

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MARCH 14, 2023 6:30 P.M.
MEETING MINUTES**

Members Present:

*Brian Murphy, Chair
Larry Keane
Grover Hensley, Jr.
Mark Corwin
Brian Sullivan*

Also Present:

*Andrew Stewart, Building Commissioner
Atty. Robert Galvin, Town Counsel*

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Mr. Murphy called the meeting to order at 6:32 P.M. and read all disclaimers; he explained to the public that Zoom was provided as a courtesy and advised callers to use *6 to mute and unmute.

Roll call attendance was not necessary as the five (5) members attending the meeting were in attendance.

#23-16: Matthew J. and Lisa Quinn: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 16' x 30'8" rear deck that will be less than 48" on the property located at **216 Foster Avenue** which is further identified on the Assessors' Maps as being on parcel L10-24-06 and is located in an R-3 zoning district.

Mr. Murphy said that they would start with **Case #23-16** and he read it into the record and asked Dick Rockwood, who did the architectural work for the Petitioners, to explain the project. Mr. Rockwood said that they are nonconforming on the sides and they would like to extend the deck the width of the house; they have already been approved by Conservation. Mr. Stewart said that they did all of the steps in the Floodplain Permit. Mr. Murphy asked Mr. Rockwood if it would be an open deck or covered; Mr. Rockwood said it would be open. Mr. Murphy asked if the Board or public had any questions and there were none. He made a motion to close the hearing which was seconded by Mr. Sullivan; all were in favor. The Board agreed that the Petitioners met 1-10 of the Special Permit requirements. Mr. Murphy made a motion to grant the Special Permit with the conditions of a building permit and a Final As-Built; Mr. Sullivan seconded the motion and the Board voted 5-0 with Murphy, Keane, Hensley, Corwin and Sullivan voting in favor.

#23-17: Jay Dembro: The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 20' x 30' second floor addition and a 12' x 20' deck on the property located at **288 Old Main Street** which is further identified on the Assessors' Maps as being on parcel E18-03-03A and is located in an R-1 zoning district.

Mr. Murphy read **Case #23-17** into the record. Jay Dembro said that the setback on the sides are at four feet (4') and they are putting a second floor addition over the kitchen and a deck. Mr. Keane asked if he would be increasing the nonconformity and Mr. Dembro replied that he would not. Mr. Murphy said that he has two (2) acres and asked Mr. Stewart, the Board and the public

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if they had any questions; there were none. He made a motion to close the hearing which was seconded by Mr. Sullivan; all were in favor. The Board agreed that the Petitioners met 1-10 of the Special Permit requirements. Mr. Murphy made a motion to grant the Special Permit with the conditions of a building permit, Final As-Built, Certificate of Occupancy and Conservation approval. Mr. Sullivan seconded the motion and the Board voted 5-0 with Murphy, Keane, Hensley, Corwin and Sullivan voting in favor.

#23-18: John Richman: The Petitioner is seeking a Special Permit in accordance with §305-11.09 of the Marshfield Municipal Code to re-establish a previously approved Accessory Apartment within the existing dwelling on the property located at **165 Plain Street** which is further identified on the Assessors' Maps as being on parcel F08-02-12A and is located in an R-2 zoning district.

Mr. Murphy read **Case #23-18** into the record. John Richman of 165 Plain Street said that he wants to keep the existing Accessory Apartment; his mother is living there. Mr. Galvin said this is the third time that this address has asked for an Accessory Apartment and there have been two (2) previous approvals; new owners need to apply for the Apartment. Mr. Stewart asked Mr. Richman if he lived at the address and he said yes; he asked if it was Mr. Richman's primary residence and he said yes. Mr. Stewart asked if Mr. Richman was registered to vote in Marshfield and he said no, that he was registered in Middleboro; he thought that if it was the same county he didn't have to register.

Mr. Stewart said that it looked like there was a deck that had been built on to the old garage and ripped down; it's now a patio. He said he didn't see any permits and it may have been a previous owner; Mr. Richman said a previous owner. Mr. Stewart said that a building permit will be needed for any work that will be done; he also said that nobody should be living in the accessory building. Mr. Sullivan said this is for an Accessory Apartment and he thinks this is a complete application. Mr. Cusick from Zoom said that the Planning Board has an article at Town Meeting. Mr. Murphy made a motion to close the hearing which was seconded by Mr. Sullivan; all were in favor. The Board agreed that the Petitioner met the requirements found in §305-11.09. Mr. Murphy made a motion to grant the Special Permit with the standard conditions; Mr. Sullivan seconded the motion and the Board voted 5-0 with Murphy, Keane, Hensley, Corwin and Sullivan voting in favor.

#23-14: Town of Marshfield: The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-6.02, Table of Dimensional and Density Regulations, with regard to the side and rear setbacks and Site Plan approval in accordance with §305-12.02 to construct a 249 kWh AC photovoltaic system consisting of four (4) carports and 1,104 panels on the property located at **35 Proprietors Drive** which is further identified on the Assessors' Maps as being on parcel E09-01-17A/E09-01-128 and is located in the I-1 zoning district.

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Mr. Murphy read **Case #23-14** into the record. Michael Maresco, Town Administrator, said that the Town was seeking a Variance for relief from the side and rear setbacks at the dog park. He said the dog park was unique and it provides socialization for the dogs and their owners. The photovoltaic array will provide green energy; Mr. Maresco explained the logistics and said the carports and pavilion will provide shade. Mr. Keane thinks it is unique. He read a comment from a resident about noise and asked if there will be noise that will affect the dogs like a dog whistle. Mr. Maresco said he was not aware of that. Nathan Collins said he was the senior manager of engineering at NextGrid. He apologized for submitting plans late and said that they have a decibel level of 75 which is not much different than conversation or a vacuum cleaner. He said this is unique for a dog park; they have one over a horse paddock in Millis which have been in place since last summer. It will be similar for the dog park; the surface material will be mulch and the carports will be over the mulched area. Mr. Sullivan said he wasn't sure who to direct this question to but asked why a Variance was needed. Mr. Collins said this exceeds the twenty foot (20') setback; it's shifted toward the property owned by the Town to maintain the setbacks on the residential side. Mr. Sullivan said that didn't answer the question; he asked why they couldn't them to an area which wouldn't require a Variance. Mr. Collins apologized and said that he hadn't understood the question. He said there is a gap between the canopies so there will be an opening on each side to play catch. Mr. Sullivan said he didn't see a hardship; he doesn't think they come near the standards.

Fred Russell, Facility Director, said the Stanton Foundation gave the Town \$250,000 and specified that there be a cleared area to catch and play. Mr. Keane said the only way he sees this complying is if it is moved; Mr. Sullivan said it could be moved to an area where they wouldn't need the Variance. Mr. Keane said that someone said they need it for the roofline. Mr. Murphy said the Town owns both parcels and asked if this could be reconfigured so that it would comply. Mr. Russell said they put out a bid for landscaping, \$60,000 for shade trees; they were successful providing shade at the police station and saved \$30,000; they will save and generate. Mr. Sullivan said he wasn't against solar panels; he doesn't see that it has to encroach. Mr. Hensley said they just denied a Variance for someone doing a project at their house; this would be a slap in the face. Mr. Murphy made a motion to continue this to the March 28, 2023 meeting at 6:30 PM; the motion was seconded and all were in favor.

#23-15: Town of Marshfield: In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioner is seeking an Appeal of the Building Commissioner's determination that guardrails have been installed, the entrance for the Harbor Park parking area has been relocated and a new entrance created without obtaining Site Plan approval per §305-12.02 on the property located at **200 Joseph Driebeek Way** which is further identified on the Assessors' Maps as being on parcel M07-03-01 and is located in the Residential Waterfront (R-3) and Coastal Wetlands Districts.

#23-15A: Town of Marshfield: The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to install/replace guardrails and to move the current parking lot entrance to the middle of the lot to allow vehicles to enter and/or exit more safely on the property located at **200 Joseph Driebeek**

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Way which is further identified on the Assessors' Maps as being on parcel M07-03-01 and is located in the Residential Waterfront (R-3) and Coastal Wetlands Districts.

Mr. Murphy said they would hear both of these cases at the same time. Mr. Galvin said the Board should move to combine them but Mr. Murphy should read both Public Hearing Notices. Mr. Sullivan moved to combine the hearings; this was seconded by Mr. Murphy and Murphy, Keane, Hensley, Corwin and Sullivan were in favor.

Mr. Murphy said that the Board usually hears from Mr. Stewart first on an Appeal. Mr. Stewart said that he received a Request for Enforcement that an alteration had been made; he went there and saw that guardrails had been installed. He felt that it changed the safety of navigation there. He was told to address the violation to the Select Board. Mr. Murphy asked who the request was from and Mr. Stewart said Eric Murphy. Mr. Sullivan asked if he was an abutter; Mr. Stewart said he wasn't sure but that he is in the neighborhood. Mr. Maresco said this was standard maintenance; the guardrail was taken down and re-installed. He said the work was within the layout of the roadway. Mr. Murphy asked if the yellow area displayed was in the layout of the roadway. Mr. Stewart said it was hard to see; he has the 2014 proposed plans and can see where the guardrail lines up; he displayed the plan that was approved by Conservation which shows sixty feet (60') of roadway. Mr. Murphy asked if the guardrail location was the blue line and Mr. Stewart said thereabouts. Mr. Murphy asked if work done in the Right of Way was the purview of the Zoning Board. Mr. Stewart said he felt the work changed pedestrian and vehicular safety and felt the Zoning Board should decide. Mr. Galvin said that he feels it is maintenance if in the Right of Way but outside of that would need Site Plan approval. Mr. Sullivan asked if it would have been a violation if it had only been the guardrail. Mr. Stewart said no but it changed the entrance; he is being consistent with the guidelines.

Mr. Murphy said the government body for street openings is the Department of Public Works (DPW); Mr. Stewart said yes for curb cuts, driveways, openings and the Zoning Board for other things. Mr. Galvin said a Special Permit is required from the Zoning Board for a curb cut; all other uses are through the DPW. Mr. Galvin said it was his understanding that there were multiple places to enter and aid it would be helpful to get input from the DPW staff; they have talked about replacing this since July. Tom Reynolds, DPW Superintendent, said they moved the guardrail to make the crosswalk safer; there is a better line of sight centering it; this was for safety as well as maintenance. Mr. Keane said he went down there; he has a small SUV and there was a big bump to get in. Mr. Stewart said they haven't done any work since the issue came up; he is sure they would have fixed that. Mr. Keane said that it makes sense for a safety issue; his concern is people using the crosswalk because there really isn't a sidewalk. Mr. Maresco said the sidewalk is on the park side. Mr. Hensley asked if there had been a plan to grade that. Mr. Reynolds said there was a temporary ramp where the opening was relocated. He said they are in conference with the DEP on how to use the site in the future; they have permission to cap the site. Mr. Keane said they weren't doing this in anticipation of that; it was just for safety. Mr. Reynolds said it was for safety. He said the whole area is mulch and he has talked to the DEP about putting down gravel.

Mr. Murphy said it was minimal to him; the area is within their jurisdiction and there was a compelling reason per Mr. Reynolds for safety but he understands Mr. Stewart's action; he

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doesn't think Mr. Stewart had all of the information. Mr. Stewart said if they overturn his determination then the rest is moot. Mr. Keane thought Mr. Stewart was correct. Mr. Maresco said when Mr. Stewart came to him and said he thought there was a violation he told him to do what he had to do. Mr. Keane said he appreciated that.

Steve Lynch of Central Street said the first thing is the southern crosswalk is dangerous and should be shut down; he isn't sure why the other crosswalk is there. Mr. Lynch said he isn't sure why everyone is calling it a parking lot and asked where the permit was; it's a dredge spoils area; it's illegal to keep calling it a parking lot; it shouldn't be used for Lobster Fest or other things. Pam Keith said she hoped the Board got her letter and said it's in an unlawful parking area; the closing statement insinuates wrongdoing. She said putting the guardrail up is confusing because the Board isn't talking about fill. She said Mr. Reynolds said mulch but didn't talk about the 30 yards of fill; she doesn't think the Board is going to discuss fill tonight. Mr. Murphy said they will discuss the 40' x 40' area. Ms. Keith asked if that was all of the fill and what if they needed a little more. Ms. Keith said she has this plan and the 2 acre plan. She said if they are going to approve the Site Plan tonight then this is the plan that is going to be done and nobody pulls a switcheroo.

Mr. Keane started to say for the area going into the parking lot and Mr. Lynch said it wasn't a parking lot. Mr. Sullivan said they are dealing with the area within the yellow lines. Ms. Keith said she wouldn't be surprised if there was a little more to this. She said even if it's six inches (6") it's still filling the Coastal Wetlands; it needs a Special Permit because it's illegal and not allowed by right. She said it's an illegal use and the guardrail shouldn't have been moved. Mr. Murphy said the guardrail was not under Zoning because it's in the roadway. Ms. Keith said the other half of the equation is illegal. Mr. Murphy said say it is 40 feet and they pushed everything back over the yellow line then we don't have a problem. Ms. Keith said the road was built with a Variance. Mr. Murphy said it was a 60 foot Right of Way. Ms. Keith said that the Town has had 50 years to change this and it should be enforced literally. She said filling was not discussed at the Conservation meeting; she said Mr. Galvin and Mr. Stewart said they can't do any work if they obey the Coastal Wetlands.

Mr. Stewart said there were a couple of people waiting on line. He said he didn't phrase it like that, he asked it as a question. David Carrier of Outlook Road said he is the Chair of the Board of Public Works (BPW) and it isn't unusual to do road work; he said Mr. Reynolds was exercising his authority. He asked if there was a consultation with the traffic safety officer before Mr. Stewart took action; Mr. Stewart and Mr. Reynolds said no. Mr. Reynolds said he had a conversation with Mr. Feyler in the spring but no consultation. Mr. Murphy asked Mr. Reynolds if they could move a percentage of the grade and stay within the Right of Way; Mr. Reynolds said they could go wide and not deeper but may encroach in DSA.

Nanette Parziale, (did not hear street address) had a question about the guardrail and asked how someone in a wheelchair or stroller access the crosswalk. Mr. Reynolds said both are now open. Mary Murphy (did not hear street address) said that with respect to maintenance she feels that the residents brought it forward; it might have been on the DPW list but with residents asking it became more of a priority. She said she just walked there and wanted to figure out how deep the divot going down is and then up. She said she was crossing at the other crosswalk and said

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people were zinging by and she couldn't see. Ms. Murphy said they might want to have a safety officer look at it. She said she had been in touch with the DPW and they changed their opinion but didn't give a reason. She does like that people are talking about capping it. She asked why residents of Brant Rock aren't included in these talks; she said she tried to get minutes of the meeting with Mr. Maresco and the DEP.

John Cusick of Waterman Avenue said he wanted to clarify some things mentioned by Mr. Reynolds. He said as a Board member, he has no information on the capping of this lot. He also wanted to point out that the drawing provided by Rod Procaccino is not done to scale; any work done there should be surveyed. He said the first Monday after this he talked to Jimmy Kent. He said he was told that Patrick Brennan mapped this out and he was directed by Pat Brennan and Mike Demeo on where to put it. Mr. Cusick said the Board never discussed a new opening on Dreibeek Way; we did talk about a \$91,000 contract that had nothing to do with this. He said that an engineer and Demeo hijacked a BPW contract. It was only to replace guardrails, not an opening; he doesn't know why we are allowing Pat Brennan and Demeo to come over and make marks and close this up. He is asking the Board to deny the Appeal; he said it's illegal because it was directed by Brennan. Mr. Cusick said that, respectfully, the Board can deny Site Plan approval. He said the BPW had nothing to do with this. They are doing the work and begging forgiveness.

Eric Murphy said as the applicant (?) he thinks he should have a say. He said he came to this Board a year ago with a plan. Mr. Murphy asked Eric Murphy if Mr. Demeo changed the guardrail. Mr. Eric Murphy said that Mr. Demeo came to the Board and they all showed up; he said it was continued and then Demeo didn't show up. Now he sees Demeo's truck and Jimmy Kent being directed on where to put it. He said there were granite bluestone blocks and when he came back there was a pile of dirt there. He said that even the Conservation plan didn't say to move dirt. Mr. Brian Murphy said that the work in the roadway is not with the Zoning Board. Mr. Eric Murphy said that the plan wasn't to scale; Mr. Brian Murphy said there was another certified plan. Mr. Eric Murphy said they pulled the plans for the ZBA just because they changed the name from Demeo to Maresco.

Mr. Brian Murphy asked him if he heard that the guardrail is in the roadway; Mr. Stewart showed a plan to scale (beige in color) which shows the guardrail laid out and he asked Mr. Stewart to point out the Right of Way. Mr. Eric Murphy said no curb cut and Mr. Brian Murphy said the DPW would do the curb cuts. Mr. Eric Murphy said they pulled the last plan because it wasn't going to get approved. Mr. Brian Murphy said if it stays in the roadway it's someone else's problem, not the ZBA's. Mr. Sullivan said this wasn't the ZBA's jurisdiction; outside the yellow lines is their jurisdiction; inside is not their jurisdiction. He said Mr. Demeo, Mr. Maresco and plans for 2010 and 2021 are not before the Board tonight.

Mr. Reynolds said he wanted to correct a previous speaker. He said they received money in July and that's when they decided to replace the guardrail; they told the BPW what they planned and it was discussed in 3 different meetings and his Superintendent Report. He said it was delayed until February and nobody besides Mr. Reynolds gives Mr. Kent orders. Mr. Carrier said he operates this way – he doesn't ask for information from staff unless he goes through the Superintendent; the Superintendent runs the department.

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Pam Pristas of Central Street said she was concerned about things going on in her area. She said they just changed the guardrails because of safety and asked what it was based on. She said Demeo said they need more parking but they could line people up and use the spots correctly. She said they don't have trust because so many things go down and they don't know. Mr. Murphy said he understood and this is what was in front of the Board. Ms. Pristas said they moved it for safety but there was no safety officer involved. Joseph Pecevich of Wilson Road asked if the violation notice was put on the screen. He asked if there was any talk about filling and said they aren't just talking about guardrails, they are talking about relocation. Mr. Pecevich said if that was done on Plain Street or Ocean Street you would need a Site Plan. Mr. Murphy said it was in the roadway. Mr. Pecevich said the roadway required a permit. He said the lot across from McDonald's, Roderick, had an issue with curb cuts. Mr. Murphy said there was no curb cut there or here, it would be DPW. Mr. Pecevich said DPW was required in addition to other approvals and they were looking for a way to wiggle out of using fill by saying they can slope it down. He said Mr. Stewart's violation notice is correct because they know it's going to require a lot more fill. Excavating and fill in a Coastal zone are not allowed. He said it is obvious more grading will be allowed. He asked what they would do if people came for site plan but there wasn't access. Mr. Murphy said it could fall under a building permit if needed and the DPW; if they needed Site Plan approval it would be the ZBA. Mr. Murphy said if they stay within the yellow lines, it's not ZBA.

Mr. Pecevich said the DEP, DPW and Conservation can't say it's okay to cap something. He said you have to obey the Zoning laws; the ramp is an illegal operation. He said Mr. Stewart covered his bases and the resulting violation should be enforced. Mr. Murphy said that was Mr. Pecevich's interpretation. Ms. Keith said Mr. Galvin often gives wrong advice or leaves things out. She said if it's in the roadway they should keep going with that; the road got a Variance and Special Permit and now doesn't need a permit. She said she doesn't necessarily buy the roadway thing.

Anastasia Powers, Elm Street, said that the plan shows going in 40 feet and asked if the other line was where it said 30 feet. Mr. Murphy said he assumes it's 30 feet and said the guardrails are where the blue line is and those spaces are 20 feet deep. Mr. Murphy said it's in the roadway and a percentage of grade has to be met; he said the only plan they have is the 40 feet. Ms. Powers said they should come back with a detailed plan. Mr. Keane asked Mr. Reynolds if during the discussions they mentioned relocating the entrance when waiting to move the guardrails; Mr. Reynolds said yes. Someone said the Planning Board has applied for the blinking lights at the crosswalk but didn't get the grant.

Diane Jordan started to speak and Mr. Murphy asked her if she would be staying within the scope. Ms. Jordan said the Planning Board said they should uphold Mr. Stewart's decision. Mr. Murphy asked Ms. Jordan if she had read the second case notice and she said she had not. She asked if they were recommending upholding the violation and he is speaking in support of that. She said she wanted to bring attention to the Harbormaster project; he skirts Bylaws and gets away with it. Mr. Murphy said this isn't the Harbormaster project. Ms. Jordan said it was a 2929 posting and Mr. Murphy said this was for work in a roadway. Ms. Jordan said the pictures show it way off the road. Mr. Murphy asked her if she was referring to the edge of the asphalt on the road; Ms. Jordan said she was talking about all the fill put in and spread out. Mr. Sullivan

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said that was all in the roadway except for 20 feet. Mr. Murphy said it didn't look like any of it is in there per her pictures. He asked if she was saying this was more than 20 feet. Ms. Jordan said yes, of course, it's the DSA; Mr. Murphy said they didn't know that. Ms. Jordan said they should get a permit first and Mr. Murphy asked if the BPW should go to the BPW for a permit. Ms. Jordan said something about the Conservation plan 2929 dated June 1, 2021. She said the Harbormaster got the whole thing approved by Conservation and the whole layout was in the plan. Mr. Reynolds said they have replaced a lot of guardrails in town and they don't pull permits.

Ms. Jordan said to let her say what she has to say; Mr. Murphy said he wanted her to stay on point. Ms. Jordan said a 2929 permit for opening that is a match to this one; it's a permit posted for work. She said they should have a permit from the DPW. Mr. Murphy said she was talking about Conservation and they have no say and they have no say with the DPW. Ms. Jordan asked if a resident put in a new driveway and doesn't get a permit, can they take a permit from another job? Mr. Murphy asked if a resident would need a permit if they were moving their driveway; Mr. Stewart said no. Ms. Jordan said if a resident and a business change something on their property that requires them to get ZBA, Conservation, DPW, and Board of Health permission, is it illegal for them to post a permit not for that work? Mr. Murphy said if a Special Permit triggers a road opening they would address it.

Ms. Jordan said she would ask this simply and maybe she would get a simple answer. Can residents do anything they want on their property without a permit? Mr. Murphy said if it was nonconforming they would have to come to ZBA; if conforming they would go to the Building Department. Ms. Jordan asked if they wanted to get a permit but posted another permit. Mr. Murphy said that was Conservation; Mr. Sullivan asked how that affected Joseph Driebeek. Ms. Jordan said what you're saying...Mr. Murphy asked her not to put words in their mouths. He said 10' x 40' was their jurisdiction; that's what they anticipate the work to be. The question tonight is Site Plan approval needed. Mr. Murphy said they could uphold part of what Mr. Stewart said. Mr. Keane said he would like to get it absolute; he doesn't want to have to spend \$96,000 again. Mr. Lynch said No Parking signs should be put up and said that Mr. Reynolds said he moved the entrance to an illegal parking lot and they should leave the site untouched.

Mr. Reynolds said as far as the DPW was concerned, it's DSA. Ms. Jordan said if it wasn't a parking lot why move the entrance for safety; there is a Harbor Park parking sign there. Mr. Murphy said they want to work on their part of the problem and they need to get to the right department. Ms. Jordan said her rear is that if they don't support the violation it would trigger approval for the whole project. She asked the Board to go on record and say that. Mr. Murphy said they can only go with what is in front of them; it's not the guardrail because that's in the roadway and the work is located in the Right of Way. Mr. Lynch said it was built with a Variance so it is the Board's purview. Mr. Murphy said it was a matter of jurisdiction. He said the DPW would have had to send a violation to themselves. Ms. Jordan said she was pushing for the Board to go on record. Mr. Murphy again said that this is in front of them. Ms. Jordan said then she would go on record and say that the ZBA won't.

Marlene Labossiere, Central Street, asked if the Board was saying they don't have jurisdiction over this. She asked why there wasn't a drawing to scale and asked if the next item up was

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Demeo's. Mr. Murphy said they have jurisdiction in the DSA when it comes over the yellow line. Ms. Labossiere said she didn't like that talk. Mr. Murphy said when they are on the other side they are in the roadway. Ms. Labossiere said it was Demeo and Ms. Porreca advised Mr. Demeo wasn't on the Agenda. Mr. Peceovich said if they are going to grant Site Plan approval they should deal with the Appeal. He said they wouldn't be asking for Site Plan approval on the same night; the violation brought up some concerns.

Ms. Porreca said they would need two decisions. Mr. Lynch said if they are giving them Site Plan approval they should condition it. Mr. Carrier said what they are voting on here is labelled a parking lot but it is DSA; any talk about a parking lot will be another meeting. Ms. Keith said they can't fill in the Coastal Wetlands; they can't fill to make an opening which shouldn't have been done because it's not a parking lot. She said the 2 scale plan looks different. Mr. Murphy said they will review that during discussion. Ms. Jordan said if it wasn't a legal parking lot then what is the purpose of changing the opening. If it is only supposed to be for the DPW why does it matter where the opening is compared to the crosswalk?

Mr. Murphy said the guardrail is in the roadway. Mr. Sullivan said Ms. Jordan is saying that the DPW can't say that it's not safe; but they can; he said that she may not like that it's for safety. Mr. Sullivan said the work they did was outside the ZBA's jurisdiction. He understands that Ms. Jordan disagrees with the DPW's call; they did what they did within their jurisdiction. Ms. Jordan said "he" said it was for public safety but said it was for the DPW. Mr. Murphy said if the DPW said something wrong then go to the DPW. Mr. Cusick said he has had his hand up for 15 minutes; Mr. Sullivan asked if he was going to speak as a resident or as BPW. Mr. Cusick said this was never discussed at a meeting; this is all Brennan and Demeo. He said he is on Zoom so he doesn't know who is talking except for Mr. Murphy; he said they should have a Site Plan from a surveyor. Mr. Cusick said he has never missed a meeting and he has never heard a word about this; he said they talked about a contract. He said that Mr. Kent said he was directed by Brennan and Demeo. Mr. Murphy said they don't know if it represents what is on the ground or what is anticipated. Mr. Cusick said they should table the meeting and get a surveyor; he said they won't get away with 40' x 49' and said Mr. Murphy has been down there. He said they kept going back and forth with the audience and he had his hand up for 10 minutes; he will never Zoom again, he'll come down to the meeting. He said that Mr. Reynolds said this was discussed so show him the minutes.

Anastasia Powers of Elm Street said #23-15A is for moving the guardrail so they can't vote on it; it says nothing about fill. Ms. Jordan said maybe she is an idiot but if it's not your jurisdiction why are they asking for Site Plan approval? She said they can write what they want and they will address it. Mr. Murphy said some people apply for both; if they upheld Mr. Stewart's decision then they would need Site Plan approval. Mr. Murphy said the guardrails would be in the Board's jurisdiction if they needed a Special Permit. Mr. Stewart said the request for Site Plan approval is there if they uphold the Appeal; if they overturn the Appeal then Site Plan is moot.

Mr. Murphy made a motion to close Case #23-15 and Case #23-15A which was seconded by Mr. Sullivan and all were in favor. Mr. Murphy asked Mr. Galvin if they could approve this based on if there was work in the DSA; he asked if they could determine if it was *de minimus*. Mr. Galvin said he sat here for an hour and a half listening to people talk about nothing that was in

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front of them. He said historically this is a DSA area and people have been parking there for as long as he can remember. He heard what Ms. Keith said; she is not a lawyer. He respects her and will tell her when she is right. He said the Board is here for that small area and it's up to them to waive it. Clearly the DPW has authority to do work in the roadway. Mr. Galvin said he wanted to correct another incorrect statement that was cherry-picked from his 17 page memo; if "the Bylaw is read literally, you could not resurface any roadway, install new utilities or engage in any activities, including digging up a site to repair or replace anything." Mr. Galvin said they can't conflate Zoning with Conservation. He said they can agree in part and disagree in part with Mr. Stewart; Mr. Stewart is likely correct for the work outside the roadway. Mr. Galvin said the narrow question before them is that small area and said the Board has waived the formality of a plan in the past. Mr. Murphy said they could agree with Mr. Stewart on the Appeal; Mr. Galvin said they should be specific so there is clarity going forward. Mr. Murphy said they could agree on work done in the roadway and disagree with the work done outside the roadway. Mr. Keane said he wants to know what they are dealing with – 10' x 40' or 40' x 40'. Mr. Murphy asked him if he thought he could decide tonight to waive or approve Site Plan. Mr. Keane said if they pushed it back it would be a pretty steep grade. Ms. Jordan started to speak but Mr. Murphy advised that the hearing was closed. Mr. Murphy asked Mr. Keane if he was saying he wanted a plan. Mr. Sullivan asked Mr. Keane in his best estimate what the drop off was; Mr. Murphy asked if it was 3 feet; Mr. Keane said it was a steep drop. Mr. Stewart said it was a 2 foot contour gradient. Mr. Murphy said the 40' x 10' is what they need and they may need to go into the DSA. Mr. Sullivan said that a surveyor will have to go out there at some point for an As-Built; he said the Board could say they can go X feet into the DSA. Mr. Keane said it shouldn't be anything imported; they should use fill already on site. Mr. Murphy said if they go 10 feet into the DSA they are considering it minor; Mr. Hensley said they could set a limit. Mr. Murphy asked Mr. Galvin if they could waive approval if they thought it was *de minimus*; Mr. Galvin said it would be up to the Board to determine if it is minor. Mr. Corwin said he thinks they need Site Plan approval. Mr. Galvin said that in the past people have provided something after it has been built; Mr. Murphy said they could do an As-Built; Mr. Galvin said that was within the scope of the Board's authority. Mr. Keane said it was up to the DPW to be on their toes if it's going to be more than the Board approves.

For the Appeal, Mr. Murphy made a motion to adopt Mr. Galvin's verbiage and affirm in part and overturn in part Mr. Stewart's decision. The motion was seconded by Mr. Sullivan and Murphy, Keane, Hensley, Corwin and Sullivan were in favor.

Mr. Galvin said the Board could require Site Plan approval or waive Site Plan approval. He said the Board has stated that the plans were not to scale and they can say what they construe to be minimal. Mr. Sullivan made a motion that the applicant meets the requirements for Site Plan approval as much as the work inside an area no greater than 40' x 10' as presented on the plan and that they use existing on site material. Mr. Murphy seconded the motion and Murphy, Keane, Hensley, Corwin and Sullivan were in favor.

Mr. Murphy made a motion to adjourn; this was seconded by Mr. Keane and all were in favor.

Meeting adjourned at 9:01 PM.

**ZONING BOARD OF APPEALS MEETING PLACE: LIVE AND ZOOM MEETING,
MARSHFIELD TOWN HALL MARCH 14, 2023 6:30 P.M.
MEETING MINUTES**

Respectfully submitted,

Nanci M. Porreca

Nanci M. Porreca
Zoning Administrator

These minutes were approved by the Board on April 11, 2023 by a
5-0 vote.

Signed:  Date: 04/11/2023