

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL APRIL 9, 2019 7:00 P.M.
MEETING MINUTES**

Members Present:

*Francis X. Hubbard
Brian Murphy
Lynne Fidler
Heidi Conway*

Also Present:

Anthony Riley, Esquire

Mr. Francis Hubbard opened the meeting at 7:01 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.

#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.

Mr. Hubbard stated that the Board would be taking two (2) things out of order. He read Case **#18-91** and advised Attorney Creed there would not be a quorum; they need four (4) members for his hearings and they will only have three (3) available. He advised that this should be continued to the May 14th meeting and Mr. Creed agreed. Mr. Hubbard made a motion to continue this to the May 14th meeting which was seconded and all were in favor.

#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.

Mr. Hubbard read Case **#19-14** into the record. He asked Mr. Creed if he wanted to continue this to the May 14th meeting based on their previous discussion and Mr. Creed agreed. Mr. Hubbard made a motion to continue this to the May 14th meeting which was seconded and all were in favor. Ms. Fidler asked if there was paperwork for this and Ms. Porreca advised that it was distributed when both cases were initially filed and would be given out again.

#19-28: John Kesaris: The Petitioner is seeking Site Plan modification in accordance with §305-12.02.J.7 of the Marshfield Municipal Code to include four (4) tables of patio seating at the restaurant property located at **1840 Ocean Street** which is further identified

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on the Assessors' Maps as being on parcel H08-04-07A and is located in a B-1 zoning district.

Mr. Hubbard read Case #19-28 into the record and turned the hearing over to the applicant or his/her representative. Mr. John Kesaris said that he wants to put sixteen (16) seats, four (4) tables, on the patio for outdoor dining. Mr. Hubbard asked if it was already built and Mr. Kesaris said that it was. Mr. Hubbard asked if this had been included on the original plan and Mr. Kesaris said that they didn't think to ask for it at that time; they just assumed they would have it. Mr. Hubbard asked if the patio was approved on the original site plan and Mr. Kesaris said that it was. Both Ms. Fidler and Mr. Hubbard stated but without the tables. Mr. Hubbard asked what type of service would be out there and Mr. Kesaris said that it would be full service. He asked if Mr. Kesaris had gone to the Board of Selectmen to get approval to increase his seating for the liquor license and Mr. Kesaris replied that they have plenty of seating. Mr. Hubbard asked if they had approved that area and Mr. Kesaris said he did not know he was supposed to go to them. Mr. Hubbard believes that he does need to go before the Selectmen because it is an outdoor area and there are special requirements that they look for if serving liquor outside. Mr. Kesaris said that he knows about fencing and things like that; Mr. Hubbard said sight lines to the bar and so forth.

Ms. Fidler said that if there is seating outside they would need to see some vehicle protection for the people sitting out there as well as fencing and lighting. Ms. Conway asked if there had been seating there before and Mr. Kesaris said there were 72 seats outside before and that was why he didn't think he needed to redo this. Ms. Fidler said she just wanted to make sure the public was protected. Mr. Hubbard said that he was leaning towards granting this and Ms. Conway said they could condition it upon approval of the Board of Selectmen if needed. She asked if there was fencing there before and Mr. Kesaris said there was and now there is a higher slab. Ms. Conway asked what kind of fencing had been there and Mr. Kesaris said it was black metal and they tried to save it to use again. He said the access to the bar would be through that door. Ms. Conway said that Kkaties had to have a hostess station outside and asked if they were going to do that here; Mr. Hubbard said that depended on the Board of Selectmen; Ms. Conway said that the ZBA had decided that for Kkaties.; Ms. Fidler said they didn't go to the Selectmen. Mr. B. Murphy said it was existing and they shrunk it; they decreased the outside seating. Mr. Hubbard wondered if a hostess station would be needed for four (4) tables. Mr. Kesaris said the new bar is there and there would be servers in the area. Ms. Conway asked if there was any lighting and Mr. Kesaris said he had plenty of lighting. Ms. Fidler asked that if there was an emergency, would there be safe access out of the area or would they have to go back through the restaurant; Mr. Kesaris said that there would be egress and there would be a gate out. Ms. Conway asked what they did in Brant Rock and asked if they had a safety get; Mr. B. Murphy said they could go out but couldn't go in. Mr. Kesaris said there would be a lock. Mr. Hubbard moved to close the hearing which was seconded and all were in favor. He moved to grant the Site Plan modification with the conditions that property fencing and appropriate lighting be installed and that the Petitioner goes to the Board of Selectmen to get proper approvals. This was seconded and all were in favor.

#19-29: Manuela and Edward Barrett: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to raze the existing dwelling and construct a new two and one half (2½) story 26' x 31.5' dwelling with a

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5.5' x 26' rear deck, a 5' x 12' covered porch with stairs to grade and a 5' x 10' second story master deck on the property located at **205 Bay Avenue** which is further identified on the Assessors' Maps as being on parcel M05-10-35 and is located in an R-3 zoning district.

Mr. Hubbard read Case #19-29 into the record and turned the hearing over to the applicant or his/her representative. Dick Rockwood said that existing house is over the property line on the street; they are pulling it back by a half of a foot and they are trying to make it better in all directions by inches. They are working within the existing footprint and made it better where they could. He said there is a covered porch in the back but they will change it to a deck; each floor will be about 800 square feet so it will be about 1,600 square feet. The house will be on piles because it is in the Flood Zone, AE16, and they will bring it to AE17 and maybe to AE18 for insurance credit. Parking will be under the home; it's a one and a half story home now. There is a barrier beach so they will use wood driven piles. Mr. Hubbard asked the Board if there were any questions. Mr. B. Murphy asked Ms. Porreca if Mr. Folkard had given any comment and she replied that he had not. Ms. Fidler asked if the elevation would be under 35 feet and Mr. Rockwood said it would be 35 feet to the midpoint; if they raise it to AE18 it would be 33 feet. Ms. Fidler asked if there would be any exterior air conditioning or anything because it is tight on the property. Mr. Rockwood said that it would have to be at least above elevation 16; if they go to 18 feet he isn't sure if they can hang anything horizontally underneath; the driveway would be on one side; they would make it so it wouldn't be right next to the house next door. Mr. Hubbard asked if there were any questions from the Board or the public. Mr. John Good of 207, 201 and 206 Bay Avenue questioned the width of the property side to side and asked if it presently included the covered porch that runs down the side. He said that there is no current structure where the stairs on the left side are; a covered porch is to the immediate right of the stairs; the house presently does not extend to the red boundary line, comes in about six feet (6') on the back side and front. He questioned if the project being proposed on the external footprint on the property or to the existing structure. Mr. Rockwood said the covered porches are part of their footprint; they aren't using the back as living space so they will make that a deck. The covered porch on the side is part of their footprint by right. Mr. B. Murphy asked if it had a roof and Mr. Rockwood replied that it did. Ms. Conway stated that the 31' to the 37' is the covered porch. Mr. Rockwood said the covered porch goes to about the middle; they will be extending down the side using the covered porch area. Ms. Fidler asked if they were extending the staircase off to the left said; Mr. Rockwood said yes, it will be the egress set of stairs. Mr. B. Murphy asked Mr. Good if Mr. Rockwood had answered his questions and Mr. Good said that he had.

Mr. Hubbard asked if there were other questions and Meg Good of 207, 201 and 206 Bay Avenue said that they surround the property and they are concerned because their deck is right behind this. They would like a barrier so the car won't go through and hit their deck; she said she has small grandchildren and every week you hear about a car going through some place. Mr. Rockwood said that there would be cross bracing between the piles underneath for lateral support. Ms. Good said that because they are close she had questions about the removal of debris, asbestos and lead paint. Mr. Rockwood said that this was all part of the building permit

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process; they would get the demo permit and a certified asbestos guy would go out to inspect it; it was all part of the Town signoffs. Mr. Hubbard asked if this was all part of the demo permit and Mr. Rockwood said that it was. Mr. Rockwood said that traps would have to be put out, a report would be sent stating that there are no rodents; might take about two (2) weeks.

Steve Good said that he co-owns 207 Bay Avenue and has a young daughter; he has questions about the removal of debris and parking for vehicles because it is a tight lot; he is concerned about having his daughter around hazardous situations. Mr. Rockwood said the house footprint is the house footprint and right now cars can only park on the street; it will be a bit of an issue for service vehicles working on the house. Ms. Conway asked if there would be a construction fence and Mr. Rockwood said there would be. Mr. B. Murphy said that was part of the building permit and these are building questions and not zoning questions. Those will be addressed by the Building Department; if people feel they have done something wrong they can go to the Building Department. Ms. Conway said there was a property on Ferry Street and the Board had to make sure they were putting something up. Mr. Rockwood said it would be an orange mesh fence about three feet (3') high; they would make some provisions. Ms. Conway said it was cozy there and should respect the boundaries and safety for the kids. Mr. Hubbard asked if there were any questions from the Board or the public and there were none from the public. Ms. Fidler asked if the Board was okay with conditioning the construction fence; Ms. Conway said they should condition it. 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 conditions that there be construction fencing and a barricade for protection under the first floor. Ms. Fidler said that she didn't think the Board had the authority to do anything else as far as parking and construction. Ms. Conway asked if the shed was part of the new plan; Mr. Good, an abutter, said that it was his. Mr. Hubbard's motion was seconded and all were in favor.

#19-30: Julie Hantson/Marshfield Pediatric Dentistry: The Petitioner is seeking a Variance from §305-7.04.B to erect a wall sign, which shall not exceed 40 square feet, on the side of the building facing the parking lot which is where the front entrance is located on the property located at **3 Proprietors Drive** which is further identified on the Assessors' Maps as being on parcel E09-02-09 and is located in an I-1 zoning district.

Mr. Hubbard read Case **#19-30** into the record and turned the hearing over to the applicant or his/her representative. Ms. Porreca said that she did not see anyone for this hearing. Ms. Fidler asked if they had called and Ms. Porreca said that the applicant had worked with the Building Department. She explained that the applicant was issued a sign permit but they weren't told that they could not put it in front. Their frontage is actually on Enterprise Drive and they need a Variance, which Mr. Folkard said is similar to what was just done at 57 Snow Road; they can have a sign at the entrance to the building as well as on the side. Ms. Fidler asked if this should be continued to May 14th and Ms. Conway asked if they could hear it because it was just a sign.

Mr. Hubbard said that he was familiar with the building and the sign is up; Mr. B. Murphy said he did a site visit. Mr. Hubbard said the sign is over the doorway and the business is operating; Ms. Porreca said there was an error with issuing the sign permit. Mr. Hubbard said that he does not have a problem with this. Mr. Hubbard explained the sign does not lead to where the doors are for the business; it is on the side which will call attention to it and indicate a turn. Mr. B.

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Murphy said they could read what was in front of them and go from there; it was the same as the old Bikeway. Mr. Hubbard asked Ms. Porreca if it was correct that Mr. Folkard had said there was no place to put a pole sign; Ms. Porreca said that was correct. Ms. Fidler said this was for a Variance so in the application they need to understand the shape, topography; are they going to say that it is the shape of the lot that drives this? She said that she didn't feel comfortable without the applicant here; Mr. Hubbard said that he does. Ms. Porreca said that if Ms. Fidler did not feel comfortable then they should not do it; she was trying to have this heard because the applicant was so upset about the mistake with the permit. Ms. Fidler said this was the first time ever since she has been on the Board that they have gone forward without an applicant. Ms. Conway said that it was totally weird; Ms. Fidler said it was unusual but the argument was convincing so she was okay with moving forward with it. Mr. B. Murphy said that to him it was like Bikeway; Ms. Conway said that she did not hear Bikeway; Ms. Porreca said it was the building next to Bikeway. Mr. B. Murphy said there was no place for the sign so they did the Variance. Ms. Porreca displayed the 57 Snow Road decision. Ms. Fidler asked the Board if they were happy with the decision language and said that in this situation she was okay with proceeding. Ms. Conway said for the record they would never normally proceed without the applicant. Ms. Fidler asked where the Site Plan was for this property and Mr. Hubbard said the Board would not have done the Site Plan because this is in the PMUD so it would go to the Planning Board. Ms. Conway said it looks tasteful; Mr. B. Murphy said it looked great. He asked to see the other decision because this one said the applicant should submit a Variance to substitute the sign. Ms. Porreca explained they originally filed for a Special Permit for parking and then came back for the Variance which is the decision on display. Mr. B. Murphy said they would mirror the Snow Road decision. Mr. Hubbard asked if there were any questions from the Board of 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 Variance which was also seconded and all were in favor. Mr. Porreca stated for the record she did not know this applicant; she just knew that there were issues with the sign and the Building Department. Mr. Hubbard said that he had spoken to Mr. Folkard about this.

#19-31: Alan Tremblay: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 25' x 25' attached two (2) car garage on the west side of the existing single family dwelling on the property located at **106 Colonial Road** which is further identified on the Assessors' Maps as being on parcel M08-06-43 and is located in an R-3 zoning district.

Mr. Hubbard read Case **#19-31** into the record and turned the hearing over to the applicant or his/her representative. Alan Tremblay said he is renovating the existing single family house which is nonconforming; the west side conforms to the setback and he wants to build a two (2) car garage on that side. Ms. Porreca displayed the Site Plan that was submitted and Mr. Hubbard asked Mr. Tremblay if he had a current Site Plan; he does not. Ms. Fidler said that this does not have the setbacks identified and the Board will need that. Mr. Hubbard said that he would look at the plan that was done for the mortgage; he stated that Mr. Tremblay said that he meets setback requirements and asked Mr. Tremblay to define what that is. Mr. Tremblay asked if it was 15' on each side and said that he has 40 something feet. Mr. Hubbard said that is what he has now and asked how wide the garage would be; Mr. Tremblay said 25' x 25' and Mr.

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Hubbard said they would leave a 15' for setback. Mr. Hubbard said that he was willing to grant this with an engineered Site Plan submitted to the Building Department and the Zoning Board of Appeals that has the setbacks and the garage and would show the existing property and the layout of the new garage. Ms. Fidler said this was also unconventional; Mr. Hubbard said that they have issued these before. Ms. Fidler said they usually at least have someone draw it in there so you would know; the site plan comes with the setbacks identified and the proposed building is identified on it so we have that for our records. She advised that when the Board says that they will "condition" something it is so that the applicant has the proper information for the building permit. What happens is this ends up in our file so the condition should be that they are not going to get a building permit without a proper site plan and that the proper site plan needs to be added to our files. Mr. Hubbard said that was how he conditioned it, to the Building Department and to the Zoning Board of Appeals. Mr. Tremblay said that he has filed for a building permit and he is hoping to have that cleared to bring it here (ZBA) because it has setback information and the site plan. Ms. Fidler asked if he had a current site plan and Mr. Tremblay said that he gave the Building Department what he gave to the Zoning Board; he said that he would get an engineered plan. Mr. Hubbard said that it needs to be signed and stamped. Mr. B. Murphy said this will prove out that he is not going to build out in excess of the fifteen feet (15') to the left and front and thirty feet (30') to the rear. Anthony Riley, Esquire, speaking on behalf of Robert Galvin, Town Counsel, stated if that is the case then the applicant doesn't need the Special Permit because he is not altering any nonconforming structure. Mr. B. Murphy said the applicant was only here because the right side may be nonconforming; Mr. Hubbard said the right side is nonconforming. Mr. B. Murphy said that everything he is going to do will conform but he doesn't conform on the right. Mr. Riley said that it sounded like the garage would fit so he doesn't think that he needs the Special Permit to extend the nonconforming structure because he isn't extending the nonconformity. Mr. Hubbard said he is not extending the nonconformity but the structure itself is nonconforming. Mr. B. Murphy said that he is adding to that. Mr. Riley asked if he were attaching the garage to the house and Mr. Tremblay said that he was. Mr. Riley did not know that and thought it would be a separate garage. Mr. Tremblay asked if he would need a Special Permit if he didn't attach it; Mr. Hubbard said he couldn't do a 25'x25' garage. Mr. B. Murphy said he could go ten feet (10') off the lot line but he would lose five feet (5'); Mr. Tremblay understands. Ms. Conway asked if he was LT Investments and Mr. Tremblay said that he was. Mr. Hubbard asked if there were any questions from the Board or public and there were none. He made a motion to close the hearing which was seconded and all were in favor. Mr. Hubbard made a motion to grant the Special Permit with the condition that before a building permit can be issued the applicant submit to both the Building Commissioner and the Zoning Board of Appeals an engineered set of plans, signed and stamped by an Engineer or Land Surveyor, that show the existing and proposed setbacks. The motion was seconded and all were in favor.

#19-32: James Leahy: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 16'2" x 23'5" attached garage on the right side of the dwelling and a 9' x 15'2" addition at the rear of the dwelling on the property located at **169 Webster Street** which is further identified on the Assessors' Maps as being on parcel K05-02-02 and is located in an R-2 zoning district.

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Mr. Hubbard read Case #19-32 into the record and turned the hearing over to the applicant or his/her representative. Richard Servant of Stenbeck & Taylor represented the applicant, James Leahy, who was also in attendance. Mr. Servant said that Mr. Leahy wants to put a garage on the right side and a small addition in the rear of the single family home. The existing house is nonconforming because the front of the house is thirty-six feet (36') from the street line which is really the only reason they are here. They are stepping it back from the front of the house and will match the existing front setback; it meets the right setback with 15.1 feet. There will be a small bumpout in the rear for the bathroom; it will be on piers per the Board of Health. Ms. Fidler asked if it would be a standard garage and if there were plans; Mr. Servant gave them to Ms. Fidler and said that he had submitted them to the Building Department. Mr. Hubbard asked if there were any questions from the Board and Mr. B. Murphy asked Ms. Porreca how Mr. Folkard was with this; she replied that he was fine. Mr. Hubbard asked if there were questions from the public. Margaret Tamuleviz of 173 Webster Street said that she lives to the right of the applicant and was interested in seeing a stamped set of drawings to make sure he has the setbacks. She said she has young children and would suggest putting up a construction fence. She said it was awfully tight over there and asked what would be in the garage; Mr. Leahy replied, cars. Mr. Hubbard said that in the Board's file there is a stamped set of drawings. Mr. B. Murphy asked Ms. Tamuleviz if she wanted to see the architecturals and she replied, yes. Mr. B. Murphy said that Ms. Porreca has a copy right there and Ms. Porreca said that he has also submitted them to the Building Department. Ms. Tamuleviz said she was not aware of any of this until she got the notice and now she is sitting here. Ms. Tamuleviz asked for the stamped plan and Ms. Porreca provided it. Ms. Fidler said the Site Plan is stamped, she is asking for architecturals but Ms. Fidler said she isn't sure why those would need to be stamped for a garage. Ms. Fidler asked Ms. Tamuleviz what side her parcel was on and she replied; Ms. Conway said that was on the other side. Ms. Fidler said there was quite a bit of distance between the corner of the garage and her property boundary so she is not inclined to offer a construction fence. Mr. Servant said there is an existing fence there, it isn't so much on the lot line; they found monuments and they are comfortable with where the lot line is on the side. Mr. Servant agreed that it was tight. Mr. Hubbard asked if there were any questions or comments and there were none. He asked Ms. Tamuleviz to return the Site Plan because it was part of the official file. He made a motion to close the hearing which was seconded and all were in favor. He moved to grant the Special Permit which was also seconded and all were in favor.


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, 2022 meeting by a 5-0 vote.
Signed:  Date: 5/29/22