

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

Members Present:

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

Also Present:

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

2022 JUL 15 AM 10:57

MARSHFIELD TOWN CEM
RECEIVED

Mr. Francis Hubbard opened the meeting at 7:10 P.M. and advised that the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were also being recorded. Mr. Hubbard stated that he would be the Hearing Officer and that other members were signified by their nameplates.

Mr. Hubbard informed the chamber that the Board would be taking some cases out of order and that the first item up for discussion would be further discussion/deliberation on case **#19-22 D.J. Sullivan Collision Center, Inc., 612 Plain Street** and turned the hearing over to Mr. Robert Galvin. Mr. Galvin said that he wasn't at the previous meeting but it was his understanding that when the Board deliberated, they expected the Petitioner to file an application for a Special Permit with the Planning Board for the Water Resource Protection District (WRPD). This should have been a condition for the applicant to file for the Special Permit with the Planning Board; when the decision came out it did not include the condition. Mr. Galvin has spoken to the applicant's attorney about amending the decision to include the condition where it had been discussed and agreed to by the applicant. Mr. Galvin said that he advised Mr. Sullivan that the Planning Board is not happy with this decision and there will be further discussion regarding that issue. Mr. Galvin said that it was important that the decision include everything that was deliberated and discussed. Amending the decision is including something that was intended to be in there but didn't make it. Mr. Hubbard asked what needed to be done procedurally. Mr. Galvin said that he gave notice to the applicant's representative and had communicated with Attorney Brodsky and Mr. Brodsky is aware that they need to get a Special Permit but Mr. Galvin wants the decision amended to include the condition in the decision because it was discussed during deliberations that the applicant must obtain a Special Permit from the Planning Board. Mr. Galvin advised Mr. Brodsky that it would come up tonight so that he would be aware. Mr. Hubbard made a motion to amend the decision to include the condition which was seconded and all were in favor. Mr. Brodsky said that they have applied for the Special Permit from the Planning Board. Mr. Galvin said the amendment should read, "apply and obtain a Special Permit from the Planning Board in connection with the proposed use".

#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 on the property located at **887 Plain Street** which

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

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 asked the Petitioner to come forward so that voices could be picked up on the microphone. He reminded the Board that they had closed the hearing at the last meeting. He said if the Board feels that they need to reopen it to take in more testimony and documents they could vote on it. Mr. Galvin said that they had already closed the hearing so if anyone who had been at the previous meeting and was in opposition, they wouldn't have the opportunity to be heard. He said that he didn't think that they should re-open the hearing and said that they should deliberate. Mr. Hubbard said that he had raised an issue as to whether there were in fact two (2) primary uses on the property; whether the sale of landscaping material could be considered a secondary use on the property. The property consists of two (2) lots, one with the landscaping material and the other lot will deal with retail. What came out at the hearing was that the prior owner had been selling, doing retail sale. Mr. Galvin said that he was not at the last meeting but his understanding is that it's the old Copeland property and that additional land had been added from Tim Connors. It doesn't have separate frontage but connects to this parcel. There is only one (1) lot for zoning purposes. He was at a meeting when this came up – was it permissible to have equipment repair or equipment sales business separate from the processing and lumber, what they were doing before. Mr. Hubbard said the sale of landscape material. Mr. Galvin said that his view was that they can probably sell products that are associated with the wood processing like saws, stuff you need to spread mulch or products they sold at Copeland for years. He did not hear any testimony about what the prior equipment sales were or whether they were products of a nature that had nothing to do with wood processing. It is his belief that it's a different business if you are selling products other than the products that would be incidental to the principal use of the property, which would be wood products. Mr. Hubbard said testimony was that they were selling everything from equipment to even hinges; Ms. Fidler and Ms. Conway said that they did not remember that.

Mr. B. Murphy said that they could ask Mr. Smith but he said riding mowers and all that. Ms. Fidler said that the hearing is closed and Mr. Smith cannot be part of deliberations. Mr. B. Murphy asked for clarification and Mr. Galvin said that if the Board wants clarification they can invite a comment but Mr. Smith is not able to offer a comment without the Board asking. Mr. Galvin said that they aren't here to hear uses described. What he sees and observes is not important; it's what the Board sees and observes and what evidence was submitted. He said they have to weigh enough evidence for equipment sales independent of what is going on; what evidence was submitted; it's what the Board saw and observed. He asked if it was testimonial and not backed up by something, they could consider that in determining what weight they afford that testimony and what credibility they give it. Mr. Galvin said the Copelands were still around but he doesn't know if they submitted anything. He said that was the information they needed to consider. His opinion on selling of hardware that is not incidental to wood and the selling of products not specifically relating to wood or incidental to that business are probably a different use. He said the burden is on the applicant to provide evidence that they have done these types of sales. Ms. Fidler said that it was his responsibility to show the Board that it is a preexisting, nonconforming use that was allowed on that property.

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

Mr. Galvin said the way he understands it is that he thinks is that everyone accepted the Copeland lumber business in and of itself the sale of mulch and wood products was a preexisting, nonconforming use. It's an Industrial district so it was probably allowed either by right or by Special Permit if it wasn't. He said the burden is on the applicant to show there was a second business on there if they were also selling products other than what was incidental to wood processing; sell a wheelbarrow, a pitchfork, what you would associate with what Copeland did. Taylor Lumber is similar but they have two (2) lots; they have an equipment rental place and a hardware/lumber business. Mr. Galvin said it's easier to see what they did because they had a store and you could go in and see what they sold. There is no clue about Copeland; the applicant has the burden to come forward with evidence that there was a second business there of this nature. Even if there was an equipment business the Board would have to decide if it was the same nature and scope as what Mr. Smith is proposing. Mr. Galvin said they are not allowed to expand the scope of a preexisting nonconforming use which would be two (2) businesses on one (1) lot. Mr. B. Murphy said they are trying to determine if the applicant needs a Variance. Mr. Galvin said they definitely need a Variance if the Board finds there are two (2) principal uses on the property. Mr. B. Murphy said that was where they are and asked the Board if they thought selling the other "stuff" is a second business use. Ms. Fidler, Ms. Conway and Mr. Hubbard said they thought the applicant needs a use Variance. Mr. B. Murphy asked Mr. Stiles if he was on this but he didn't think so; he asked Mr. Feeney if he was on this; Mr. Feeney thought that he had been here but wasn't sure on voting. Mr. B. Murphy asked for Mr. Feeney's opinion; Mr. Feeney said he doesn't think he saw an issue with what they were talking about at that time and doesn't think it has changed since. Mr. B. Murphy said that they all think that they will need a Variance – Mr. B. Murphy, Mr. Hubbard, Ms. Fidler and Ms. Conway. Mr. Feeney asked if anyone else had an opinion and Ms. Fidler said that was her opinion. Mr. Feeney said the group has more experience but at that time he doesn't think anything jumped out at him. Mr. Hubbard said he was also willing to grant a Variance. Mr. B. Murphy said that now that they have decided he needs a Variance, now they need to get into the nuts and bolts of the Variance. He asked if it met the conditions they are looking for. Ms. Fidler asked if they could review what they talked about the last time; her memory is that Mr. Smith talked about selling lawn mowers, selling chainsaws, selling small equipment that the supplier is giving them the opportunity to sell; once they sell it they would need to service at the location. She asked if that was a game changer because now they have retail and you have the service. She would like to hear what the Board feels about that, adding the service end of it to this. She said it was very difficult to pass a use Variance and now what are the uses. She said they need to be specific about what specific uses they are proposing.

Ms. Conway said that she recalled that Mr. Smith said he will fix his own stuff and whatever he sold would come back and he would repair it if something happened to it. Mr. B. Murphy said that anything he was selling, the stuff he had of his own, they were repairing so he would be adding the service; having the ability to fix the material he was selling. Mr. B. Murphy asked Ms. Porreca if she had how Mr. Smith walked through this Variance; Ms. Fidler asked if we had his answers to the arguments. Ms. Fidler read from Form 2B and said that number 1 relates to soil, shape, topography; she said they all know that answer – "no changes to the property or structure are necessary"; it's a literal enforcement of the Bylaw. Mr. Galvin said the elements of a Variance are conjunctive – you have to find them all. If they are missing any one of them then

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

they can't grant the Variance. Mr. B. Murphy asked Mr. Hubbard if he were ready to vote and he said that he was. Mr. Hubbard said he would state it in the positive – if they grant then “yay” and if they deny then it would be “no”. Mr. Hubbard moved to grant a use Variance to DH Smith and Sons, LLC which was seconded. Nobody was in favor and five (5) were opposed (Hubbard, B. Murphy, Fidler, Conway, Feeney). Mr. Murphy said they have already answered everything else and Mr. Hubbard said they already gave them Site Plan approval.

#19-23: Edward Maguire: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 4'4" x 9'2" first floor addition and a 4'4" x 16'4.5" second floor addition on the property located at **80 Ocean Street** which is further identified on the Assessors' Maps as being on parcel N06-08-06 and is located in an R-3 zoning district.

Mr. Hubbard read Case **#19-23** into the record and turned it over to the applicant or his/her representative. Steve Moran said that he did the survey with Edward Maguire and Douglas Friesen. The hatch marks on the plan is all existing and the green is what will be added. They already have a covered entrance; Mr. Maguire wants to take that away and bring it flush with the house. Mr. Stiles asked if it was nonconforming on the side setback and Mr. Moran said it was and this will be no more nonconforming. Mr. Maguire said the entrance to the home sticks out a little bit and nothing will change in the back. Mr. Folkard said he had no problem with regard to zoning but said that when they file for the building permit they will need an updated elevation certificate because they have them in an AE zone and Mr. Folkard said they were in a VE zone; Mr. Moran said it was in two (2) zones. Mr. Folkard agreed and said when it is in two (2) zones they need to go with the most restrictive; he said that because they are in a VE zone they will have to watch for substantial improvement with the costs for the addition. Ms. Fidler asked if they had a deed because it wasn't in the packet; Ms. Conway said it wasn't a deal breaker but it needs to be in the file. Mr. Maguire passed the deed to Ms. Fidler who asked if she could use it; Mr. Maguire said yes. Mr. Hubbard asked if there were any other questions from the Board, the applicant or the public and there were none. Mr. Hubbard moved to close the hearing which was seconded and all were in favor. Mr. Hubbard moved to grant the Special Permit with the condition that the Board does not endorse the shed that is currently on the property; this was seconded and Hubbard, B. Murphy, Fidler, Conway and Stiles were in favor.

#19-24: Jetty, L.L.C./Richard Vaughn: The Petitioners are seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code for the installation of an outdoor patio seating area containing 24 seats and a bag toss area at the rear of the premises and a Special Permit pursuant to §305-6.05.B, Screening and Buffers-Industrial and Business Districts, to substitute a solid fence complemented by suitable plantings in lieu of the 35 foot buffer as defined in §305-6.05.A 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 a B-4 zoning district.

Mr. Hubbard read Case **#19-24** into the record and turned it over to the applicant or his/her representative. Attorney Steven Guard said that the Board may recall that the applicant came before them awhile back and the Board allowed them to withdraw their petition without prejudice so that they could come back requesting more appropriate relief. They still have the

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

Site Plan approval for the outdoor seating; that hasn't changed. The bag toss area has been eliminated; new to this application is the request for a Special Permit to substitute the buffer zone for the 35 foot buffer zone between the residents in a business area. Gabion walls constructed of rocks and wire mesh will allow for the flow of tidal waters through it. That wall has been approved by Conservation. Square planters will increase vegetation and will provide sound buffering in the seating area. The entire area will be fenced in and will be a serving area; it will allow for emergency egress even in the winter time. They will leave some of the planters even when the tables and chairs are taken in; it's a seasonal thing. Mr. Guard said that he is sure that everyone is aware that it's difficult for a restaurant in this area to sustain even in the summer; this is allowed at other restaurants in town and the applicant needs this in order to be a successful business model. Mr. Brian Taylor said the Gabion wall that Mr. Guard mentioned is the primary structure used for sound attenuation at airports or adjoining a highway; it's the highest decibel level sound attenuation that you can get. Mr. Folkard suggested putting up a guard rail; Mr. Taylor said they were putting a guard rail proximate to the parking area, a guard rail and a four (4) foot fence. There will be emergency gates on either end of the dining area and they will have crash bars on the gates. Mr. Guard said that access would be entirely through the restaurant. Mr. Taylor said a six foot (6') wood fence would replace a wood fence at the rear of the property line; they didn't run it all the way because some neighbors like to use it for a transitional parking area for family members on the fourth of July. He said they added seven (7) 2'x2' planters that are portable as Mr. Guard mentioned; they can bring them in if there is a storm event. Mr. Guard pointed out the proposed planters, wall, fence and tables on the plan. Mr. Taylor said the plantings will be yellow ribbon arbor vitae.

Ms. Conway asked if the seating would be where the snow fence is now and Mr. Taylor said yes. She asked if it would be open space in the square area and Mr. Taylor said yes. Mr. Guard pointed out the gate and Mr. Taylor said it was a six foot (6') solid fence; Mr. Vaughn said they could use the shed for a reference point. Ms. Conway asked about the lighting and Mr. Taylor said they would do under umbrella lighting which is downcast lighting; there will also be lighting required for egress. Mr. Taylor said it would be attached to the building. Mr. Vaughn said they have wall packs out there now for emergency egress. Mr. Guard said that no outdoor entertainment is proposed. He said if the Board were to grant the application they could have a condition for that as well. Mr. Guard said they would sealcoat the area to fix the cracks and the footings. Mr. Guard said a small area to the left that has cobble now but they are going to pave that.

Ms. Conway asked if the stockade fence that is there now will be staying and Mr. Taylor said yes. Mr. Taylor said the owner replaces it every year but Mr. Vaughn said he didn't have to this year. Ms. Fidler asked if it would be ADA compliant and Mr. Taylor said yes. Mr. Guard asked if there were any questions and said it was a straightforward application. Mr. Vaughn said to Ms. Fidler's point, it does look bigger than it is; there's an extra line.

Mr. Hubbard asked Mr. Galvin that since they aren't meeting the 35 foot buffer zone, do they need to apply for the Variance; Mr. Galvin said yes. Mr. Guard asked what 35 feet and said the Special Permit allows substitution. Mr. Galvin asked what the zoning district was and was the entire lot in the Business zone. Mr. Guard said the back line is B-4 and the next one over is Residential; there is not 35 foot buffer there now. Rather than get into a preexisting

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

nonconforming structure like Roht Marine, they thought it would be more appropriate to apply for a Special Permit; substitute the two (2) because they can do a fence and they can do the planters; the building isn't even 35 feet. Mr. Hubbard said if they want to expand the use into an area that should have a buffer zone...if he remembers correctly if Mr. Guard is going to cite to Roht, the Board granted them a Variance. Mr. Guard said it was a Special Permit and they had to come back for a Special Permit to substitute for the 35 feet; there was no Variance to expand the use into that area because it was already being used as a restaurant for the entire lot. Mr. Galvin read from Marshfield Municipal Code §305-6.05: "Screen and buffer shall be required in any Industrial or Business district that adjoins a Residential district as follows: the strip should be at least 35' in width, it should contain a screen of plantings in the center of the strip. The screen should not be less than 5 feet' in width and 6 feet in height at the time of the occupancy of the lot. Individual shrubs and trees should be planted not more than 3 feet on center and shall thereafter be maintained by the owner or occupants so as to maintain a dense green year round." Then it says: "At least 50% of the plantings shall consist of evergreens. A solid wall or fence, not to exceed 6 feet in height, complemented by suitable plantings, may be substituted for such landscape buffer strip by special permit. The strip may be part of the yard area." Mr. Galvin said that he thinks they are allowed to substitute screening and fencing for a landscaped buffer. Mr. Hubbard asked about the 35 feet and Mr. Galvin said it is actually a use within the buffer like a restaurant use within the buffer, that's more the issue and he thinks they can substitute. Mr. Hubbard said he didn't have an issue with that; his question was about expanding into the 35 feet; Mr. Galvin said he thinks they are already in; Mr. Guard said they already do.

Mr. Galvin said the question is when dealing with a commercial use, you first have to look at 1) does it increase the nonconforming nature of the use. If you allow the use to expand into that area where it wasn't, that's probably a Variance. Mr. Taylor said if they look at all the survey plans done by his office and history and photographs, it's been a restaurant since the 1930s. Mr. Hubbard said he didn't believe there was any outdoor seating in that portion of the property. Mr. Taylor said there were picnic tables out there; Mr. Guard said similar to Roht Marine they had picnic tables. Ms. Fidler asked Mr. Hubbard if that answered his question; he said no, he still thinks they need a Variance and he asked Mr. Galvin if he thought they needed a Variance. Mr. Galvin said that he did not think they can increase nature of the use without a Variance. Mr. Hubbard said they are doing that by extending the dining outside and into an area that was not approved for that. Mr. Galvin thinks they are okay with screening and buffering; the use in question is up to the Board. They are making the pitch that it is a preexisting nonconforming use and trying to change it. Mr. Hubbard asked if there was waitress service out there and Mr. Guard said he did not know but it was still restaurant use. Mr. Taylor said if patrons are dining then it's a restaurant use. They are still eating whether he is serving them or you are serving them or they are serving themselves. If they had three (3) picnic tables with six (6) seats each that is 18 seats and 18 seats aren't economically viable. He said the entire property has always been used as a restaurant. Mr. Vaughn said it had three (3) picnic tables when he bought it; Mr. Guard said he didn't think there was waitress service but seating is seating.

Mr. Stiles asked what use they wanted to change it to; Ms. Conway said that it would still be the same use. Mr. Hubbard said they were expanding their restaurant use into the buffer zone; Mr. Stiles said they have a substitution buffer. Mr. Hubbard said he understood that but thinks they

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

are expanding their use of the restaurant. Mr. Stiles asked what the use was; is outdoor seating a separate use from a restaurant? Mr. Hubbard said they were expanding their restaurant beyond the dimensions of the building. Mr. Guard asked if the Special Permit was to substitute the buffer zone; the whole reason for that is to use the land in the applicant's side area; if you take the 35 feet out and substitute a fence and a wall, why would anyone do that to utilize the area? He said that Mr. Hubbard was right to be hung up on the 35 feet and he understands that but the Special Permit allows for substitution.

Mr. B. Murphy asked Mr. Folkard if there was any difference with restaurant use; he doesn't think there is any difference between inside and outside. Mr. Folkard said in this case, no; they are just expanding the seating in the restaurant. Ms. Fidler wanted to confirm that they did a Special Permit for Taylor/The Point. Mr. Stiles said this is a Special Permit or Site Plan; Mr. Guard said Site Plan approval for outside seating. Mr. Galvin said they do have the section §305-10.12 of the Bylaw re: nonconforming use where you are allowed to get a Special Permit for the extension or alteration of a nonconforming use. If there is a nonconforming use of a piece of property, there was some use (he doesn't know if it was restaurant or not) that was up to the Board to decide. They can either alter or extend a nonconforming use under the Bylaw but they have to find that it is a listed and permitted use, which this is. The requested extension or alteration is desirable for public convenience and welfare. The requested extension or alteration of use will not create further undue congestion or impair safety; it will not overload any public water, drainage or sewer system; it will not impair the character and integrity of the district or be detrimental to health, morals or welfare; won't bring it into further nonconforming of Dimensional and Density Regulations unless a Variance is also granted; will not be substantially different in character than the prior use will not be more detrimental or objectionable to the neighborhood. These are they Major findings the Board would have to make.

Mr. Hubbard said it was surrounded by residential property; Mr. Guard said just to the east. Mr. Hubbard said that he was concerned with the noise for the neighbors. Mr. Stiles said they hadn't heard from them yet; Mr. Hubbard said they had at prior hearings. Ms. Conway said she actually thought it would help with the noise because when they have events they are out in the parking lot and neighbors were complaining that they were going everywhere; she thinks it will help be more contained. She thinks it will improve the property and improve the neighbor relations as well for those who frequent the restaurant. She doesn't think it's any different than other places down there that have been used like this for many years. Mr. B. Murphy said the Gabion wall will help stop the noise; he was surprised they okayed it but they did. That will stop the noise not just from the Jetty but from the noise in the street and other restaurants, the everyday flow of traffic. He said that was one of the things he struggled with in the original request; he likes the wall and thinks it's a great idea and beneficial to the esplanade. Ms. Conway asked what he was struggling with and Mr. B. Murphy said the wall stops the noise but Conservation allowed it because it lets the water through. It's a great asset whether they like it or not; it helps deafen the sound down there; it's a good benefit but they are only going to get it if this gets built. Ms. Conway said it would clean it up.

Mr. Hubbard asked if they were losing any parking spaces and Mr. Taylor said they were not. Mr. Folkard talked about the emergency egress; they have a gate with panic hardware on it down by the parking lot and when the gate opens it opens to the parking lot curb. His question is what

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

if there is a car parked there; how will they get out? Mr. Taylor said they paved that access way against the building and they will put curb stops there; Mr. Folkard said it was paved to the gate. He said if a car is parked there and it's up close to the four foot (4') fence, where do the people go? Mr. Taylor said that is why they are going to put a curb stop there; Mr. Vaughn asked about moving it to the end. Mr. Folkard said they could just leave a little more space there for the exit. Mr. Guard said they need to verify that they can walk in front of the building. Mr. Folkard said if the building was burning you don't want to run along the front of the building. He said to leave little more space there so people can get through and they will be good. Mr. Vaughn said in an emergency people can also go right and head around the building that way; they don't currently have that.

Ms. Fidler asked about access from the building to this area; there's not a hostess station so can people just open the door? Mr. Vaughn said the hostess station is inside and Ms. Fidler asked if someone would be at that; Mr. Vaughn said most of the time. He said this should be a low impact use; they aren't trying to have a party atmosphere outside the building; they are trying to accommodate some diners during limited hours. Ms. Fidler asked about the hours again. Mr. Vaughn said he didn't want to quote them but at the last meeting they limited them significantly. Mr. Galvin said the Fairview ended at 9:00 outside; Mr. Guard doesn't remember talking about it and asked if they were in the application. Mr. B. Murphy said they weren't but they had talked about them; Ms. Fidler asked what was typical. Mr. Galvin said the only thing close is the Fairview and they had a restriction of 9:00 outside because it is in a residential neighborhood. Mr. B. Murphy asked if all the music would be indoors and Mr. Vaughn said there would be a speaker outside. Mr. Galvin said they can't have a speaker until they go to the Selectmen; they have to approve all amplified sound outside. Mr. Vaughn said it wasn't intended to be a high impact use out there; it would be 24 diners they might not get when they call to ask if they have outdoor dining. He said it would be more the lunch crowd from 11:00 AM to 2:00 PM; he also said they plan to have a No Smoking area.

Mr. Hubbard asked if there were questions from the Board, Mr. Folkard 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 following conditions: 1) emergency egress leading to the parking lot be moved; 2) that the hours of operation outside cease at 9:00 PM. Ms. Fidler asked about having last call outside be 9:00 PM; Mr. Hubbard said last call at 9:00 PM and tables cleared by 9:30. The third condition will be no outdoor music; the fourth that the area be designated as a non-smoking area. Ms. Fidler said they can't limit the outdoor music; the Selectmen will make that decision; Mr. Hubbard said they can make that decision also. Mr. Galvin said he didn't think people were allowed to smoke period.

Mr. Feeney said that he has an issue with someone ordering an appetizer at 8:55 and they have to be out of there at 9:30. He said he hasn't been in the restaurant business in a long time but he thinks they have to give them a little more time; everyone is different. He said someone sits down coming from someone's First Communion; he doesn't think someone should dictate how long a diner is going to take. If someone sits down at 8:55 and they are coming from their father's 90th birthday, the appetizer might come out at 9:15 and they need to go by 9:30; he doesn't think they should set a limit. They order an appetizer at 8:55, they pay \$20 for it, it gets busy and only have 10 minutes to eat it. Mr. Hubbard asked what time Mr. Feeney would

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

suggest and he said he wasn't sure but 9:30 was cutting it tight. Mr. Galvin suggested that they say no new seating outdoors after 9:00 PM. The history of this property is that it was The Breakers and there was no outdoor seating and everyone was inside. Then it was The Lobster Tail by Billy Last, Sr. who developed it and there was an outdoor porch that was open and the Board had a condition people had to be off the deck by 9:00 PM. Then they enclosed the deck when the Lobster Tail was sold. Then it was the Irish pub and then it was The Jetty. Faith Jean lived there and she didn't want anyone outdoors at all. But they enclosed the outdoor porch to provide more seating and there was a prior condition on an earlier approval that said they couldn't be out on the deck after 9:00 PM. Mr. Hubbard said the condition would be no new customers after 9:00 PM and the area cleared by 10:00 PM. Mr. Vaughn said once the band starts at 9:00 they will want to go inside. Ms. Conway said it will be buggy; she said the music is what they do now. Mr. Vaughn said they have music in the parking lot now; Mr. B. Murphy said that would be up to the Selectmen. Mr. Hubbard agreed to take the music condition out and it will not be in the decision.

Mr. Hubbard made a motion to grant the Special Permit which was seconded; Mr. B. Murphy thought it was for Site Plan but Mr. Hubbard advised it was for a Special Permit also. The motion passed with a vote of 4-1 with B. Murphy, Fidler, Conway and Stiles in favor and Hubbard opposed. Mr. Hubbard asked if there were any comments or questions from the Board before he closed the hearing for Site Plan approval. Ms. Fidler said she wanted to make sure they understand the point where what they discussed here is outlined in their decision. Mr. Vaughn pointed out an area on the right that is not on the plan; Mr. Guard said there was scrabble on one side. Ms. Conway asked if the fence will be where the snow fence is now and Mr. Vaughn said it would. Mr. Hubbard asked if there were any questions from the Board or public and there were none. He made a motion go grant Site Plan approval with the condition that the emergency egress will be moved so that it is facing the parking lot. The motion was seconded and the motion passed with a vote of 4-1 with B. Murphy, Fidler, Conway and Stiles in favor and Hubbard opposed.

The Board took a five (5) minute break; Mr. Hubbard called the meeting to order at 8:20 PM.

#18-91: Dana Junior: In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioner is seeking an Appeal of the Building Commissioner's decision to not issue a building permit because the requirements of the Storm Water Management Overlay District have not been met, additional approvals have not been received from the Board of Health, Conservation Commission, Planning Board and the Department of Public Works and a statement from a Professional Engineer stating that post-development runoff will not exceed pre-development runoff has not been received on the property located at **49 Hingham Avenue** which is listed on the Assessors' Map as parcel I11-03-06 and is located in an R-2 zoning district.

#19-14: Dana Junior: In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioner is seeking an Appeal of the Building Commissioner's decision to not issue a building permit because approval from the Planning Board has not been received on the property located at **108 California Street** which is listed on the Assessors' Map as parcel G12-18-05 and is located in an R-1 zoning district.

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

Mr. Hubbard read Case **#18-91 and #19-14** into the record and said they would be hearing both of these at the same time; he then turned it over to the applicant or his/her representative. Attorney James Creed requested a continuance until the next hearing date. He said the only thing he wanted to get on record on 49 Hingham Avenue, #18-91, is it is his understanding the Building Commissioner's position is that this is a repetitive petition under Chapter 40A, Section 16 because of the June 17, 2017 Cease and Desist order [note: the June 2017 decision denied the Appeal of the Cease and Desist order that was dated December 28, 2016.] has not expired and based on Chapter 40A, Section 16 they cannot go forward. Mr. Creed said that was his understanding of Mr. Folkard's position. He wants the opportunity to present a written cogent responds to that. Mr. Hubbard said that he would be on vacation on March 26th which is the next meeting and said the Board will only have four (4) members present. He suggested that the hearings be continued to the April 9th meeting when they will have a five (5) member Board. Mr. Creed was fine with this as long as both cases are heard at the same time and agreed to the April 9th date. Mr. Junior asked if anyone wanted to go out and look at California Street; Ms. Fidler said that she was going to go the day before. Mr. Junior said they should let him know and he will show them what's going on, where the lot is; it has a real estate sign pretty much in the middle of the 50 feet of frontage.

#19-06: Trustees of the Tedeschi Family Revocable Trust: In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioners are seeking an Appeal of the Building Commissioner's decision to decline to issue a building permit because the requirements of the Storm Water Management Overlay District have not been met and additional approvals have not been received from the Board of Health, Conservation Commission, Planning Board and the Department of Public Works on the property located at **123 Norwell Road** which is listed on the Assessors' Map as parcel I11-13-15 and is located in an R-2 zoning district.

Mr. B. Murphy said that he would run the next hearings. Mr. Hubbard asked two (2) women in the audience if they were here for the California Street hearing and they said they were. Mr. Hubbard asked if they understood the hearing would now be on April 9th and advised there will not be Public Hearing notices sent to abutters. One of the women asked where she could get copies of what was submitted and Mr. Hubbard advised she should speak with Ms. Porreca. Mr. B. Murphy started the hearing and asked Mr. Creed if there was anything new; Mr. Creed passed out appeal information that was not previously submitted to the Board. Mr. Folkard asked if the information was for Tedeschi and Mr. Creed said it would be for both. Mr. B. Murphy asked Mr. Creed and Mr. Galvin if there was anything new. Mr. Galvin said there wasn't and that he had sent an email on February 20th with a summary of how votes would look and gave some proposed motions. Mr. B. Murphy asked for a clean copy of Mr. Galvin's edited decision be displayed. Ms. Fidler asked Ms. Porreca if she had Mr. Galvin's email and she replied that it was displayed.

Mr. B. Murphy said they would go through the five (5) points again to see how the Board feels; they did not complete them at the last meeting. #1) That the Premises is a grandfathered/residential lot of record, held in single ownership; Mr. B. Murphy asked if the Board still agreed with that and the Board said that they did. He also asked if anyone had a

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

problem with that and they did not. 2.) That the Premises has vital access on a private way, Norwell Road; Mr. B. Murphy asked if the Board still agreed with that and the Board said that they did. He also asked if anyone had a problem with that and Ms. Fidler said the only piece of information given to them was the letter from the Deputy Fire Chief but they have not received anything else; July 23, 2018 the Deputy Chief determined vital access. She said she struggled with this last time. Mr. B. Murphy said they will all go through this and make a decision. 3.) That grandfathered/residential lots of record, held in single ownership, and with vital access, are exempt from later enacted, more restrictive dimensional zoning requirements, as set forth in the Zoning Act, including but not limited to the dimensional and building area provisions; Mr. Murphy asked if the Board agreed and they replied yes. Ms. Fidler said "dimensional" is the key work so she would agree. 4.) The Board finds that the Petitioner's lot is only partially exempted from the provisions of the Stormwater Management Overlay District concerning "buildable area" only requirements. The Petitioner must comply with all other requirements of §305-13.04; Mr. B. Murphy asked if everyone was okay with that and they said yes. Ms. Fidler asked Mr. Galvin that if they say "buildable area" are they talking setbacks because buildable area can go to setbacks. Mr. Galvin said that he agrees with Mr. Creed that the restriction was a dimensional restriction and he does not think this applies to them. There is literally a section in each category on buildable area depending on lot size. Ms. Fidler said they don't usually see buildable area. Mr. Galvin said when you look at the Bylaw you know exactly what that means; Ms. Fidler said it was complex. Mr. B. Murphy asked Mr. Galvin if the last statement was basically discussing complying with all requirements meaning any recharge would be contained on the property; Mr. Galvin said it would include that. 5.) The Board finds that to the extent the Building Commissioner's decision was based on Planning Board rules and regulations, that this is a matter beyond the scope of the Board's jurisdiction and therefore affirms the decision of the Building Commissioner with instruction to address the matter with the Planning Board; Mr. B. Murphy asked if anyone had a problem with that. Mr. R. Murphy said he did if they were talking about the definition of a street.

Mr. Stiles asked why there were talking about the Planning Board. Mr. Folkard said that is what it is saying, that this Board doesn't have that jurisdiction and has to go to the Planning Board. Mr. Stiles asked why they would even say that; Mr. B. Murphy said it was like saying that they have to go see them. Ms. Fidler said §305-13.04 already outlines that; Mr. Stiles said he doesn't think that he agrees with that. Mr. B. Murphy asked what language he didn't agree with and Mr. Stiles said he doesn't think they should mention Planning Board at all in their zoning decision. Mr. Folkard said his decision was based on the Planning Board regulations. Mr. Galvin said that one of the matters he and Mr. Creed also agreed on was where the Building Commissioner decided it on that basis the Board has to address it. He is not telling the Board how to decide it but they both agree they have to decide if he was right or wrong on that basis. Mr. B. Murphy asked if the Board agreed to hear from Mr. Creed. Ms. Fidler said just on this item because it was closed; Mr. Creed said he didn't think the hearing was closed; Mr. B. Murphy said they reopened it; Mr. Stiles said if they didn't close it tonight it is still open; Ms. Fidler said that they closed it; Mr. B. Murphy said even if they closed it they are allowing him to speak; Ms. Fidler said she wasn't here for the reopening. Mr. Galvin said they should hear from Mr. Creed. Mr. Creed proposed that the Board deal with the subdivision control issue by deciding this entirely

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

on zoning and if you decide it entirely by zoning you can deal with #5. He said they have determined the Petitioner is entitled to the issuance of a building permit under the Zoning Bylaws. Mr. Creed said everything the Board has seen has been on unconstructed paper streets; this street is constructed and has vital access in accordance with the Marshfield Fire Department. Under those circumstances this matter can be decided entirely under zoning without touching on subdivision at all; you address subdivision by saying we decided entirely under zoning.

Mr. B. Murphy said he would see how the Board feels and asked Mr. Feeney how he felt about Mr. Creed's #5 and then said he would ask Mr. Galvin first. Mr. Galvin said he does not think it is correct; if the Board is inclined to decide they have to comply with the street determination process then they have to say that because that is one of the reasons the permit was denied. Mr. Galvin doesn't think the Board can address it by just saying it is under the Zoning Bylaw because you can drive a truck through that ambiguity. The Board needs to say if Mr. Folkard was right or wrong. They have to say whether Mr. Folkard was right to say that they have to comply with the Planning Board rules or that they have no jurisdiction over the issue and it needs to go to the Planning Board; it has to be decided one of these ways. Mr. Creed said if that is the case they advocate that the Board overturns Mr. Folkard on those grounds as well. Mr. B. Murphy asked if anyone else had other language to impart. Ms. Fidler asked if they could say, "with the Planning Board and the requirements of Chapter 305" but said it was repetitive. Mr. B. Murphy said the Petitioner must comply with the requirements of §305-13.04; Mr. Galvin said that was Stormwater, not street determination policy.

Mr. Galvin said that what is true and he doesn't think this is contested, is the Board finds the Building Commissioner's decision was based on Planning Board rules and regulations, so that is true. Then the Board has to decide if this is a matter because it was a Planning Board rule whether it is within the Board's jurisdiction or not. Mr. R. Murphy said that he doesn't think it gets that far because he doesn't think they are subject to the definition of a street in our Bylaws. In his opinion, if they were subject then it would get kicked over for street determination and he doesn't think it gets there. Mr. B. Murphy asked if anyone had language they wanted to put up there. Ms. Fidler said she was fine with that in the alternative. Mr. Stiles said the first clause is a fact so he denied it based on that and asked if anyone found error with that decision. Mr. B. Murphy said he was fine with that; Ms. Fidler could not hear what Mr. Stiles said; Mr. B. Murphy said they find error in the decision. Mr. B. Murphy said he thinks the main word is "affirming" because that is what they are doing. They are either affirming or overturning this decision. Mr. Galvin said affirm in part and overturn in part was a third option. Mr. Stiles said they are overturning the decision. Mr. B. Murphy said everyone is suggesting different language. He said that Mr. Stiles is saying the Board finds to the extent of the Building Commissioner's decision was based on Planning Board rules and regulations that the Board disagrees; he asked if that was the end of it. Mr. Galvin asked if they disagreed with Mr. Folkard's decision; Mr. Stiles said it was the only thing before them now. Mr. Galvin said Mr. Folkard clearly decided it on the basis that he felt it had to comply with Planning Board rules and regulations; he doesn't think there is any dispute that was the basis for his decision. Mr. Stiles said that they disagree with his decision. Mr. Galvin said that is within the scope of their discretion.

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

Mr. B. Murphy asked Mr. Feeney how he felt about the language and Mr. Feeney was not sure. Ms. Fidler said she disagreed with Mr. Stiles and Mr. Hubbard said he also disagrees. Mr. Stiles asked them to help him with some language then. Ms. Fidler and Mr. Hubbard said they like the language as stated. Mr. B. Murphy said Ms. Fidler and Mr. Hubbard like the language and Mr. R. Murphy and Mr. Stiles do not like it. Mr. B. Murphy asked Mr. Feeney how he felt about the current language and Mr. Feeney asked if he was voting on this one. Mr. B. Murphy said he would like to see how the full Board feels. Mr. Stiles asked about Mr. Creed's language. Mr. B. Murphy said they definitely need "the Board finds to accept the Building Commissioner's decision was based on Planning Board rules and regulations; they have to have that because the whole decision is either up or down; the initial clause can remain and we can follow it with his #5. Mr. B. Murphy said what Mr. Stiles is suggesting is they leave in up through "regulations" and they add "the Petitioner is entitled to the issuance of a building permit under Zoning Bylaw. We need not address subdivision control issues."

Mr. B. Murphy said that Mr. Galvin said it is not subject to subdivision control so he doesn't know if they need to reiterate that. Mr. Galvin said he was asked for his opinion on this and he gave his opinion, that he decided it on this basis. Mr. Galvin said it was not a matter within their jurisdiction and he is only saying that because they asked for his opinion. Mr. B. Murphy said that Mr. Creed could speak if it was on the same subject. Mr. Creed wanted to clarify the denial letter from Mr. Folkard reads that the Planning Board status is incomplete as it does not meet the minimum Planning Board road standards; that was the denial. Mr. B. Murphy asked the Board if they had any language for that since they are discussing vital access and standards of the denial. Someone asked Mr. Creed to read it again and he said it was the same as McDonough, Planning Board status is "incomplete" as it does not meet the Planning Board minimum road standards. Mr. B. Murphy said his decision was based on minimum road standards and he feels it has vital access. Mr. Galvin said they could ask Mr. Folkard what he meant by that if there is confusion. Mr. Galvin asked Mr. Folkard what he meant by the statement Mr. Creed just read. Mr. Folkard said it was incomplete because there was no road determination as required by the Planning Board. Mr. B. Murphy asked for adequate grade and construction and Mr. Folkard said that was correct. Mr. Folkard said that under Stormwater overlay section F, the Planning Board, Conservation, Department of Public Works and Board of Health have 21 days to provide comments. Mr. Stiles asked and? Mr. Folkard said they sent a comment they needed a road improvement plan and it was denied on that basis.

Mr. B. Murphy asked Mr. R. Murphy and Mr. Stiles if they had language they would like to see beyond what was in there. He said if they can't come up with something different then this language is going to stay in there. Mr. Tedeschi asked if he could say something and Mr. B. Murphy said that he could not. Mr. Stiles said it was still open and Mr. B. Murphy asked the Board if it was still open. Ms. Fidler said it was closed but Mr. R. Murphy said they opened it for comments. Mr. B. Murphy said they closed Tedeschi but kept McDonough open. He said just so they understand, Ms. Fidler was here for Tedeschi and it is closed so Mr. Tedeschi can't speak. He asked if anyone had other language they were willing to put in there. Mr. R. Murphy said, "Because we determined the Petitioner is entitled to the issuance of a building permit under Zoning Bylaw and not subject to the definition of a street as mentioned in the Zoning Bylaws" and then said he needs to get to the end somehow. He asked Ms. Porreca if there was a way to type it

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

in a different color. Ms. Fidler asked if they could do a "saved as" so they don't lose the verbiage that two (2) of the members are okay with. Mr. B. Murphy said they are going to vote on it and Ms. Fidler said okay. Mr. R. Murphy said, "Because we determined the Petitioner is entitled to the issuance of a building permit under Zoning Bylaw because they are not subject to the definition of a street in the Zoning Bylaws, the lot in question is not subject to the determination of street in the Zoning Bylaws and is not subject to the street improvement plan or street determination plan. He said the Building Commissioner made an error in his decision. Mr. Stiles said he doesn't know if that needs to be in there. Mr. B. Murphy said that was all; the rest of it is gone but they will leave it there and vote on it.

Mr. B. Murphy said that Mr. R. Murphy was okay with his new language on #5 and asked if they were okay with Mr. R. Murphy's language; Mr. Stiles said that he was; Mr. Hubbard wanted to think about it; Ms. Fidler is not okay with the language; Mr. Feeney wasn't sure and asked if they could continue discussing it. Mr. B. Murphy said no, they were getting down to it and they had to make a decision. If the Board has four (4) votes for that language they will move on to #6; they will either vote for it or against it; there will be a single answer to this. Mr. B. Murphy said that to him it is very simple. Mr. Feeney said it was not grammatically correct and it doesn't flow for him. Ms. Fidler said they should move past that. Mr. B. Murphy asked if he was okay with the language; Mr. Feeney asked Mr. B. Murphy to come back to him. Ms. Fidler and Mr. Hubbard are not okay with the language; Mr. B. Murphy, Mr. R. Murphy and Mr. Stiles are okay with it. Mr. Galvin asked who was voting on this; Mr. B. Murphy said it didn't matter because they are putting the language up there however the Board feels. Mr. Galvin said they need to know who is voting. Mr. Hubbard said the voters on this particular application were Mr. R. Murphy, Mr. Stiles, Mr. B. Murphy, Ms. Fidler and himself. Mr. B. Murphy said if that is the case then it is 3-2 so the language stands and asked Ms. Porreca to get rid of the rest of the language. Mr. Galvin asked Mr. B. Murphy if he understood that 3-2 is a failure; Mr. B. Murphy said he understood that but they were just voting on the language on the whole piece as one; wherever that vote goes lives.

Mr. B. Murphy moved on to #6: That the provisions of G.L. c.187, §5 apply to the installation of utilities in private ways, and that Norwell Road is such a private way, and therefore, the Petitioner has the right to extend the municipal water line in Norwell Road to provide water service to the Premises, subject to the provisions of G.L. c.187, §5. He asked if everyone agreed and they all agreed. Ms. Fidler said she agreed but thinks whatever Ms. Porreca did on #5 needs to be the opposite; Mr. B. Murphy said that was her opinion and this is what he is putting up there. He then said they needed to go to the bottom where they decide the vote; Mr. Galvin said it was above the paragraph with the numbers. Mr. B. Murphy read: Testimony at the hearing indicated that the Petitioner meets the minimum area of land at 5,000 square feet, has frontage of at least 50 feet and is a residential lot of record. For all the foregoing reasons, a majority of the Zoning Board of Appeals reverses the Building Commissioner's denial of a building permit for the Premises and grants the Petitioner's Appeal and directs the Building Commissioner to issue said permit forthwith. A minority of 1 voted not to overturn the decision of the Building Commissioner. The majority of the Zoning Board of Appeals voted to incorporate numbers 1 through 6 as follows. Mr. Galvin said they have to do something with the word "denies"; it's grant or deny. Mr. B. Murphy said grants the Petitioner's appeal and directs the Building

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

Commissioner to issue said permit. In addition, the Board will incorporate #1-#6 from the Petitioner's memo. Mr. Galvin said the memo is inconsistent with this language so they are not incorporating his memo; he said they didn't need to say anything and just say these are your findings, #1-#6 below or as follows; he said they had to go up to the vote, too. Mr. B. Murphy said the Board consisting of Francis Hubbard, Brian Murphy, Lynne Fidler, Richard Murphy and Mark Stiles but not Stephen Feeney on a motion duly made and seconded unanimously, not unanimous, voted to overturn the decision of the Building Commissioner and grant the appeal. Mr. Galvin said it was by a vote of 3-2; Mr. Stiles said they didn't know that yet; Mr. Galvin said it sounded like that was what it was. Mr. B. Murphy said that is what he is going to ask right now; he said they only voted on the language and now they would vote on the whole petition. He said that he wanted the Board to vote by name and say if they are for it or against it; he made a motion that the Board approve this.

Ms. Fidler asked that they go back to the green edits; she thought she had said that she and Mr. Hubbard were not okay with this and asked if they were getting rid of the green. Mr. B. Murphy said that they are not because he said it was a 3-2 vote so they are putting it in and they are going to vote overall how they feel about the entire thing; Ms. Fidler said it was confusing. Mr. Galvin said that years ago there was a project up in the Hills involving a day camp that he was involved in and the Board was split 4-1; the person who voted against it wanted to explain why they voted against it in the decision and they can do that if they want. Mr. B. Murphy asked Ms. Fidler if there was language there that she would change, that would make her vote for this; Ms. Fidler said nothing at this point, no. Mr. B. Murphy asked if they removed the green language and put the red language back in; Ms. Fidler said no. He said they would leave the language in there. Mr. Stiles asked about Mr. Hubbard; Mr. B. Murphy asked Mr. Hubbard if he had anything and he said no. Mr. B. Murphy made a motion that they accept this document and vote on it as is; this was seconded by Mr. Hubbard. Mr. B. Murphy asked if all were in favor of accepting this document as it stands. Mr. Galvin made a suggestion where it says 3-2 that it should be 3 in favor and 2 opposed to be clear; the Board doesn't want any misunderstanding. Ms. Fidler said that in favor would be the reverse; Mr. Galvin said 3 in favor and 2 opposed to overturn. Mr. B. Murphy said that was the vote, it stands. Ms. Porreca asked Mr. B. Murphy to go over the vote: Mr. Hubbard and Ms. Fidler against and Mr. B. Murphy, Mr. Stiles and Mr. R. Murphy are in favor; the motion fails. Mr. Galvin said the motion is technically approved but does not carry with a sufficient vote to overturn the decision; a 4-1 vote is required to overturn. Mr. B. Murphy said it was denied and Mr. Galvin said the language should say they voted 3 in favor and 3 opposed to overturn and grant the appeal. Mr. Hubbard said the word "grant" in the third sentence should be changed to "deny" the appeal. Mr. Galvin said a sentence should be in there that says the effect of this vote is to deny the appeal; the sentence was added. Ms. Porreca asked if they were keeping "grant the appeal" and Mr. Galvin said yes because that is what the motion was, to grant it. The effect of this vote does not overturn the decision of the Building Commissioner. Mr. B. Murphy asked if he needed to make another motion for the Board to vote to add that language or is it just decision language. Mr. Galvin said in the second sentence "for all the foregoing reasons a majority of the Zoning Board of Appeals voted to grant the appeal. Mr. B. Murphy said "reverses"; Mr. Galvin said "grant" because the majority voted to grant. He said if they wanted to be clear, "a minority of two voted not to overturn the opinion of the Building Commissioner. It should say "the majority of the Zoning Board of Appeals voted in

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

favor of incorporation #1 to #6 as follows. Mr. Hubbard asked if they needed another vote and Mr. Galvin said they should confirm that this is the decision of the Board. Mr. B. Murphy asked the Board to confirm this decision as it stands; Ms. Fidler and Mr. Hubbard said Aye; Mr. B. Murphy advised Mr. R. Murphy and Mr. Stiles that they were confirming the decision; they also replied Aye.

The Board took a short break; Mr. B. Murphy called the meeting back to order and advised that they would do Case #19-05, Kevin McDonough/True North Development. Mr. B. Murphy asked Mr. Galvin if they had to go through everything again because it was the same information. Mr. Galvin said they should for the benefit of Mr. Feeney. Mr. B. Murphy said they would go back to the exercise and asked the Board if they had any questions; there were none. He then moved to close the hearing which was seconded and all were in favor. Mr. B. Murphy then advised the hearing was closed and they would get into deliberations. He said they would go through #1 through #6; he read each of the statements and asked the Board members if they still agreed.

1) That the Premises is a grandfathered/residential lot of record, held in single ownership; all agree. 2) That the Premises has vital access on a private way, Norwell Road; all agree. 3) That grandfathered/residential lots of record, held in single ownership, and with vital access, are exempt from later enacted, more restrictive dimensional zoning requirements, as set forth in the Zoning Act, G.L. c.40A, §6, ¶4, first sentence; all agree. 4) The Board finds that the Petitioner's lot is only partially exempted from the provisions of the Stormwater Management Overlay District concerning "buildable area" only. The Petitioner must comply with all other requirements of §305-13.04; all agree. 5) The Board finds that to the extent the Building Commissioner's decision was based on Planning Board rules and regulations, it has determined that the Petitioner is entitled to the issuance of a building permit under Zoning Bylaws and the lot in question is not subject to the street improvement plan; Mr. B. Murphy, Mr. R. Murphy, Mr. Stiles and Mr. Feeney agree; Mr. Hubbard does not agree. 6) That the provisions of G.L. c.187, §5 apply to the installation of utilities in private ways, and that Norwell Road is such a private way, and therefore, the Petitioner has the right to extend the municipal water line in Norwell Road to provide water service to the Premises, subject to the provisions of G.L. c.187, §5; all agree.

Mr. B. Murphy said they would go back to the top. The Board consisting of Francis Hubbard, Brian Murphy, Richard Murphy, Mark Stiles and Stephen Feeney considered the request. The Appeal of the decision of the Building Commissioner, upon a motion duly made...Mr. B. Murphy made a motion to accept the decision verbiage and his motion was seconded by Mr. R. Murphy; the vote was 4 to 1 with Mr. B. Murphy, Mr. R. Murphy, Mr. Stiles and Mr. Feeney in favor and Mr. Hubbard opposed. Mr. B. Murphy said the "Appeal of the decision of the Building Commissioner on a motion duly made and seconded" and he asked Mr. Galvin if it should be noted who made the second. Mr. Galvin said that he would include it. He also said that this decision and the last decision are inconsistent with one another. Mr. B. Murphy said he made the motion and it was seconded by Mr. Hubbard. "By a motion by Brian Murphy and seconded by Francis Hibbard, the Board voted 4 in favor and 1 opposed to overturn the decision of the Building Commissioner and grant the Appeal." Mr. B. Murphy said that under Reasons for Decision..."Testimony indicated the Petitioner meets the minimum land area of 5,000 square

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MARCH 12, 2019 7:00 P.M.
MEETING MINUTES**

feet, has frontage of at least 50 feet and is a Residential Lot of Record. For all the foregoing reasons, a majority of the Board reverses the Building Commissioner's denial and directs the Building Commissioner to issue said permit forthwith. A minority of the Board, one, voted no to overturn the decision of the Building Commissioner. The majority of the Board voted #1 to #6. Mr. B. Murphy asked if they all affirmed their decision and all replied that they did.

Mr. B. Murphy asked Ms. Porreca if there was any other business and there was none. Mr. Hubbard made a motion to adjourn which was seconded and all were in favor.

Meeting adjourned at 9:15 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 24, 2022 meeting by a 5-0 vote.

Signed:  Date: 5/24/22