

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 2,
MARSHFIELD TOWN HALL MAY 9, 2017 7:30 p.m.
MEETING MINUTES**

Members Present:

Mark Ford
Lynne Fidler
Francis Hubbard
Heidi Conway
Brian Murphy

Also Present:

Jerry O'Neill, Bldg. Commissioner
& Code Enforcement Officer

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Members Absent:

Joseph Kelleher, Chairman
Richard Murphy

Mr. Ford 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. Unless noted, Mr. Ford was the Hearing Officer and he noted that the other members were signified by their nameplates.

#17-23: 1619 Ocean Street Realty Trust/Stephen Forte, Trustee: The Petitioner is seeking a Special Permit in accordance with Article X, Section 10.12 and Article IX, Section 9.02.3 to construct an 8' x 10' addition for a walk-in refrigerated storage room on an existing single family dwelling with a Residential Business (florist) on the property located at **1619 Ocean Street**, which is further identified on the Assessors' Map as parcel I08-07-08 and is located in an RB zoning district.

Mr. Ford read the petition into the record and stated that there were some procedural issues. Terry McGovern from Stenbeck and Taylor stated that procedurally they needed to request site plan approval; they had only requested a Special Permit so the Site Plan approval was not noticed in the newspaper advertising the hearing. Mr. Ford made a motion to continue the hearing until June 13, 2017 when the petition for Site Plan approval would be heard. The motion was seconded and all were in favor.

#17-24: Joanne Regan: The Petitioner is seeking a Special Permit in accordance with Article X, Section 10.12 of the Marshfield Zoning Bylaws to construct a new three (3) season room on top of the approximately 16' x 11' existing deck of the single family dwelling on the property located at **20 Danforth Street**, which is further identified on the Assessors' Maps as parcel L05-16-07A and is located in an R-2 zoning district.

Mr. Ford read the petition into the record. Brian Maxwell, the contractor representing the applicant, stated that there was an existing deck that they would like to enclose to make it a three (3) season room which would be built within the existing footprint. Mr. O'Neill explained that they were nonconforming in the rear and front setbacks but that they were okay on the side setbacks. Mr. Ford asked if there were any questions and there were no additional questions from the Board or public. Ms. Fidler asked if there was a deed in the file and there was not. Mr. Ford asked if there were any questions and there were no additional questions from the Board or public. Mr. Ford made a motion to close the hearing which was seconded; all were in favor.

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Mr. Ford made a motion to grant the Special Permit with the condition that a deed be submitted. The motion was seconded and all were in favor.

#17-25: Patrick Forde and Heidi Hickman: The Petitioners are seeking a Special Permit in accordance with Article IX, Section 9.02.3 and Article X, Section 10.12 of the Marshfield Zoning Bylaws to demolish a fire-damaged existing single family home and construct a new modular 48' x 28' three (3) bedroom home on the parcel that will be no closer to the front yard setbacks along Quincy Avenue and Dakota Street than the existing dwelling on the property located at **174 Quincy Avenue**, which is further identified on the Assessors' Map as parcel J10-05-04 and is located in an R-2 zoning district.

Mr. Ford read the petition into the record. Terry McGovern from Stenbeck and Taylor represented the applicants and stated that they would like to replace the fire-damaged house with a one-story modular home which would be similar in size and character as the existing house. He stated that the house is slightly angled and they would like to pull it out of the flood zone and rotate the corner; it will come no closer than the existing house. Mr. McGovern stated that they have filed and obtained orders of condition from Conservation. He said that the Board of Health has approved the reconnection and to allow the corner of the house to be 8'5". Ms. Fidler stated that the Board would not endorse the existing shed. Ms. Fidler asked if there were any questions and there were no additional questions from the Board or public. 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 noting that Dakota Street would be the frontage and with the condition that the rear deck not exceed four feet (4') in height. The motion was seconded and all were in favor.

#17-26: Daniel J. Quirk, Manager/James Francis, L.L.C: The Petitioners are seeking a Variance in accordance with Article VI, Section 6.05 to extend the existing vehicle storage area to the rear of the property across the zoning district line separating the B-2 district from the R-1 district and proposes to carry the required 35 foot screening buffer to the rear of the proposed parking area rather than at the zoning district division line as required; the Petitioners are seeking a Variance in accordance with Article V, Section 5.04 to use that portion of the lot located within the R-1 zoning district as outside vehicle storage accessory to the dealership; the Petitioners are seeking Site Plan Approval pursuant to Article XII, Section 5.2 to add an additional 123 vehicle storage spaces; the Petitioners are seeking further relief from Article XIII, Section 5.2.i and requests a finding that or Variance from Article XIII, Section 5.02.i as it applies to a site/lot entirely within the WRPD, sections of which are located within the B-2 and R-1 zoning districts, that consideration of the site/lot in the aggregate for the purpose of impervious coverage and open space determination within the overlay district may be allowed on the property located at **830 Plain Street**, which is further identified on the Assessors' Map as parcel D10-01-07 and is located in a B-2 and R-1 zoning districts.

Ms. Fidler read the petition into the record and advised that she would be the Hearing Officer. Steven Guard, Esquire and Terry McGovern of Stenbeck and Taylor represented the applicant. Mr. Guard stated that a condition of the previous Special Permit allowed them to allocate

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27,000 square feet of impervious surface from the R-1 zoning district to the B-2 district which left behind approximately 40,000 square feet of impervious surface allowable in the R-1 district. They are asking for a Variance to use that section of the R-1 district for vehicle storage. There is a 35' buffer zone between the two (2) zoning districts. The Variance to carry that buffer zone to the end of the new parking area; the remaining seven (7) acres of land is a vegetative state with no more impervious surface allowed on that portion of the lot. There are two (2) apartment complexes on either side and Sherman Lane is in the back, more than 350 feet away. Mr. Guard said that they had a successful meeting with the Planning Board and there was nobody from the public speaking for or against. They have one (1) letter and they are addressing it and they have met with apartment management. Mr. Guard stated that the seven (7) acres would remain in perpetuity; nothing else can be done with it. He said that Mr. Quirk is not interested in building houses and he thinks this is the least intrusive use of the land.

Mr. Ford stated that he wanted to walk through the prior restrictions from the decision dated January 22, 2013 that includes Condition 6 that says, "That the portion of the lot ... referred to as the R-1 zone shall remain undisturbed and undeveloped, unless any future requested use is approved by the Marshfield ZBA through, at a minimum, a site plan approval hearing. This R-1 portion is to have a deed restriction stating that the maximum allowed impervious area shall not exceed 40,138 square feet". Mr. Ford asked Mr. Guard if there was any impervious surface in the R-1 portion of the property and Mr. Guard replied that there was not. Mr. Guard said that if relief were granted, the 40,138 square feet would be used for their intended purpose which is the parking and there will be no more impervious surface allowed in the R-1 district. Mr. Ford asked where the 40,138 number came from and Mr. Guard said that they used 27,000 square feet of impervious surface of the 60 odd thousand that was allocable for the R-1 district by way of a Variance back in 2012 or 2013. He said that it was a clever way to do it and he applauded the previous Board for embracing that concept. Mr. Guard said that Mr. Quirk was all about inventory choice and he wants as many choices for the customer on the property that he can have. He said that they aren't display cars, it is storage and will only be accessed by employees who will get the cars to be prepped for sale; it's onsite availability and not for customers.

Mr. Ford said that he wanted to walk through each piece of relief. He stated that the applicant was asking for a Variance from 6.05 which is the screening and buffer provision that requires a 35' buffer when a business property abuts a residential property and asked what the rationale for granting a Variance would be. Mr. Ford said that the pushback would be that they are looking to expand, and he understood why, which doesn't mean that the property is unusable unless you tell me otherwise, a financial hardship. Mr. Guard said that he thought the unusable or the financial hardship is the remaining seven (7) acres. They can't use it for anything because it's landlocked and oddly shaped. He said that if they have the opportunity to expand the parking lot they can utilize as much of that as they can which they are allowed to because of the impervious surface restriction. And to do that they are going to have one (1) business that spans two (2) districts, you can't abide by the 35' buffer zone. Mr. Guard said that they aren't grandfathered because they have expanded use. They are asking to take the 35' buffer zone and put it at the end of the

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parking lot, knowing that there are seven (7) acres of land. Mr. Ford asked Mr. Guard if there was precedent for that or if he had seen this done elsewhere. Mr. Guard replied that he had not done that. He said that there are alternatives to the 35' buffer zone – the six foot (6') fence, the planted vegetation – they are just asking to keep the 35' buffer but at the back end of the property. Mr. Ford said that essentially there would be no buffer between the theoretical B-2 line and the R-1 line. Mr. Guard said it would be cars and asphalt and the 35' buffer at the end.

Mr. Ford stated that the next requested relief is from Section 5.08, is accessory outside storage directly necessary to the operation of a commercial use which is prohibited from an R-1 district. Mr. Ford asked Mr. Guard if their rationale for the Variance from this is the exact same and Mr. Guard said that it was. Mr. Guard said that accessory storage was a very specific section of Section V that allows the Table of Uses as long as it is accessory to the principal use but it's not an allowed use in the R-1 district which is why they need relief. He said that 25,349 square feet is the only portion in R-1 and Mr. Ford replied that 13,392 square feet is in the B-2. Mr. Guard said that there is a portion of the B-2 district that is between the asphalt and the line. He also said that the Variance is for 25,000 square feet, not 40,000 square feet and Mr. McGovern pointed out that the 25,000 was on the right on the plan. Mr. McGovern also said that they were at least 350-400 feet from the nearest house. Ms. Fidler asked if the entire parcel was in the WRPD and the answer was that it is.

Mr. Ford said that the third thing that they needed to address was Article 13.5.2.1 which is the impervious surface limitation which is typically 60% in B-2 and 30% in residential. If you just look at B-2 you would see the 60%. Mr. Guard stated that what the Board did last time was look at the entire site in the aggregate; then Stenbeck and Taylor did the calculations for residential and then for commercial and they came up with the total in the proposal. Mr. Ford asked if they looked at the site in the aggregate and then used the 60% as the maximum and Mr. Guard said they did whatever was allowed and they reserved the remaining open space as impervious surface for the R-1. Mr. McGovern said that with the entire site being 12.8 acres, it created a budget of 60% if it was treated as one site. Mr. Ford said that if the Board did the calculations that Mr. Guard and Mr. McGovern think they should do, take the area of both sections together, the percentage would be 47.5. Mr. McGovern said that it is still under the 60% and that they had agreed to a restriction that limited them to the 38,000-40,000 square feet in aggregate. Mr. Ford said that he had been thinking about this and the right way to do it. He said if you take their argument you are applying the 60% rule to a residential portion. Mr. Ford said that if you do it pro rata and take the total area, the R-1 district you assume you get 30% and the B-2 district you get 60% and then you average it out, it would come out to 48% maximum and they are at 47.5%. Mr. Guard said that might be what they did. Ms. Fidler said that they probably could use an alternative approach to that but she doesn't think the alternative approach was necessarily better for the Town.

Mr. Ford asked if any members of the Board had questions and Mr. Hubbard said, not yet. Mr. Ford said that he is a stickler for the Variances. He said that it was hard for him, that he had read their submissions but it's hard for him to understand how the straight application of the Variance

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requirements – is there something unique about the shape, topography or soil conditions, that necessitate this relief. Mr. Ford said that they could use the precedent of the previous Board's decision to deal with Article 13 but they didn't have to address the other two (2) Variances. Ms. Fidler asked if the hardship they stated was based on the inability to use the land to supplement the existing use. Mr. Guard said that there was no other practical use for the land. Mr. B. Murphy said that it becomes a big buffer. Mr. Ford asked what if they came back two (2) years from now and said that they wanted to put in another 200 spots; Mr. Guard said that they would need relief.

Mr. Ford stated that he had the May 1, 2017 submission referring to revised plans that addressed comments from the Planning Board review engineer and he asked what the comments were specifically. Mr. McGovern said that they had done a similar project across the street and went to the Planning Board WRPD process to make sure they resolved all of the technical issues with respect to nitrogen loading and drainage. The Planning Board asked them to make changes to the plan and there were a couple of typos, they revised one aspect of the drainage calculations. Charlie Swanson in the DPW had three (3) small comments and they addressed them. The discussion at the previous night's Planning Board meeting focused on two (2) issues. One, had any monitoring well testing done or reports turned in; they weren't aware of any. The other was that one of the residents at Old Stage Stop had sent in a letter about glare and noise issues and they have proposed to extend the existing fence along the property line.

Mr. Ford asked if there were comments from the public. Richard Burum of 44 Sherman's Waye, an abutter, has concerns about noise. He said that he lived there for 18 years and that there was no problem when Settles Glass was there but once Quirk came in the noise from 139 comes right down the high tension line. Mr. Ford asked if he meant he could hear the road noise from 139 and Mr. Burum said yes, that it reflects off the asphalt. Mr. Ford asked if he was concerned about them taking the extra trees out and Mr. Burum said that the more they go into the residential area, the more that it would happen. Mr. Burum said that he doesn't see the hardship needed for the Variance and requested that the Board deny it. Kristi Byrne, 26 Sherman's Waye, said that she and other neighbors were present for the first go around when Quirk was doing complicated calculations for residential versus non-residential percentages and she remembers back then that it was the furthest they would go and it was an assurance to the abutters. Mr. Ford clarified if she meant that they provided an assurance that they wouldn't go into the R-1; Ms. Byrne said yes, that was how they got through the complicated percentages. Mr. Ford said that they have the previous Board's decision and the rationale. Ms. Byrne said that there are issues with noise, lights from the parking lot and glare. Mr. Ford asked Mr. McGovern to show the lighting on the plans. Mr. McGovern said that there is a grid with light poles spread out about 50' feet apart, the fixtures are about 18' high and there is a hood that directs the light downward but he is not sure if they are on a timer. He said that some are on for security purposes and there are cameras on top of some of the poles. Mr. Ford asked if there were any way to mitigate the light beyond what was there now in terms of types of lights and direction. Mr. McGovern said that maybe a different type of hood, but they are all directed straight down. Mr. Ford asked if

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they could do a larger hood and Mr. McGovern said that he would have to check with the lighting people.

Mr. Ford asked about the buffer beyond the 123 spaces and asked if there was anything they could do to better mitigate noise. Mr. McGovern said that the cars won't be moving in and out that much so does not think that will be an issue but they could run a fence around there which might help deflect some noise. Mr. Ford asked if the back was just trees and asked if the buffering of 35' was just 35' of trees called "the buffer" or was there anything special that was there in terms of additional plantings. Mr. Govern said that there was a shallow detention basin in there, too, but it was not visible on the picture. Mr. McGovern pointed out on another picture that the basin is taking water from the apartments but they would redirect it. Ms. Fidler asked if the plans had the basin and Mr. McGovern pointed it out. Mr. Guard said that they would be willing to put additional plantings in the vegetative area.

Mr. Ford asked if there were additional comments from the public and Elizabeth Litchfield from 36 Sherman's Way said that she is the closest abutter and has been there for 30 years. She said when they bought the house they liked that there was the utility company easement there because nobody could build out back and there was all woods. She said now they drive in their driveway and they're looking at the parking lot of vehicles. Mr. Ford asked if she could see them through the trees and Ms. Litchfield said that all of the trees were gone; she isn't sure what this has done to her property value. She said it's not a hardship, that they want to put more cars there because they want more cars. Mr. Ford said that he would go out to Sherman Way and that others may as well because it will help to see it. Mr. Ford asked if there were any other comments or questions from the Board.

Mr. Hubbard read from the original decision for the Variance, "Although consisting of over 12 acres, five acres will be subject to a permanent restriction allowing the impervious surface of the total parcel, when viewed comprehensively, to meet the impervious surface requirements and the goals of Section 13.03 of the Zoning Bylaw." Mr. Hubbard asked how the permanent restriction is affected and Mr. Guard said that it was a condition in the Special Permit. Mr. Hubbard asked if they had done anything with it and if it shows on the deed. Mr. Guard said that they have an obligation to prepare a declaration of restrictive covenant identifying that particular item; it was his suggestion that it be put into the chain of title so that it wouldn't be buried in a Special Permit condition but that has been going back and forth with Bob Galvin. Mr. Guard said that if they receive relief today it would create another declaration. Mr. Hubbard asked who would hold the restriction and Mr. Guard said that it wasn't a Conservation restriction, that it wasn't back then and it isn't now. He said it would be in favor of the Town of Marshfield and its inhabitants for a restriction as to the amount of impervious surface that could be used in the remaining portion of the R-1; that's how it's written into the decision. Mr. Guard said that the Conservation was a whole different animal.

Ms. Fidler asked that when the Planning Board reviews something like this, do they get involved with a covenant of that nature in their Conditions and Mr. Guard replied, yes. Ms. Fidler than

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asked if this would be applicable to that, whatever they are working on for WRPD. Mr. Guard said that the whole thing is governed by the WRPD with respect to impervious surface; they have a Condition in their Special Permit. Ms. Fidler asked if the Zoning Condition would be in conjunction with the Planning Board's Condition and Mr. Guard replied that it would be a separate Condition on its own.

Mr. Ford stated that the application was filed on April 6, 2017 and said that they have 100 days to act on a Variance. He suggested that the hearing be continued to the June 13th, 2017 meeting and advised Mr. Guard he would have this time to have other evidence that they think would address the neighbors' concerns. Mr. Guard said that they could look at the hoods for the lights. Mr. Ford advised the public that he and some other members of the Board would be out informally; Mr. B. Murphy confirmed their addresses. Mr. Ford asked Ms. Porreca to find the minutes, if possible, that led to the previous decision. Mr. Ford advised the public that there would be no other notice to them other than publishing the Agenda; the meeting will be June 13th at 7:30. He then made a motion to extend the hearing until June 13th which was seconded; all were in favor.

#17-27: Timothy and Tanya Cohoon: The Petitioners are seeking a Variance in accordance with Article X, Section 10.11 and Article VI, Section 6.07 of the Marshfield Zoning Bylaws to maintain an existing shed that is now located less than ten feet (10') from a lot line on the property located at **795 Ferry Street**, which is further identified on the Assessors' Map as parcel H13-02-29 and is located in an R-1 zoning district.

Mr. Ford read the petition into the record. Adam Brodsky, Esquire represented the applicants and stated that they had purchased the property in 2008 and rebuilt the existing shed in 2012. The Cohoons woke up one morning and there were stakes in the ground. The Williams Trust determined that the property line went through the driveway and cut off what they thought was their side yard. Both parties agreed to an equal land swap to allow the Cohoons to keep their driveway and parking. Because of the land swap the shed will now be less than ten (10) feet from the property line which is why they are asking for a Variance. Mr. Ford asked if the neighbors with whom they did the land swap approved of the Variance and Mr. Brodsky said that they had agreed not to oppose it. Second question is, what that there for ten (10) years? Mr. Ford said that the applicants said that they rebuild it when they moved in. Mr. Cohoon stated that there was an existing shed and Mr. Ford asked if it was in the same spot and Mr. Cohoon said it was roughly in the same spot. Mr. Ford asked if there was any way to prove that, they are nine (9) years if they go back to 2008. He said that Variances are tough; there's a statute of limitations issue. Mr. Brodsky said that if he was talking about 2016 there was a statute that allowed an extension of a legal nonconforming structure and there has been no lawsuit filed then they could be granted in and not be considered an illegal structure. Mr. Brodsky said that the problem with that is that it concerns structures.

Mr. Ford asked why the shed couldn't be moved. Mr. Brodsky said that the shed was placed there because it was reasonably accessed; he also said that it was on concrete sono tubes and has

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electricity. Mr. Ford asked if it could be moved eight (8) feet and Mr. Brodsky said that it would bring them to a tree plus they would lose the utilities. Mr. Brodsky said that with respect to the hardship, it is a substantial structure and it would be costly to take down and reconstruct. He said that the applicants did not create the hardship and that this would not be a substantial detriment to the neighborhood. It would be a minor dimensional change and he believes they have sufficient grounds. Mr. Ford asked if there was reason to believe that the shed was there on 05/09/2007; Mr. Cohoon said that the existing shed was at least 2008; he printed Google image from 2008 but it doesn't show the shed because of the tree. Mr. Ford said that he was trying to get facts on the record. Mr. Brodsky said that the house dates back to 1986 after zoning was adopted. Mr. Hubbard said that it has been nonconforming for a period of time. Mr. Ford stated that they would credit the applicants' whole testimony. Mr. O'Neill said that a Variance would be needed if it was not pre-zoning. Mr. Brodsky said that it was not a title issue, that they just want to clear it up if they ever sell it in the future.

Kathy Williams, Trustee of the abutting property, had two (2) questions. Her first question was that in the event the land swap didn't go through and the shed remained on the lot line, could they ask to have the shed moved. Mr. Brodsky stated that everything was in escrow until the closing. Mr. Ford said that they couldn't answer a hypothetical question in advance, that it might be grandfathered. Ms. Williams said she had the answer to her second question and said that they have no objection to this. Mr. Ford said that he would like to think about the Variance vs. other options. He advised Mr. Brodsky that he wouldn't make him go through everything again but asked him to write a one page summary. Mr. Ford explained that he would close the hearing and deliberate and speak with Town Counsel at the next meeting. Mr. Hubbard said that he would not be at the next meeting, that there would only be five (5) members; Mr. B. Murphy said that Mr. R. Murphy can watch the meeting. Mr. Ford said that it would be on the 05/23/2017 Agenda for deliberation and invited Mr. Brodsky to submit an explanation. Mr. Ford made a motion to close the hearing which was seconded; all were in favor.

#17-28: Erin Dipietro: The Petitioner is seeking a Special Permit in accordance with Article X, Section 10.12 of the Marshfield Zoning Bylaws to construct a wraparound screen porch addition over the existing deck and covered porch which will be 12' on the North side, 26' on the East side and 22' on the South side on the property located at **142 Revere Street**, which is further identified on the Assessors' Map as parcel J10-07-14A and is located in an R-2 zoning district.

Mr. Ford advised that the applicant had requested to move this hearing to May 23, 2017. He read the case into the record and made a motion to continue the hearing to May 23, 2017 at 7:30. This motion was seconded and all were in favor.

#17-29: John and Kathleen Fitzgerald: The Petitioners are seeking a Special Permit in accordance with Article X, Section 10.12 of the Marshfield Zoning Bylaws to construct a 28' x 14' two (2) story addition to the right side of an existing dwelling on the property located at **90**

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Webster Avenue, which is further identified on the Assessors' Map as parcel M08-23-02 and is located in an R-3 zoning district.

Ms. Fidler read the petition into the record and advised that she would be the Hearing Officer. Jim Brennan represented the applicants and said that they would like to extend the right hand side of the house 28'x14'; it will be L-shaped. The deck would be removed and that area would be part of the addition. They are keeping it the same depth and they will conform with the existing setbacks. There would be a net gain of six feet (6') in front and fourteen feet (14') in the back. He said that they are before the Board because they are very close to the property line but no work would be done on the nonconforming side. The addition will come out six feet (6') into the driveway but there will be plenty of room for cars. Ms. Fidler asked if there were any questions and there were no additional questions from the Board or public. 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.

Michael Biviano, 1899 Ocean Street: The Petitioner is seeking the Board's opinion as to whether construction of an 8' x 8' shed on the roof which will house telecom equipment for a new vent system as required by the DEP would be considered a minor modification not requiring site plan approval.

Mr. Ford read the petition into the record and asked Mr. Biviano to describe what he is proposing. Mr. Biviano said that the building is attached to Jackanson's and he pointed out on the GIS map where the building was located and the walkway between the buildings. He said that there is a fake dormer that is approximately seven feet (7') high. They are proposing to build the shed near the dormer so that it will not be visible from the street. Ms. Fidler asked what the materials that would be housed and Mr. Biviano said that it was similar to a remote dialer. He said that DEP wants to make sure that there are no vapors left in the ground from the old owners of the building; they have monitoring vents that are installed in the ground and the vents run up through the ceiling to the roof joists and then to this area where the sampling will be done; if something is detected that isn't supposed to be there an automatic dial out will go to DEP and whoever else needs to know about it. Ms. Fidler asked if it was currently there and Mr. Biviano said no, that the DEP was requiring it now. Mr. Ford stated that it wouldn't be visible from the street and that it would be barely visible from the parking lot; Mr. Biviano said that the only way you would see it would be if you stood on top of Osco. Mr. Ford asked if there were any questions and there were no additional questions from the Board or public. Mr. Ford said that he was always hesitant with minor modifications but he said this is the Business district, it doesn't change the footprint, that it was a very minor modification and didn't change the aesthetics of the structure either from the street or the interior. Mr. Ford made a motion to declare this a minor modification which was seconded and all were in favor.

#17-07: Dana Junior: The Petitioner seeking an Appeal in accordance with Article X, Section 10.09 of the Marshfield Zoning Bylaws of the Building Commissioner's order in a

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letter dated December 28, 2016 to cease and desist filling in the property and road layout located on **Hingham Avenue** which is listed on the Assessors' Map as parcel I11-03-06 until Site Plan approval and a Special Permit are received from the Marshfield Zoning Board of Appeals; the property is located in an R-2 zoning district.

Mr. Ford stated that this was a continued hearing and they left it at the last meeting that the Building Commissioner was going to review what you presented and comment on whether it was potentially detrimental to neighbors such that further submissions were necessary. Mr. Junior said that they were looking for a plan with the roadfill improvement to create frontage for this property. Mr. Junior said that Mr. O'Neill let him know that he had the plan; Mr. Junior was hoping that the plan would make its way to the Fire Department as well because it would be prudent to get their input. Mr. O'Neill said that Mr. Junior did send the drawing but he does not have it uploaded; he did look at what was submitted. Mr. Junior said that a few of them met at that site. He had started filling some and received the cease and desist. Mr. Junior explained that Hingham Avenue is a dirt road that turns on to Norwell Road, is relatively flat and fifteen feet (15') wide. He said that the road layout of Hingham Avenue goes straight and into a valley; it's a paper road. Mr. Junior said that he was planning to fill to create fifty feet (50') feet of frontage. He said that he has gone to Town Counsel and has the protection of Section 9.03 and that this is a grandfathered. He went to the Planning Board years ago to prove that the design conformed to the Storm Water Overlay District regulations and that's been approved. The septic system has already been approved by the Board of Health. Mr. Junior said that this is ready to go, with all of the approvals, with the exception of creating access. He has started to fill and wants to fill approximately another 100 yards which is about five (5) dump trucks. He wants to maintain the berm and the same drainage path.

Mr. Ford stated that Mr. Junior hoped that this would find its way to the Fire Department and asked why. Mr. Ford said that when Mr. Junior was finished with the street they would meet with the Fire Department again and have them provide input for the vital access determination but that's not before the Board now. Mr. Ford said that what he thought was going to happen was that Mr. O'Neill would review the plans for the street and answer whether the alteration may adversely impact abutting property owners. And if his answer was that it may then there were other procedures that Mr. Junior would have to follow. Mr. O'Neill displayed the Bylaw (13.4.3) where it states "may adversely impact abutting property owners" and mentioned the Tedeschi property on the other side. He said that Mr. Junior changed the grade so he would have to say that he may adversely impact that property from runoff because he changed the natural flow. Mr. Junior said that by filling it and if they followed the contours it would go to his side, not the other side. If anything slopes to the other side, it already goes there; he is not changing the slope so the net impact to the other side is zero.

Mr. Ford asked Mr. O'Neill what the implication of that finding if they accept that it may impact abutters. Mr. O'Neill said "may impact" would need Site Plan Review would be required. Mr. Ford asked at the Zoning Board or from Mr. O'Neill. Mr. O'Neill replied the Zoning Board, not to create a Planning Board road but to create an emergency road (vital access). Mr. Ford said

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that Mr. Junior would need to file for Site Plan Review and that abutters would be notified. Ms. Fidler asked to revisit a point, the registered land of record and the point of having fifty feet (50') of frontage on a paper street. She said that she sees it as a paper street but doesn't see it as legitimate frontage. Mr. Ford said that he currently can't get the building permit because he doesn't have the frontage or the vital access. He said that Mr. Junior is trying to get the frontage by building the extension off Norwood where the paper road is now. He stated that once he gets the frontage then he will build the road, fifty feet (50') of frontage, then he will come back to the Board and they will make a vital access determination. If there is vital access, and he believes that every other requirement of a residential lot of record has been met, then he can get a building permit. Ms. Fidler asked if Mr. Junior had to jump through the first hoop of having to have the fifty feet (50') of frontage to be allowed to build the road. Mr. Junior said that he has at least fifty feet (50') of frontage that is laid out on a plan and recorded at the Registry of Deeds. Mr. Ford said that Mr. Junior has a common law right to facilitate access but he needs Site Plan approval. Mr. Junior said that this was the first time that he had to do that. Mr. Ford said that was the map/framework that Mr. Junior's attorney set out for the Board to follow. Mr. Junior said that the attorney said to do this plan and take it to Mr. O'Neill to see how it looks. Mr. Ford said that if Mr. O'Neill thought that it would not adversely affect abutting property owners then he would be all set. But if he does think it would adversely affect the property owners, the implication is that Site Plan would be required. Mr. Junior said he doesn't understand why anything is required, that he has the right to improve his property without approval from anyone.

Mr. Ford said that he thought the Board had all of the facts that it needed and asked if anyone had questions. He said that he was inclined to close the hearing but wanted to get Mr. Galvin's input. Mr. Junior said that he thought that Site Plan Review had to do with building on your land and this isn't building on his land. Ms. Fidler said that it was about improving the street in front of Mr. Junior's property. He said that his property is already improved. Mr. Hubbard asked to see the section of the Bylaw regarding Site Plan Approval (12.02) and asked Mr. O'Neill why he thought Site Plan approval was required. Mr. Hubbard said that in the first paragraph it says, "...change in use of nonresidential use permitted by right or by special permit..." and that any Site Plan approval they have ever had has always been commercial, never a Site Plan approval for residential property. Mr. O'Neill said that in this instance they are in the Storm Water Overlay District which is Section 13.04. Mr. Hubbard asked where in the Bylaws this applied to residential property and said that even in a Storm Water Overlay District they have never had to do a Site Plan approval. Mr. O'Neill said that it was within the Storm Water Overlay District and Mr. Hubbard said that he understood that but they have had other properties within the SWOD and have not asked for Site Plan approval for residential. Mr. Ford said that he thought Mr. Hubbard was asking for a legal reading of the Bylaws that will result in their decision. Mr. Hubbard said that he was just trying to understand why Site Plan approval is required. Mr. Junior said this is a grandfathered lot and shouldn't be subject to the current Bylaws; Mr. O'Neill said that they weren't talking about his house lot, they were talking about the road layout. Mr. O'Neill also said that he agreed with Mr. Junior's statement about his residential lot.

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Ms. Fidler said that since this was in a SWOD, the Zoning Board was the granting authority therefore reverting back to Site Plan even if it is in an R-1, R-2, R-3. Mr. Hubbard asked Mr. O'Neill if he were looking at 13.04.4 and he replied that he was. Mr. Hubbard said that he needed to think about this. Mr. Ford said that he would like to close the hearing and asked what other evidence they needed. Mr. Ford asked if anyone from the public wished to be heard and there was no response. He moved to close the hearing, it was seconded and all were in favor. Mr. Ford stated that they would take the matter under advisement.

#17-22: Cris Phelps: The Petitioner is seeking a Special Permit in accordance with Article IX, Section 9.02 of the Marshfield Zoning Bylaws to raze the existing single family dwelling that extends beyond the property line and rebuild with a 26' x 30' single family dwelling that will be no more nonconforming than the pre-existing setbacks and will be no closer than three feet (3') from any property line on the property located at **71 Central Street**, which is further identified on the Assessors' Map as parcel N06-05-09A and is located in an R-3 zoning district.

Mr. Ford read the petition into the record and asked the applicant about the additional submissions and asked Mr. Phelps to go through the information. Mr. Phelps said that at the last hearing they discussed the entire project, the Board continued it and was looking for some additional architectural information which was submitted. Mr. Phelps said that the top floor will be two thirds (2/3) of the second floor; they are showing the house not to exceed thirty-five feet (35') and on the westerly side the percent of windows and openings in general will not exceed twenty-five percent (25%). He said that they also submitted a copy of the Conservation approval. Mr. Ford asked Mr. O'Neill for comments re: the two thirds rule and window coverage. Mr. O'Neill asked what was represented by the X on the third floor; the applicant said it would be a railing. He asked about the area that was not in bold and the applicant said that it would be walled off to whatever the Board tells him to wall it off to. Mr. O'Neill asked what was behind it, was it an attic or was it full height; the applicant said it was just the dormer. Mr. O'Neill asked if that area would be higher than four feet (4') and Mr. Phelps said that it would not. Mr. O'Neill asked if the attic space was greater than four feet (4') in height; Mr. Phelps said that it would be if the roof lines were changed. Mr. Hubbard said that according to the last drawing that was submitted, it doesn't appear to be so. Mr. Hubbard said that he thought the nature of Mr. O'Neill's questions was that since three (3) story buildings are not allowed, what is the usable space on the third floor; does it exceed 66%; the applicant said that it did not. Mr. Phelps asked if the area beyond the two thirds couldn't be more than four feet (4') tall. Mr. O'Neill said that anything over four feet (4') would be calculated if it's finished or not. Mr. Phelps said that they would have to lower the roof line but they would work with Mr. O'Neill to meet that requirement of lower than four feet (4'). Mr. Ford asked Mr. O'Neill if he were comfortable making that a condition and he replied that he was.

Mr. Ford asked if there were any other questions from the Board opened the floor up to the public for new matters or matters not discussed at the prior hearing. He stated that the Board understands the impact on their view. One abutter said that her comment wasn't about the view;

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she was trying to understand the logic behind why he would go outside the footprint with the seventy-one feet (71') of frontage that can be built on. Mr. Ford said that state and local Bylaws permit a homeowner to take advantage of existing nonconformities and improve their property as such as the nonconformity isn't intensified. In this case it's not, it's actually lessened by getting away from the lot line; and that the new proposal is not substantially more detrimental to the neighborhood which is a question the Board will address in their deliberations. Mr. Ford said that if there is an existing nonconformity, the homeowner is not required to come into complete conformity with all of the setbacks; they're essentially grandfathered because the Zoning Bylaws came in after the property was there. He said that the law looks unfavorably on Zoning amendments and changes that essentially take away someone's rights to make use of the property they had before the zoning laws went into effect. The law allows them to do this but the Board does review it for impact on the neighborhood. The abutter said logically speaking what was to stop them from doing more in the marsh; you buy in that neighborhood for the view; what was to stop someone from going further and further back when you have seventy-one feet (71') in front of them. Mr. Ford said that the issue would be, are they intensifying a nonconformity and are the changes substantially more detrimental to the neighborhood. That's the standard that the Board applies and they have always applied it; he said that the Board does consider the public's comments and objections. The abutter said that this would be the first time in Bluefish Cove that a house has been built on the marsh.

Mr. Ford asked if there any other comments and Marlene Lebossiere of 75 Central Street read a brief statement about the qualities of Marshfield, the rivers, etc. and they must be given the proper stewardship. Ms. Lebossiere said that the Zoning Board has a responsibility to make sure that Mr. Phelps' design is appropriate for their community and that it was possible for the building to be located closer to Central Street. Mr. Ford asked if there were any other comments from the public or final comments from the applicant or questions from the Board. Ms. Fidler asked if the Conservation conditions were received from the previous meeting and Mr. Phelps replied that they were. She said that Conservation granted this and that they had outlined conditions specifically no storage under the house to allow the native vegetation go grow; implementing a planting plan; upper salt marsh restoration; clear trash and marine debris in the salt marsh behind the existing home and several other conditions. Mr. Ford asked if there were any reasons not to close the hearing and there were none. Mr. Ford moved to close the hearing and asked Ms. Lebossiere to submit her letter for the record and the pictures that she referenced. Mr. Ford said that he would leave the record open for one week to submit them. Mr. Ford again moved to close the hearing which was seconded; all were in favor. Mr. Ford said that they would take it under advisement.

Mr. Ford said that they would do Brogan and Levitate and then talk about the Coptic Church.

Mary Anne Brogan, 6 Jackson Street: The Petitioner is seeking the Board's opinion as to whether the design change to bring the garage out an additional 2' x 12.5' would be considered a minor modification not requiring site plan approval.

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Mr. Ford read the petition and asked Mr. Arthur Hale to speak. Mr. Hale said that he just got the plans today that showed the setbacks. Mr. O'Neill asked Mr. Hale if he knew when the original hearing was and he said that Mr. Rockwood was at that one. Mr. Hale pointed out the area that he was referencing and said that there was a ramp inside the house but the original talk was to have a ramp outside the house because Mr. Brogan is handicapped. He said that they need another two feet (2') which would bring them to 15.19. Mr. Ford asked if the question before the Board was whether they thought this is a minor modification. He said that the implication of doing that is they deprive the public and the abutters the opportunity to weigh in and object which is something that he has always felt should not be taken lightly. He said generally speaking, especially in a residential area, any change to the footprint would not be considered a minor modification. Mr. B. Murphy said that the Board does not allow extensions. Mr. Ford said that he thinks that Mr. Hale will be back in a few weeks but in his view, the implication of them starting to do this sets them on a slippery slope because next it is the three foot (3') extension and then the four foot (4') extension. He said that they are not passing judgment on the approvability of it, they're passing judgment on whether the neighbors get a voice. The Board agreed.

Dan Hassett/Levitate, 1871 Ocean Street: The Petitioner is seeking the Board's opinion as to whether Site Plan Approval would be required to install windows and change the direction of the staircase at the back of the building.

Mr. Ford read the petition and said that Mr. Hassett had submitted a two (2) page letter with pictures and asked him to show the Board what he had in mind. Mr. Hassett said that he recently purchased 1871 Ocean Street and would like to add windows to the rear of the building to let natural light in. He said that there were a couple of small window but he wants to put in more appropriate ones to improve the quality of light on the interior and to look better aesthetically from the exterior. He asked the neighbor what she thought and she liked it; she supports it because they are fixing up the building. Mr. Hassett is hoping that the Board will grant a waiver from the Site Plan review process. Mr. Ford asked if this was in the Business district and Mr. Hassett replied that it was. Mr. B. Murphy asked if this was all within the footprint and Mr. Hassett said the footprint is not changing. Mr. Hassett said that the stairs are preexisting. Mr. Ford stated that the standard may vary if it is in a Business district and doesn't change the footprint; this is windows which they have always viewed as more aesthetic not tripping Site Plan. He said the closer call is the stairs but they were existing and Mr. Hassett just wants to change their direction. Mr. Ford said this does not have a perceptible impact on the neighborhood. Mr. Ford made a motion to deem this a minor modification which was seconded and all were in favor.

#17-15: St. Mary & St. George Coptic Church: The Petitioners are seeking Site Plan approval under Article XII, Section 12.02 and a Special Permit in accordance with Article X, Section 10.12 of the Marshfield Zoning Bylaws to enlarge the existing building of the church with an approximately 79' x 98' addition and modify the façade to make one uniform-looking

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building with a domed steeple and other adornments in keeping with traditional Coptic churches; Petitioner is also seeking a Variance from Article XIII, Section 13.03 of the Marshfield Zoning Bylaws from Water Resource Protection District (WRPD) impervious lot coverage on the property located at **255 Furnace Street and 490 Main Street**, which is further identified on the Assessors' Maps as parcel F10-05-04 and F10-05-05 and is located in an R-1 zoning district.

After a five (5) minute break, Mr. Ford stated that Ms. Fidler had recused herself which left the Board with four (4) members; however, Richard Murphy was on his way to the meeting. Mr. Ford explained that this request required four (4) votes to approve; if taken as a four (4) member Board that requires a unanimous vote which they generally don't want to force upon the applicant unless it's absolutely necessary. Mr. R. Murphy will arrive in ten (10) minutes and then they will deliberate. A member of the public asked why Ms. Fidler wasn't able to vote and why she left. Mr. Ford explained that she was recused from this hearing and Mr. Hubbard said that she did not have to state a reason. Mr. Ford said that if she feels she has a potential conflict, that's fair and it is what they encourage people to do. He stated again that they would begin deliberations in ten (10) minutes.

Meeting with ZBA applicant

While waiting for Mr. R. Murphy to arrive the Board met with a new applicant for membership on the Board, Mr. Mark Stiles. Mr. Ford asked Mr. Stiles to tell the Board about himself and why he wanted to be on the Zoning Board. Mr. Stiles said that he is a resident and has given back to two (2) organizations from whom he recently separated and is looking to continue with his philanthropic endeavors. He started the flag football program and stepped aside after five (5) years to give someone else an opportunity; he was also on the Board of the Marshfield Education Foundation. Mr. Ford said that the Board typically meets every second and fourth Tuesdays and asked if that would be a problem. Mr. B. Murphy said that they recently had seven (7) meetings in a row. Mr. Ford asked that after seeing the Board in action, how would he approach things as they come up. Mr. Stiles said case by case and that the purpose of the Board is to benefit the town. Ms. Fidler said that it was important to find another member to put in the extra minutes of preparation; who is open minded and receptive to the different ways of thinking especially with the public in attendance. Mr. Ford said that for the most part the Board is supportive of each other's divergent views.

Mr. R. Murphy arrived and the Board began deliberations. Mr. Ford said the hearing had been closed but there were some submitted documents, letters and video that were submitted. Mr. Ford had a document from the Board of Health titled Complaint Call re: 490 Main Street where Father Mikhail called about runoff on to the Church property. The health officer's report said that on April 12, 2017 he visited the site, spoke to Father Mikhail and noted that it appeared to be either groundwater or drainage from adjacent property and there was a puddle...discolored water could be from leaves or vegetation... Mr. Ford said that there were four (4) pictures of the property dated 04/13 and 04/21; a memorandum from Charles Swanson, DPW to the Board; and a video re: runoff. The Board watched the video which was taken after the heavy rains. Ms.

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Kathy White explained where the runoff was coming from. Mr. Ford said that the Board couldn't take testimony because the hearing was closed but said this would be considered clarification. Mr. Ford said that was the entirety of the submissions for the record.

Mr. Ford said that the issues that needed to be decided were Site Plan approval, Special Permit to enlarge the existing Church building with an addition and a Variance from Section 13.03 from the impervious lot coverage limitations. He asked the Board for comments. Mr. B. Murphy said that he liked the new buffer area and hoped that the new and old sections wouldn't be used at the same time. He said that based on what Mr. Galvin has told them, this is a tough thing to oppose. Mr. Ford said that if you think about the Dover Amendment and case law, they have some ability to enforce reasonable regulations. He said that based on his interpretation, what Mr. Galvin has advised and his own reading of the law, the Board would be scrutinized if they did not grant the Variance where they could not articulate a strong rationale for why the provision in question, the impervious lot restriction, was not an unreasonable application given their need to support and not oppose the use as a religious use. Mr. Ford said that this is obvious a religious use and what they are talking about here is the extension of the building because the parking lot has been approved; the extension is obviously a religious use, it's a church, the epitome of religious use. So the question is, is there such a compelling case to enforce the impervious surface requirement to overcome that. Mr. Ford does not think under the case law that there is enough to support that unless it is extremely clear it would wreak havoc on the neighborhood. With the comments from the DPW, notwithstanding the video that was watched - Mr Ford said that he remembers that storm as being one of the worst that he has witnessed - the consequences of this design would not be so detrimental in terms of storm water runoff in normal cases. He said that he would be uncomfortable enforcing that requirement but he does think that Mr. Swanson's memo suggests that there are certain conditions that they place on this to satisfy what he is seeking, to ensure that these things are provided before the building permit issues; he believes that they can write those in as conditions to make sure that they are done.

Mr. Ford agrees that they are never going to replicate the prior buffer that existed, especially before the clearing of the land and the building of the parking lot. But he thinks that the buffering that was proposed with the staggered arborvitaes that could go from ten (10) to fifteen (15) feet are reasonable accommodations for the neighbors. It's true that some of them will see at least the top of the Church but it's a Church and it's not the most offensive thing to see; it's a reasonably attractive Church and improves the Church and the structure and it makes it look like a really nice Church. Mr. Ford said that he is sympathetic to the concerns of the neighbors but he thinks the Board's solution is to maximize the buffering. Ms. Conway said that she would like to see more of a buffer along Route 3A and Furnace Street because it will help with the noise, there's a lot of traffic. She said that she is also concerned about the water; that granted it was a freak storm but she doesn't want to see that happening on a regular basis. Mr. Ford asked Ms. Conway what she would propose and she said more plantings along 3A, along the drainage easement area. If they do get another bad storm, people can't have that pouring into their yards, there must be some way to rectify that. Mr. Ford said that one of the recommendations from the

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DPW was to include a condition that says the disturbed slope along Main Street should be stabilized with vegetation to reduce erosion; they would have to describe exactly the conditions they wish to impose. He said in the final decision they have to describe with relative particularity what the Board would require the applicant to do. Ms. Conway said that she was still concerned about Stacy Marie Drive, the traffic there should be conditioned as well.

Mr. R. Murphy said that with what the DPW is asking, before you figure out how to correct the vegetation on this side, would like to see calculations done for the DPW to review. Mr. Ford said that the letter had been submitted today which is after the hearing had closed so their hands were tied; they would have to put some thought into how it was worded. Mr. R. Murphy said that he thought the Church had been pretty good with buffering; he is fine with the look of the building but is concerned about the operation of the Church, the times and events because that will cause a strain. Mr. Ford doesn't know how they can regulate the Church, sometimes there is Midnight Mass. He thinks that in a normal situation they could regulate the times. Ms. Conway asked if they could say anything if it is getting in the way of people's lives it's busy all of the time and there is traffic. She is not sure they ever found out the capacity and asked if they could condition that. Mr. Ford said that he didn't see that they couldn't condition to limit what they represented during the hearings. Mr. O'Neill asked if they meant the capacity of the building. Mr. Ford said one of the things they discussed during the hearings was the size of the building could lead to greater capacity but they made clear that they had no intention of using both at the same time. Mr. O'Neill said that was to accommodate the septic system. Mr. Hubbard said that the capacity of the building is determined by the building code first. Secondly, the septic and the parking which is a Bylaw; they have submitted plans for septic which are adequate and he believes they have an adequate number of parking spaces for the proposed Church based on our Bylaw. Mr. O'Neill said that he does not believe the septic system is capable of handling the maximum capacity that the building code allows; the septic system is capable to handle the capacity as it is today which is why they said they would not increase the occupant load. Mr. Hubbard said that they could state that either as a condition or as part of their reason. He said that to Mr. R. Murphy's comments that Mr. Swanson didn't have the drainage calculations, but it appears to be functioning properly. He said that Mr. Swanson said that the drainage area contributing to the Main Street culvert is much larger than just the paved parking lot. So Mr. Hubbard does not think that they can put all of the onus on fixing the Main Street culvert on the Church. They have put things into place but what comes on to their property or what comes on to Main Street from across the street is not the Church's responsibility to control; they're responsible to control their own runoff. Mr. B. Murphy said that any new water being created needs to be handled on site. Mr. Ford stated that the extension of the building itself would not add to the drainage runoff; Mr. B. Murphy said it is not allowed to, it would be part of their design.

Mr. Ford said that the key here is whether they would use the impervious surface restriction to bar expansion of the building as proposed. And if the conclusion is that the extension of the building itself won't add to the runoff, then we're comfortable with saying that would be

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unreasonable to not be flexible in the application of that provision in context with the Dover Amendment. He said that the Board should do whatever it can with conditions. Mr. O'Neill said that they could put a condition that the DPW review the calculations and do one site visit during construction to make sure it's built to what was designed. Mr. Ford asked if anyone opposed approving the expansion and said it's all a matter of the conditions they impose. He asked if they understood the Dover Amendment and their limitations. He said that they should think carefully about the drafting of the decision and the conditions, with input from Mr. O'Neill and Mr. Galvin. Mr. Ford said that it might be reasonable to draft a decision with all of the conditions and then finalize it at the next meeting and take a formal vote at that time which would give them time to think through the issues. Mr. Ford stated they would put this on the Agenda for May 16th after the Armstrong hearing. Mr. Ford said they had to think specifically about describing the buffer and believes they have covered most of the issues. A member of the public asked when they could talk about this and Mr. Ford said that they have had several open hearings. Mr. Ford made a motion to adjourn which was seconded; all were in favor.


Meeting adjourned at 10:30 P.M.

Respectfully submitted,

Nanci M. Porreca
Zoning Administrator

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

March 27, 2018 meeting by a 3 - 0 vote.

Signed:  Date: 3/27/2018