an existing day care within 500 feet of this site; the site is on a four lane roadway with a stop sight distance concern and no traffic signal; it is also under sized for the district it is in and there is limited parking available on site. Mr. Hubbard said that he wanted to make clear that the applicant was seeking a Variance and not a Special Permit at this time. Mr. Ben Virga from Frozen 4, L.L.C. said that technically they aren't seeking a Variance. Mr. Virga said that they had conversations with Town Counsel who said they should go before the Board to see if they needed a Variance and if they did, they were prepared to go ahead with it; they are prepared to come before the Board for a Special Permit when it is time. Mr. Hubbard stated that there was no Special Permit before the Board and Mr. Virga said they were told to get a Variance. He said the daycare is in a different town. Attorney Andrea Nuciforo also represented Frozen 4, L.L.C., said that facts are important. Lone Street sits 410' away from the daycare in Pembroke. One of the conversations was whether a Variance was needed; it is in the correct zone and the daycare is in another town. His opinion is that it is not needed. Mr. Hubbard asked if Mr. Nuciforo was aware of the Bylaw that was just passed a year ago and Mr. Nuciforo said that he was. Mr. Hubbard asked him to point out in the Bylaw where it says that the daycare should only be within the town. Mr. Nuciforo said that towns base their uses on what is in the town. Mr. Hubbard said that he did not believe it was the intent expressed at Town Meeting that we dump it at the border of Pembroke; the fact is it is still within 500 feet of a daycare facility. Mr. Nuciforo said that was true but they are also in a zone where this was allowed. He also said they have confirmation from the Town of Pembroke that the daycare would be moving to a new facility. Mr. B. Murphy asked if they could condition this so that they couldn't put it there if they are within 500 feet. Mr. Hubbard said they couldn't because there was no Special Permit before them and they have not gone through the process. Mr. B. Murphy said that staying away from the Variance; he is saying if they have to meet this with the daycare within 500 feet, he doesn't think they need a Variance. Mr. Hubbard said that isn't how the state law is written; they don't go out with speculations. Mr. B. Murphy said that if they come back and the daycare isn't within 500' then he doesn't think they need a Variance. Mr. Hubbard and Ms. Fidler think that they do; Ms. Fidler said there should be strict conditions.



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Mr. Hubbard said the only reason this is before the Board is that in reviewing email correspondence between Town Counsel and Mr. Nuciforo, there is a deadline of February 28<sup>th</sup> with the state. Mr. Virga said the deadline was with the purchase. Mr. Hubbard said he is content to wait until the daycare moves. Mr. B. Murphy asked if they could condition the Special Permit; Mr. Hubbard said there is no Special Permit before the Board. Mr. Nuciforo said that he thinks he sees a path, one that he prefers if the Board could determine tonight that they didn't need a Variance; they could come back and have the Special Permit conditioned and cited the Caruso case. Mr. Hubbard said that Town Counsel disagrees with Mr. Nuciforo on Caruso. Mr. Nuciforo said that he disagrees with Town Counsel; he says this is hypothetical. On #4, they have to demonstrate that they have an interest; he said that if they came before the Board and said they have an interest in buying this then that would be hypothetical.

Ms. Fidler said that she thought the state regulations were to protect the people; where this is so close to the Pembroke line the hypothetical is if that daycare moves and this group goes in, what happens if a daycare wants to move into the previous daycare's location? Mr. Hubbard said that he was not sure but would like to know. Mr. Virga said that state law has nothing to do with daycare; it's a Marshfield Bylaw. But Pembroke has banned the use so it falls under the state. Mr. Hubbard said that he agreed to a point. Mr. Virga said they would be okay if they went for a Variance and it was granted and they came back for a Special Permit. But if the Board says no to the Variance then they can't get the Special Permit. Mr. Hubbard said that wasn't true. Ms. Porreca said that they have not been to the Board of Selectmen as yet. Mr. Virga said they were told to get a Variance and then go for the Special Permit; Ms. Porreca and Mr. Folkard were there; he had two (2) applications, the Variance and Special Permit together. Mr. Hubbard said that the daycare was still there; they would have to deal with that whether they had the Special Permit in front of them or not. Mr. B. Murphy asked if they should withdraw and reapply and Mr. Hubbard said that they could.

Daniel Sullivan, owner of the property, said they can't go before the Selectmen unless they get the Variance; Mr. Virga said that they intend to apply for a Special Permit. Mr. B. Murphy said they needed to vote on whether a Variance applies. Mr. Folkard said that you said to do a Special Permit with a condition but this is a condition that violates the Bylaw. Mr. B. Murphy said it was worthless to do the Special Permit if the daycare was there; Mr. Hubbard said they should deal with what is before them. Mr. Nuciforo said that if the Board gave them a Variance they would apply for a Special Permit. Mr. Virga asked if they could come back for the Special Permit if they did not get the Variance; Mr. Hubbard said that the Special Permit does not negate the 500 feet. Mr. Virga said that if they don't get the Variance they could apply for a Special Permit and have a condition that they can't open until the daycare moves; Mr. Hubbard said that they could do what they wanted. Mr. Virga said they could have Town Counsel and their attorney meet. The Board took a short break. When the meeting was called back to order, Mr. Virga said that they would go ahead with the Variance. He said that regarding the Town Planner's email, they were planning to purchase the property next door for parking. 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 made a motion to grant the Variance and said that he would state the motion in the positive. He explained that if they say "aye" it would be to grant the Variance and "nay" would be to deny it. He asked for all in favor and there was



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no response; he asked for all opposed and Mr. Hubbard, Mr. B. Murphy, Ms. Fidler, Ms. Conway and Mr. R. Murphy voted to deny the Variance. Mr. Virga said that they would see the Board when they applied for the Special Permit; Mr. Hubbard said they would still need a Variance.

**#19-18: D.H. Smith and Sons, L.L.C.:** The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from the terms of §305-2.01 Definitions, Use, Principal which restricts principal uses to one (1) upon a lot outside a Mixed-Use zoning district; and Site Plan modification in accordance with §305-12.02 to include a fueling station and a 40' x 100' hoop house for the storage of biomass heating material (wood chips) 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 Case **#19-18** into the record and turned the hearing over to the applicant or his/her representative. Mr. Dan Smith stated that this would be a two (2) part hearing. The first is the Variance; they would like to add the sale of power equipment to what the Board granted a few months ago; the sale of lawnmowers, wheelbarrows, etc. This would add to the existing customers they already service for tree and landscaping; the do-it-yourself homeowners. Mr. Hubbard asked if the Board had approved the hoop house and Mr. B. Murphy said that they just had a discussion. Mr. Smith said that Mr. Galvin said it would be an amendment to the Site Plan; they would also like to amend the existing Site Plan to add fuel tanks which they know also needs to be approved by the Fire Department; the tanks would be above ground and fenced in with privacy slats in the fencing so that they won't be seen. Mr. Smith said the hoop house would store wood chips. Mr. Hubbard asked what the Variance was for and said that he wasn't sure if this was a second primary use. They are already selling to landscapers and he thinks that this would be a secondary use. Mr. B. Murphy said that Mr. Galvin said that they would need a Variance; Mr. Hubbard thinks that it is part of what they do; Mr. Folkard said that there was a guy selling lawnmowers in a residential area.

Ms. Fidler asked to have the Table of Use displayed. Mr. R. Murphy said that he doesn't see equipment as a primary use; he sees it as secondary. Mr. Folkard said that he thinks the problem is that he is a Wholesaler and a Retailer but he agrees with Mr. Hubbard that it's part of what he does. He thinks getting a second primary use is because of the Retail and Wholesale. Mr. Hubbard said that there are two (2) ways to vote and the Variance is moot. Ms. Fidler said that she needed to understand what they are selling. On January 22<sup>nd</sup> they provided the Board with a brochure and said that most inventory would be stored inside; she asked about what would be outside on the stoop and what is Huksvana. Mr. Smith said it was chainsaws, ride-on mowers. Ms. Fidler asked if they would service these also and Mr. Smith said that they would service their customers.

Mr. Hubbard asked if there were any other questions and Mr. Feeney asked if they would be renting equipment. Mr. Smith said no but they would come back to the Board for that. He asked the Board to look at the abutters and mentioned Crossfit. Mr. Smith said that he is on two (2) parcels, Mr. Hubbard asked if it was common ownership and Mr. Smith said that there are two (2) different owners and that was how the Board wanted that. Mr. B. Murphy asked if both



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parcels had frontage and Mr. Smith said they did not. Mr. Hubbard said the CrossFit property was grandfathered. Mr. R. Murphy said that Copeland Lumber sold retail; Mr. B. Murphy said that was why he was confused and he thinks this is moot. Mr. Hubbard asked if there were any questions from the public and there were none. He moved to close the hearing which was seconded and all were in favor. He put forth his first motion and declared that the request for a Variance was moot and the Board doesn't need to grant a Variance. Ms. Fidler and Mr. B. Murphy said that they wanted to deliberate and not make a mistake. Mr. Hubbard said he didn't think they were making a mistake and said the hearing was closed. Ms. Fidler said she would prefer to deliberate with Town Counsel present and Mr. B. Murphy agreed. Mr. Hubbard made a motion to continue the hearing for the Variance to March 12<sup>th</sup> which was seconded and all were in favor. Ms. Fidler said she just wanted more on the Variance. Mr. Hubbard moved to close the hearing on the Site Plan which was seconded and all were in favor. He made a motion to grant the Site Plan modification which was seconded and all were in favor.

**#19-22: D.J. Sullivan Collision Center, Inc.:** In accordance with §305-10.09 of the Marshfield Municipal Code, the Petitioner is seeking an Appeal of the Building Commissioner's opinion that auto body is a type of automotive repair and is not a permitted use of the property by right or special permit; and a Variance in accordance with §305-10.11 for relief from §305-5.04, Table of Use Regulations, Retail and Service #16, to locate an automotive body repair shop in the Water Resource Protection District on the property located at **612 Plain Street** which is listed on the Assessors' Map as parcel E10-02-10 and is located in a B-2 zoning district with a WRPD overlay.

Mr. Hubbard read Case **#19-22** into the record and turned the hearing over to the applicant or his/her representative. Attorney Adam Brodsky, a land use attorney, represented Mr. Sullivan who was also in attendance. He said that there is presently a shop at 10 Lone Street and he needs to relocate to 612 Plain Street in the WRPD; he said they have two (2) applications before the Board. He said that with all due respect to Mr. Folkard, he disagrees with auto repair and he feels the Board has already ruled on this. He said the Site Plan and Special Permit had been granted by the Planning Board. This is a different operation than auto repair – no engine or mechanical repairs; no oil changes; no storage of fluids on site. There will be less than 50 gallons per year of water based paints; it is currently used for boat repairs; there are no flow drains and most of it is paved. Mr. Brodsky said that neither auto repair nor miscellaneous repair is defined. He said that in 2007 when Mr. Sullivan located his business to Lone Street he had the same issue; repairs were not allowed in the Industrial zoning district but the Zoning Board approved it and said a Variance was not needed. He is respectfully suggesting the same thing here; that it is auto body repair and not auto repair. He feels that Mr. Folkard's decision is incorrect and if an appeal is granted they will go ahead and submit a Special Permit to the Planning Board. The property was laid out and the building done before there was the WRPD. He said they are substituting a clean use for a dirty use (boat repair); circumstances that justify relaxing (unknown). Mr. Brodsky said this was a hardship because Mr. Sullivan can't use the property; he has looked for a long time and can't find a suitable property; this won't be detrimental. They have suggested reasonable conditions: no auto repair at the building, no outside storage of vehicles, all unauthorized uses will be eliminated. Mr. Sullivan said he would answer any questions. Ms. Fidler said that they briefly talked about the floor surface, it was all concrete and there was no drainage inside the building. Mr. Brodsky said there was some on the



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exterior but they are not proposing anything that would release fluids. Mr. Sullivan said that he recycles everything; he's been green since 2008. All paint is stored in a spill proof room. Mr. Brodsky said they meet all strict requirements. Ms. Fidler said it was an awfully big building and she was happy that he was staying in Marshfield. Mr. Sullivan said that he has worked with Road to Responsibility, Marshfield High School. Ms. Fidler said it was in the WRPD and he understands the impact he has on the environment. Mr. Sullivan said that anyone was welcome to come through and he even catches rain water from the roof. Ms. Fidler asked Mr. Sullivan about auto body repairs vs. auto repair and Attorney Brodsky said that all auto repair is sent out. Ms. Fidler said if there was an accident on 139 and they brought the car to Mr. Sullivan's place, would it be stored outside? Mr. Sullivan said no, it will come in and go up to a loft; it's his property and his liability if there is a spill. Mr. Folkard said there were floor drains there before but they are capped off; Mr. Sullivan said the drains were dug out. Mr. Folkard said there was a small engine repair guy in the now and that he would be leaving.

Mr. R. Murphy said there are different SIC codes for auto body and auto repair and they are different in his opinion; Mr. Feeney agreed that they were two (2) different things. Mr. B. Murphy said that he read through all of the information and it looks like the boat place has been doing repairs. There were cars there but repairs were done off site. He asked if the Board decided the use was allowed in the WRPD would they go to the Planning Board. Mr. Brodsky said that they would and they anticipate conditions. Mr. Sullivan said he will clean up the front. Mr. Hubbard said he would need to come here for Site Plan approval. Mr. Brodsky said Planning Board for the Special Permit and if the Board were inclined to overrule Mr. Folkard, they would withdraw their Variance. Mr. B. Murphy said the Board has no authority in the WRPD. Ms. Fidler said that they briefly talked about the floor surface, it was all concrete and there was no drainage inside the building. Mr. Brodsky said there was some on the exterior but they are not proposing anything that would release fluids. Mr. Sullivan said that he recycles everything; he's been green since 2008. Mr. Brodsky said that if the Board reverses the Building Commissioner's decision they would withdraw the Variance.

Mr. Hubbard asked if there were any questions and there were none. He asked if the Board was ready to vote and they were. He moved to close the hearing which was seconded and all were in favor. He made a motion to uphold the Building Commissioner's determination and explained that a Yes vote would uphold Mr. Folkard's decision and a Nay vote would overturn his decision. Mr. Hubbard asked all in favor of upholding Mr. Folkard's decision and there was no response. When he asked all opposed, the vote was 5-0 with Mr. Hubbard, Mr. B. Murphy, Ms. Fidler, Ms. Conway and Mr. R. Murphy voting to overturn. Mr. Hubbard said to clarify, they are voting to determine if body repair shop is miscellaneous business repair use. On the question of the Variance, the applicant is requesting to withdraw the application.

Mr. Hubbard asked if there were any other issues the Board wanted to consider and there were none. He moved to close the hearing which was seconded and all were in favor.

Meeting adjourned at 8:51 P.M.

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Respectfully submitted,



Nanci M. Porreca  
Zoning Administrator

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

May 24, 2022 meeting by a 5-0 vote.

Signed:  Date: 5/24/22