

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,  
MARSHFIELD TOWN HALL MAY 8, 2018 7:00 P.M.  
MEETING MINUTES**

*Members Present:*

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

*Also Present:*

*Jeffrey Chandler, Building Commissioner  
Robert Galvin, Town Counsel*

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Ms. Fidler called the meeting to order and advised that the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were being recorded. Ms. Fidler stated that she would be the Hearing Officer and that other members were signified by their nameplates.

**Executive Session:** M.G.L. c.30A, §21(a)(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the Chair so declares.

Ms. Fidler introduced the new Building Commissioner, Jeffrey Chandler who explained that he was a local inspector in Chatham and became Commissioner when the Plymouth Commissioner left; he then returned as a local inspector. He was also the zoning agent and local inspector in Plymouth. At 7:05 P.M. Ms. Fidler made a motion for the Board to go into Executive Session which was seconded. Ms. Fidler asked who was in favor of Executive Session and the roll call vote was as follows: Fidler-yes; Hubbard-yes; Conway-yes; B. Murphy-yes; R. Murphy-yes; Stiles-yes; Feeney-yes). Ms. Fidler advised the Board would return to Open Session at 7:30 P.M.

**#18-28: Frederick Isleib:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 and §305-9.02 of the Marshfield Municipal Code to raise the roof over the single car attached garage and construct a 24' x 24' addition on the property located at **175 Foster Avenue**, which is further identified on the Assessors' Maps as being on parcel L09-21-09 and is located in an R-3 zoning district.

Ms. Fidler read case #18-28 into the record and asked the Petitioner to explain his project. Mr. Frederick Isleib pointed out the main structure and the driveway that goes behind the house. He stated that there was attic space above the garage and he wanted to raise the roof on the garage; the ridgeline on the roof is approximately eight feet (8') higher. Mr. Isleib explained his plans. Ms. Fidler asked the Board if there were any questions. Mr. Galvin asked if there was a deck and Mr. Isleib said that it wasn't really a deck, it was more like a patio with a slider for access to the house. Ms. Fidler asked if the 6.4 foot bump-out and deck would remain and Mr. Isleib replied, yes. Ms. Fidler asked if the garage would remain in the back of the house and if there was enough parking; Mr. Isleib replied, yes and said that parking would not be an issue. Ms. Fidler asked the Board and the audience if there were any additional questions and there were none. Ms. Fidler made a motion to close the hearing which was seconded; all were in favor. Ms.

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Fidler said that Richard Murphy, an Associate Member, would be the fifth (5<sup>th</sup>) vote for this hearing. She said that the Board could deliberate and vote now or wait until the end of the meeting and the Board advised that they would prefer to vote now. Ms. Fidler made a motion to approve the Special Permit which was seconded; all were in favor.

**#18-29: Keith and Susan Fischer:** The Petitioners are seeking a Special Permit in accordance with §305-11.09 of the Marshfield Municipal Code to create a Residential Accessory Apartment within the existing structure on the property located at **44 Whites Ferry Landing**, which is further identified on the Assessors' Maps as being on parcel I16-12-30 and is located in an R-3 zoning district.

Ms. Fidler read the petition into the record and stated that she would be the Hearing Officer. She also stated that R. Murphy would be the fifth (5<sup>th</sup>) vote on this hearing. Ms. Fidler asked the Petitioners to explain their plans. Mrs. Susan Fischer said that they have a two (2) car garage with a master bedroom and master bath upstairs; they are asking to put in a kitchen. Mr. Keith Fischer said that they would not be adding another bathroom. Mrs. Fischer said that there would not be any additional people or cars. She said that the garage doors would become windows. Ms. Fidler asked if they were non-confirming and Mr. R. Murphy said that they were conforming. Mr. Fischer said that they have a deck and Mrs. Fischer said that it existed when they purchased the house. Ms. Fidler asked the Board if they had questions. Mrs. Fischer said that the only thing changing would be the windows on the garage doors and they will put a door in. Mrs. Fischer went through the plans and pointed out where the kitchen would go. Mr. Hubbard asked if there would be a new front door and Mrs. Fischer replied, no. He asked what the square footage of the house was and the square footage of the proposed apartment. Mrs. Fischer said that the house is roughly 4500 square feet. Mr. Hubbard said that it looks like the apartment will be 968 square feet; the reason he is asking is because one of the requirements is that the apartment needs to be 40% or less. He also advised that the Petitioners will need to submit plans to the Building Inspector identifying the apartment space. Mrs. Fischer said that the builder has done that and they will add it to the plans. Mr. Hubbard asked if there was access to the main house and Mrs. Fischer replied, yes. Ms. Fidler asked if there were any other questions and Mr. Stiles asked when the house was built. Mrs. Fischer replied that it was built in 2008. Ms. Fidler asked if Mr. Chandler had any questions and he did not. She asked if the public had any questions.

Bob Connolly, 12 Whites Ferry Landing, said that they have a Homeowners Association and all of them are opposed to this. He said that they bought their homes there knowing that it would be a nice little subdivision and this is converting it to an apartment. He asked what would happen down the road, does it become a rental? Ms. Fidler said that there are rules and regulations that accessory apartments have to meet. Mr. Hubbard said that there is certain criteria – it needs to look like a single family home; it needs to have inside access; it has to be less than 40% of the square footage; if the house is sold, the apartment ceases; it is not transferred to the new owner, the new owner would need to come before the Board for a Special Permit; it can never be used as rented space; it can never be used as a two (2) family house. Mr. Connolly asked who enforces



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this and Mr. Hubbard replied that it is the Zoning Enforcement Officer/Building Commissioner and ultimately the Zoning Board of Appeals. Mr. Hubbard said that it had to be a relative, that it could not be rented out. Ms. Fidler referred to §305-11.09 of the Marshfield Municipal Code. Mr. Connolly said that the rest of the Homeowners Association was opposed.

Mrs. Fischer said that when they purchased the home they were given an affidavit that said there was no Homeowners Association and they have never been asked to join one. Ms. Fidler said that this was not in the Board's jurisdiction. Mr. Connolly said that it was recorded; Mr. Hubbard said that it did not matter if it was recorded or not. Mr. Stiles said that he assumed accessory apartments were not addressed by the Association. Mr. Connolly said that it was not; he said the home was in the developer's name until February when the Town signed off on the subdivision. He said there is a Homeowners Association; when they developed the subdivision it was recorded and nothing has gone forward. He said that each of them received a copy when they purchased their homes. Mike MacDonald of 11 Whites Ferry Landing asked how many cars and stated that with the garage not being used would the cars now be in the driveway or the street. Mrs. Fischer said there would be three (3) cars and they will be in the driveway; she sent the Board pictures of the driveway and those were displayed on screen. Mr. MacDonald said that street parking was tricky and Mrs. Fischer agreed. Ms. Fidler asked if anyone had any other questions and Paul Ripley of 21 Whites Ferry Landing said that he had a couple of comments. He is concerned about setting precedent in the neighborhood. The way that the neighborhood was developed, there is a similar look to all of the houses with garages. This house won't have garage doors; the side door to the garage has a landing and steps and there had been a parking space there. He thought they had to provide enough parking and they are losing a space. He said that his other comment is that they had a permit issued for a 10'x16' shed and he feels this should fall under the Zoning department. Ms. Fidler said the Board would not be endorsing the shed and Mr. Ripley said that it does fall under Zoning. Ms. Fidler said that was a separate issue. She said that it looked like there was enough space for four (4) spaces. She asked if there were any other questions from the Board or the audience and there were none. Ms. Fidler made a motion to close #18-29 which was seconded and all were in favor. She stated that perhaps the Board would vote on this at the end of the evening; she stated the audience should feel free to stay but she was not guaranteeing the Board would vote.

**#18-30: Thomas Gillis:** The Petitioner is seeking a Special Permit in accordance with §305-10.10 and §305-10.12 of the Marshfield Municipal Code to replace the existing damaged deck with a 24' x 18' deck that will be constructed within the existing deck footprint on the property located at **166 Foster Avenue**, which is further identified on the Assessors' Maps as being on parcel L10-25-01 and is located in an R-3 zoning district.

Ms. Fidler read #18-30 into the record, advised that she would be the Hearing Officer and said that Mr. R. Murphy had voted on the last two (2) hearings and she would like to ask Mark Stiles to vote on the next hearing. Mr. Stiles asked if it made sense that Mr. R. Murphy would slide up. Mr. Galvin said that the Board of Selectmen appoints the regular and associate members. Mr. Stiles asked why it didn't default to Mr. R. Murphy tonight. Thomas Gillis stated that his deck was damaged by a storm. The deck is less than four feet (4') off the ground; it is setback from



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the seawall three feet (3') on one and three and a half feet (3.5') on the other end. He said that the setbacks were within fifty percent (50%) of the requirements. Ms. Fidler asked if there were any questions and Mr. Hubbard asked Mr. Gillis if the new seawall helped him. Mr. Gillis said that he would have had a lot of damage; the seawall helped. Mr. Galvin asked when the deck was damaged and Mr. Gillis replied, 2015. He said that he had two (2) prior permits that were put on hold because of the new seawall construction. He said the construction was completed in September of 2017 but when they took the wall down, all the sand came down. Mr. Chandler asked about the existing deck and said that they were looking to have 24'x18' approved but it was actually 17.7'. Mr. Gillis said that he rounded up; Ms. Fidler said that they could condition the Decision to have the correct dimensions of 17.7'. Ms. Fidler asked if there were any questions from the Board or the public and there were none. Ms. Fidler made a motion to close the hearing which was seconded; all were in favor. Ms. Fidler made a motion to grant the Special Permit which was seconded; all were in favor.

**#18-31: Christopher LaForest:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 24' x 24' one (1) story addition with a two (2) car garage underneath on the property located at **31 Prince Circle**, which is further identified on the Assessors' Maps as being on parcel J02-02-06 and is located in an R-2 zoning district.

Ms. Fidler read petition #18-31 into the record and stated that she would be the Hearing Officer and Mr. Richard Murphy would be the fifth (5<sup>th</sup>) vote. Dick Rockwood and Christopher LaForest were in attendance. Mr. Rockwood said that there is an existing ramp and you drive down the driveway to the garage. He said that the reason they are at the meeting is that on the Site Plan, the front is not forty feet (40') from the street; it's thirty-eight feet (38') and that there are plenty of setbacks all around. Mr. Rockwood said the house is a two (2) story because of the walkout in the back. Ms. Fidler asked if there were any questions from the Board or the public and there were none. Ms. Fidler made a motion to close the hearing which was seconded and all were in favor. She made a motion to grant the Special Permit which was also seconded; all were in favor.

**#18-32: Webster Point Village:** The Petitioner is seeking a substantial Modification of that Comprehensive Permit pursuant to G.L. c. 40B issued by the Marshfield Zoning Board of Appeals on August 6, 2015 to Webster Point Village, LLC regarding the development known as "Webster Point Village", such that the requirement to record a Conservation Restriction pursuant to G.L. c. 184, s.31 as found in said Decision, including but not limited to, Condition No. 8 on page 3 – Compliance With State and Federal Requirements, and Condition No. 2 on page 6 – Conditions Precedent to Commencement of Project, be removed and substituted in its stead is a requirement to record a Restrictive Covenant pursuant to G.L. c. 184, s.23, or such other relief and findings as may be necessary or required for said substitution. The project is located off Careswell St., Marshfield, and partially in Duxbury (Duxbury Assessor's Map 170-002-003), is shown on the Town of Marshfield Assessor's Map J2-05-Lot 1A and has a total

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area of approximately 44.71 acres and the Marshfield portion of the project is located in R-2 zone.

Ms. Fidler read #18-32 into the record and stated that Attorney Shelmerdine had reached out to the Board and requested to postpone the hearing until June 12, 2018 at 7:00 P.M. (time and date certain). Ms. Fidler's motion to continue the hearing was seconded and all were in favor.

Ms. Fidler made a motion to change future meeting times to 7:00 P.M. which was seconded and all were in favor.

Ms. Fidler stated that she would like to go back to case #18-29 (Fischer) and asked if there were any comments from the Board before they voted. Mr. Hubbard said that they have met every criteria but have not shown the apartment is 40% or less and he said that should be a Condition. Mr. R. Murphy agreed as long as the square footage is met. Ms. Fidler made a motion to grant the Special Permit with a condition that 40% or less be calculated on the plan. The motion was seconded and all were in favor.

**#18-17: Francis and Rachel Sturgis:** The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 18' x 12' addition to the front of the existing single family dwelling on the property located at **246 Canal Street**, which is further identified on the Assessors' Maps as being on parcel M04-03-12 and is located in an R-3 zoning district.

Ms. Fidler stated that case #18-17 was continued to May 29<sup>th</sup>. Mr. Hubbard asked if the Board would be discussing it tonight and Ms. Fidler replied that they would not.

**#18-33: 1871 Ocean Street Realty Trust/Daniel and Jessica Hassett, Trustees:** The Petitioners are seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to change the use of one (1) of the units from barber shop to restaurant, which is an allowed use, with 29 indoor seats and 20 outdoor communal type seasonal seats; the Petitioners are also seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to improve access to the premises for people with disabilities by adding an accessible ramp, improving the doorways and the interior layout on the property located at **1871 Ocean Street**, which is further identified on the Assessors' Maps as being on parcel H07-05-06 and is located in an B-1 zoning district.

Ms. Fidler read case #18-33 into the record. Attorney Steven Guard was in attendance with the applicant, Daniel Hassett, and Mr. Hassett's brother Jeff from Morse Engineering. Mr. Guard said that they are proposing to use the property as a taco restaurant with picnic tables out back. He said this was a change of use which is why he filed a Site Plan; he said that it is also mixed use which is why he filed for a Special Permit. He said that the Bylaw allows two (2) principal uses in a mixed use area. Mr. Guard said that one (1) component of the Special Permit was the handicapped ramp that Mr. Hassett is proposing to construct but the front piece of the ramp will be on Town parking lot property. Mr. Hassett has asked the Board of Selectmen (BOS) for a license to do that because there is no other way to do the ramp and get the slopes without their approval. Mr. Guard said that from the Site Plan, it looks like certain things are encroaching. He



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said that the ramp has been before the BOS but they have not addressed it yet; he said this could be a Condition. Their underlying request is that the Board grant Site Plan approval that evening. Mr. Guard said that when it came to parking requirements, they were on Town sewer and they do have the requisite number of spaces within the 300' radius and public parking within the 500' radius. Mr. Guard said that he would defer to Mr. J. Hassett for the technical explanation. Mr. Hassett pointed out the subject property and said that it had no parking and relied on the Town owned lots. He said that there are four (4) parking lots owned by the Town within 500' of the property. Immediately adjacent and in the vicinity of the restaurant are thirty-eight (38) spaces within a radius of 300'; there are fifty-seven (57) public spaces across the street. Mr. Hassett pointed out all of the areas of Town parking within the vicinity or immediately adjacent, across the street, at Library Plaza and Dairy Queen. Mr. Guard said that the restaurant component required an additional eleven (11) spaces and they are asking the Board to allocate these eleven (11) spaces for the restaurant for public parking; in total the entire building will require twenty-one (21) spaces. This will include all seating. Mr. J. Hassett said the barber shop currently has eleven (11); the restaurant will have thirteen (13). Mr. Guard said that it is not as big of an ask as it sounds.

Ms. Conway asked if the outdoor seating would be tucked in the back because cars do drive behind there. Mr. Guard said that was a good point and the outdoor seating will be entirely encased by a stockade fence that exists now. They use that area now for employee lunches and sitting around, getting together. He said their proposal is that the gates won't be accessible from the outside; it would be for emergency exit only. Mr. Guard said that he asked the Hassetts about rubbish and there will be a dumpster within the fence. Ms. Fidler asked if it would be a six foot (6') fence and Mr. Guard replied that it would be and he had tried to send pictures so it could be visualized. Ms. Fidler said that everyone was familiar with the area. Ms. Conway asked if the dog groomers had access to the back and Mr. D. Hassett said they have emergency access. Ms. Conway asked if that would go in to where they were gated and Mr. Hassett replied, yes. Ms. Fidler asked about the footing on the exterior where the seating is and Mr. Guard said that it would be a gravel pea stone. Ms. Fidler asked if it was ADA compliant and Mr. Guard said that he had a letter from Patricia Fischer, Registered Architect, who they consulted with for accessibility and would submit copies of the letter for the record. Ms. Fidler said they would need to go before the BOS to use that section of Town property for the ramp and they have to lease it or whatever they have to do. Mr. Guard said that the BOS has to issue a license; basically a document that gives the person permission and it is revocable by the Town. They were amenable to giving them the license for the piece that has been on the corner of 139 forever. This is a different ask of the Town. As the Board will see from the letter from the consultant, this is the preferred plan for the handicapped ramp. Mr. Guard said that normally the BOS would not give a license but because this is an existing building and there really is no other place to put the ramp, that is why they are asking for a license. They could put it in the back but persons with disabilities would have to go through the back to get into a place and that wasn't good. Mr. J. Hassett said that right now you would step up one step about five inches (5") on to the sidewalk and then the next step is from the sidewalk to the threshold. He said that 4'x4' would be on Town land and then it would turn back to the subject property. Ms. Fidler asked if there was a way to make this ADA compliant through the adjacent premises and Mr. Hassett replied, No. He said that the paper plan shows an alternative location of the ramp if the



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Board of Selectmen says No. Ms. Fidler said she would like to encourage the BOS to approve this. Mr. Guard said the alternative location is not much in the back but it was not the right message they want to send to the public.

Ms. Fidler asked if there were any questions from the Board. Mr. Hubbard asked when the BOS would vote. Mr. D. Hassett said that he submitted a letter to the BOS and had a conversation with the Chairman. He went to the meeting the night before but it wasn't on the Agenda; they said it was on the radar. Ms. Fidler asked what the business hours for the restaurant would be and Mr. Hassett said noon until 9:00 or 10:00. Ms. Fidler asked if they had a liquor license and Mr. Hassett said that they did not have one yet; Ms. Fidler said perhaps in the future. Mr. Guard said they would like one but he does not think that there are any available; they are on the list. Ms. Fidler asked about signage and said that Mr. Hassett knows the deal with signage for it. She also said that lighting in the back where they will have their seating will need to be addressed. Mr. J. Hassett said that the parking lot is lit with down lighting; there might be some modifications in the back; there won't be any glare. The back will be enclosed with a stockade fence. Mr. Guard said that there were no residential properties. Ms. Conway said she was more concerned with safety. Mr. Guard said that Mr. Hassett intends to decorate it with Christmas tree type lighting. Mr. Hassett has had one day permits to have events back there.

Ms. Fidler asked if there were any questions. Mr. Chandler asked if the exit part of the ramp would be on their own property and Mr. Guard said that it would be. Mr. Chandler asked if the area where it terminates was concrete. Mr. Guard said that it was and it was not an issue; they will have pea stone there. He said the area where the ramp terminates is asphalt and concrete. Mr. Guard said that he had Mr. J. Hassett do an analysis on the accessibility, handicapped accessibility from the public parking spaces to the site and there are multiple sidewalks. Ms. Fidler asked if the emergency egress was in back of their own area and Mr. Guard said that it was. Ms. Fidler said that would need to be compliant as well. Mr. Guard said that he has done this with other properties and will suggest crash bars, especially if Mr. Hassett gets an alcohol permit in the future.

Mr. Galvin said that looking at the stockade fence area and asked if it were on Library Plaza; a portion of it on Town Property and a portion on the Library Plaza L.L.C. property. Mr. Guard said that it was and that Mr. Hassett has an agreement with the neighbor on Library Plaza that says it is okay for Mr. Hassett to put the fence there. When it was erected, they questioned it but said it was okay. Mr. Guard said he does not have an explanation for the portion that is on Town land other than it is a natural way the area goes out where there is some shoulder; it is just the way the fence was put up. Mr. Guard said if the Board thought it was necessary, he would have Mr. Hassett include this with the Board of Selectmen request. Mr. Galvin said he was not sure how the Selectmen would react to that and said he would recommend that the fence follow the property lines; he knows that it constrains the area. Mr. Galvin said if you look at the Site Plan you can see the stockade fence encroaches. Mr. Guard pointed out the fence and the property of the neighbor who said it was okay. He said they can dress up the dead area with landscaping. Mr. Galvin said he understands the handicapped ramp issue but this is a public benefit. This is using the other property and he is less concerned about the neighbor's property. He said that a *de minimus* thing is one thing but this is more than *de minimus*. Mr. Guard said if the Board is inclined to move the fence on to the property line; the applicant is okay with that.



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Mr. Galvin wanted the Board to be aware that the front of the building has an existing license that allows them to stay where they are; it has been there forever and was there with the prior owner. He said that to the extent it becomes necessary to do work on the roadway, they have agreed to deal with it at that point. Mr. Galvin said that further down on the next building is another encroachment; it's the same layout and there is a license for that, too. Mr. Galvin said that there is a request for the handicapped ramp but there is no pending request for the stockade fence area. He is not sure how the Board of Selectmen will react although they are not necessarily opposed to outdoor seating; he does not know how they will react with the stockade fence enclosing the square footage. Mr. Guard said the applicant was amenable to moving the fence provided that it is required by the Selectmen. He said if the Selectmen say to move it back, they will move it back; if the Selectmen say that it can stay, then it's okay. Mr. Galvin said that if they approve the fence on the property line then they could allow them to change the Site Plan – if it gets approved. Mr. Guard asked Mr. Galvin if they wanted them to come back. Mr. Galvin said they could come back for a minor modification but he thinks they need permission to show the use of the land. He believes the Selectmen are favorably disposed to helping with the handicapped accessible ramp. He doesn't think they have a conception of the stockade fence.

Ms. Fidler stated that they asked for a waiver from a Site Plan traffic study and asked if anyone had a problem with that; they did not; also waiving lights and photometric plan. She asked about a landscape plan and Mr. J. Hassett said that the physical portion of the property is concrete but they can include some potted plants. Ms. Conway asked how far over the fence was and Mr. J. Hassett said it was five (5) or six (6) feet. Ms. Fidler said that she did not see the storm drainage plan calculations for this property and then said that they weren't changing anything. Mr. Guard said that there would be no change in structure. Mr. J. Hassett said that there would be no increase in impervious surface. Ms. Fidler asked if they were changing the façade and Mr. Guard said that they were not.

Mr. Chandler said he was concerned because he did not see the distance between the parking spot and the handicapped ramp. He asked if they would be putting in vehicle protection poles or some barrier that would protect the ramp. Mr. J. Hassett said that there is a 30' wide aisle and they would like a curb lifting up 7". Mr. Chandler said that they would be putting a curb so there won't be banging into the ramp itself. Mr. Guard said they could put a bollard on the corner to protect it from people backing into it. Mr. Guard asked Mr. Chandler if he would put one on a corner. Mr. Chandler said if they did put something then it will encroach more and there will be a shorter space to back up. Mr. Guard said that if they did two (2) bollards and pointed out two (2) spots, it would decrease the distance. If they put one (1), then it encroaches further out. Ms. Fidler said that made sense and asked if there were any other questions.

Ms. Conway stated that they had two (2) gates and one (1) was by the ramp. Mr. J. Hassett said it was a little pedestrian gate. Mr. Guard said that Mr. D. Hassett owns the area in the back but can't use it for parking because they can't access it over the neighbor's property. Mr. Galvin asked what the grade was there and if it were flat. Mr. Guard said it was pretty flat around the patio; he also said the building goes up pretty high. Mr. Galvin asked about lighting in the back and Mr. Guard said that there would be lighting. Mr. Galvin asked about the proposed hours and Ms. Fidler replied 12:00-9:00. Ms. Fidler asked about deliveries to the location. She knows that it is a restaurant so there will be trucks and asked if they would be pulling up in the morning



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hours. Ms. Conway said there would be kids at the skate park and at Tumblefun. Ms. Fidler asked if there were any questions from the public and there were none.

Ms. Fidler said this was a Site Plan waiver with the comment from Ms. Conway about the landscape plan. Ms. Fidler said it was pretty much a storefront façade and they could put two (2) whiskey kegs with flowers in them. She said it would look nice and they are probably going to do that anyway. Mr. Guard said that they wanted to have the plan approved with the fence on the property and they can come back for a minor modification. Ms. Fidler made a motion to close the hearing which was seconded and all were in favor. She made a motion to grant a Special Permit in accordance with §305-10.12 to work with the Board of Selectmen for the accessible ramp in the front. Ms. Fidler's motion was seconded and all were in favor. Ms. Fidler made a motion to grant Site Plan approval with the Condition that the fence be on the property line unless the Board of Selectmen allow it to stay as is. The motion was seconded and all were in favor. Ms. Fidler made a motion to grant a Special Permit, a mixed use Special Permit according to §305-4.04; there was a second and all were in favor.

**2104 Ocean Street: Discussion with Attorney Steven Guard**

Ms. Fidler said that they will now go into a discussion with Attorney Guard re: 2104 Ocean Street. She is not sure what needs to be discussed because they did not receive anything; this was before the Board before but she has no other information. Mr. Guard thanked the Board for meeting with him and said that he had emailed a plan to Attorney Witten awhile back. Mr. Galvin recused himself. Mr. Guard said that he knows it is not normal for a Board to meet with an attorney without an application in front of them and he appreciates their time. He said that as the Board knew, this property had been before them many months ago; the Special Permit was denied and then appealed and the Rodericks withdrew the lawsuit on appeal. During that time Cumberland Farms came to them and wanted a 5,000 square foot building with gas pumps and convenience store. It's in an area with similar uses, gas stations, so it makes sense that they didn't have to deal with two (2) buildings or 11,000 square feet. Mr. Guard gave the Board a plan. He said that it was the plan he had emailed and apologized for not confirming that the Board received it. He said it was basically a 5,000 square foot building with pump islands out front and has two (2) curb cuts. He said that Cumberland Farms is concerned with the curb cuts. Mr. Guard said the Special Permit had been denied so they didn't have the need to deal with the Variance requests. He said the Board had closed the hearing and he could not withdraw them. Cumberland Farms said they need a Variance for two (2) curb cuts; the property has two (2) curb cuts and has always had two (2) curb cuts. He said the Bylaw that Marshfield has allows for two (2) curb cuts for pre-existing uses as long as you make them as compliant as you can. They have tried to design it with one (1) curb cut but there is not enough room for an 18 wheeler to come in and fill the tanks; so that doesn't work. He said that the property has tons of frontage but doesn't have enough for two (2) curb cuts under the Bylaw. He said they were not looking for a vote; it's a single building with a gas station and Cumberland Farms is a local company. Mr. Guard said that the Board has always been amenable to allowing the two (2) curb cuts. They want some assurance before they go spend a lot of money on the project. He said he would submit copies of the plan he just submitted; that was the plan that was done by the Cumberland Farms



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engineers. Mr. Guard said the project is not without other challenges even if they get through Site Plan approval; there is a river in the back

Mr. Guard said that he appreciated the Board allowing him to come and ask if they would be okay with the two (2) curb cuts. He thinks they are fine but Cumberland Farms wants to hear it from the Board. Ms. Fidler said that it was unusual to have an attorney come before the board and ask for an assurance. Mr. Guard said that he was looking for feedback. Ms. Fidler said that she would like to see this come through as a formal hearing request. She knows that they have spent a lot of time and money to work through this project and it's getting to the point where she sees some closure. She said that Planning has specific rules re: curb cuts; this is the Zoning Board, not the Planning Board. She said that they are amenable to what Mr. Guard's client has to say but they are not here to judge or give assurances. Mr. Guard said that they just want to know that it would be okay with the two (2) curb cuts. Ms. Fidler said that they can't give him that assurance and suggested that they come before the Board. Ms. Fidler said that she knows where that project has been and believes that other members also know where it has been. She said that they would like to work with them within the guidelines. Mr. Guard asked if this was a good idea and several Board members said that it was. He said that he could go back to them and tell them to watch the tape and they could judge the Board themselves.

Mr. R. Murphy said that he likes having things like this; likes having Mr. Guard come before them to ask questions. Ms. Fidler said that it was not a waste of time or money. Mr. R. Murphy said that there's not always an answer; sometimes they need the back and forth. Mr. Stiles said that it was public. Mr. Guard said that it was a mechanism that the Planning Board uses, an open type of thing; it benefits the applicants and zoning boards as well. Ms. Fidler said that she understands that but it's not part of what they do. She said she likes the rules but she also likes the questions.

Mr. B. Murphy said that the 139 expansion took so long to do and he didn't know if they need approval from the state because it is a state road even though it is in Marshfield. Ms. Fidler said she didn't think they needed to get into all that tonight. Mr. B. Murphy said when it comes to 139 he likes two (2) better than one (1). Mr. Hubbard said it would make the flow of traffic better. Mr. Guard said their concern was they needed a Variance for two (2) curb cuts because the Bylaw only allows one (1). He said that he is trying to convince them that when there are pre-existing curb cuts the Board has said it's like a nonconforming use and allowed it to continue. He wants to make sure that Cumberland Farms is not going to spend all this money and not get a Variance. Mr. Guard said that he had asked for a Variance in the other case. If the Board had just shut down the Special Permit, this would have come up. The engineer pointed out it is in the Bylaw; they don't think you can add a curb cut without a Variance. Mr. Hubbard said that even the place across the street, Speedway, has two (2) curb cuts. Mr. B. Murphy said that everything has two (2): McDonald's, the gas station and even the donut shop that has about forty feet (40') of frontage. Ms. Fidler said that she thinks that Mr. Guard has received feedback from the Board and Mr. Guard thanked the Board for allowing them to come before them informally.

**#18-21: John A. Kesaris, Trustee/Kesaris Realty Trust:** The Petitioner is seeking the Board's opinion as to whether moving the foundation out four feet (4') to align with the roof



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would be considered a minor modification or would full Site Plan approval be required. The Petitioner has found that once the new equipment is installed, it will reduce egress and handicap access in the addition; the Petitioner is not adding additional seating. The Petitioner received previous Site Plan approval at the March 27, 2018 meeting to construct a 12' x 15' addition and a 22' x 28' addition to the existing building, add fifty (50) additional seats to the restaurant, to remove the existing drive-through lane and reconfigure the parking area to add seven (7) new spaces including two (2) ADA accessible spaces.

Ms. Fidler said that under "Other Business" there is a request for a *de minimis* change and read the information into the record. She said that case #18-21 was before the Board a few weeks ago and it was granted. She said that she has a Site Plan dated February 27, 2018 and asked if that was what they were looking at and asked Mr. John Kesaris to explain the change. Mr. Kesaris said that when they put in their equipment, it didn't give them enough space. He said that they want to extend the outside wall to the end. He said they weren't looking for more seating or parking. Things weren't to scale when they laid out the equipment. Ms. Fidler said that 17' on the Site plan goes to the end of the building. In her opinion, she thought that Mr. Kesaris was all set. Mr. B. Murphy said that he concurred with Ms. Fidler. Ms. Fidler said that it was *de minimis*; it increases the interior square footage. Mr. Kesaris said they were just looking for bigger aisles. Ms. Fidler said the only problem with giving a *de minimus* change is that it is part of the applicant's file. It needs to be edited to reflect the change; it's an addendum to his plan. She made a motion to determine that this was a *de minimis* change which was seconded; all were in favor.

Ms. Porreca said that Duxbury had a list regarding things that will not be any more nonconforming. Ms. Fidler asked to have that added to the Agenda for the May 29, 2018 meeting and the Board could review Accessory Apartments and docks. She said we should invite the Planner and the Planning Board Chair to attend. Mr. Hubbard said he would like to talk about signs; the signage Bylaw is overly restrictive. He said if an establishment has two (2) entrances, they have a front and a back, they can only have one sign in front. He said Marshall's has two (2) signs but he does not know why. Ms. Fidler said it was time consuming and they need to go to Planning; they need a couple of people to see it through. Mr. Galvin said that signs have been kicked around for a while and the issue is the size; they need to fix this Bylaw; the Cask & Flagon has no sign over their rear entrance. Mr. Hubbard said he was told they can't put their emblem on the awning. Mr. Galvin said that the Board could propose by Special Permit to allow the signs to be a little larger and to have an additional sign; they could ask the Planning Board for help with these issues. There was a time when the ZBA and Planning Board did not get along and the ZBA used to get sued by the Planning Board. He suggested asking the Planning Board to consider making some changes. Ms. Fidler said they don't have to restrict it to these issues; if anyone has any other suggestions they should submit them to Ms. Porreca by the Friday before the meeting. Mr. B. Murphy said that maybe Mr. Galvin could give them a copy of the list approved by Duxbury.

Ms. Fidler made a motion to adjourn which was seconded; all were in favor.



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Meeting adjourned at 8:35 P.M.

Respectfully submitted,



Nanci M. Porreca  
Zoning Administrator

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

November 13, 2018 meeting by a 5-0 vote.

Signed:

 Date: 12/13/2018