

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 3,  
MARSHFIELD TOWN HALL NOVEMBER 12, 2019 7:00 P.M.  
MEETING MINUTES**

*Members Present:*

*Lynn Fidler  
Brian Murphy  
Richard Murphy  
Mark Stiles  
Larry Keane*

*Also Present:*

*Robert Galvin, Town Counsel*

MARSHFIELD TOWN CLERK  
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Ms. Fidler called the meeting to order at 7:05 P.M. after some technical difficulties and advised that they would go a little out of order. She stated the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were being recorded. She also said they were in a tight area and designated the applicant area. She said that there was no overhead to display plans.

**#19-73: David and Kathleen Kessler:** The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 24' x 18' addition on the east side of the existing dwelling on the property located at **56 Foster Avenue** which is further identified on the Assessors' Maps as being on parcel M09-01-06 and is located in an R-3 zoning district.

Ms. Fidler read **Case #19-73** into the record and turned the hearing over to Steve Moran of Moran Survey who did the plans. Mr. Moran said they are planning an 18' x 24' addition and they are here because the existing dwelling is nonconforming on the left side. Ms. Fidler showed the architect's rendition to the public and passed the plans to them. She stated that the lot area was 9,842 square feet. Mr. Moran said they were one of only a few lots in the area where the property lines were well defined. Ms. Fidler said they have a reference to a one hundred foot (100') buffer which is in the VE zone with elevations 18 and 17 which go to a 14 on the abutting property and asked if this was correct. Mr. Moran said that was correct and the 17 and 18 are in the Velocity Zone. Ms. Fidler asked the Board if they had any questions and an abutter started to speak. Ms. Fidler explained that the Board would ask questions first and then the public. There were no questions and Ms. Fidler asked the abutter to identify himself as the site plan was being passed to the public. Mr. Roger Rich and his wife, Janet, are neighbors across the street. He asked about the height and Mr. Moran said that it was on the plan. Ms. Fidler said that she wrote it on the back of the plan that she passed to him and advised Mr. Rich to open the plan. She said that she made notes prior to the hearing and it is clearly under the thirty-five feet (35'). Mr. Rich asked if it was a single story addition and Mr. Moran said that it was. Mrs. Rich asked if there would be a basement and Mr. Moran said that he believes it will be a slab on grade and the original house has a basement. Mr. B. Murphy said thirty-five feet (35') is for any house in Marshfield. Ms. Fidler asked if there were any more questions from the Board or public and there were none. She 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 and all were in favor.

**#19-74: William and Marjorie Meehan:** In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioners are seeking an Appeal of the Building Commissioner's decision that the egress construction is encroaching into the roadway

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which is Town property on the property located at **431 Ocean Street** which is further identified on the Assessors' Maps as being on parcel M08-18-07A and is located in an R-3 zoning district.

Ms. Fidler read **Case #19-74** into the record. Mr. William Meehan, the owner, said that he bought the house in 1987 and there was always eight feet (8') from the door to the railroad ties; the ties were put in in the 1800s. He handed pictures to Ms. Fidler who then passed them to the Board. Instead of going eight feet (8') what they did was go six feet (6') so as not to interfere with the road. He said they could see the old railroad ties going out eight feet (8') in the pictures. The fence is still there; they took out the overgrowth and made the road wider by going six feet (6') and keeping everything at six feet (6'). Ms. Fidler said she visited the site that day. She said that Mr. Folkard, the Building Commissioner, was not at the meeting but she looked at the pictures he submitted. Mr. Folkard was also in touch with Mr. B. Murphy. Ms. Fidler said she was there today and would share her opinion. It was nicely manicured, it abuts the asphalt, there is no berm, and it just goes straight to the landscaped ties and right to the grass. Mr. Meehan said that right now two (2) cars can go by but couldn't before; he made it a point to make it wider.

Mr. Stiles said that in the past they have had the Board of Selectmen give a license to use that space. Mr. B. Murphy said that Mr. Folkard does not have a problem with this; he just didn't know how to go about it. Mr. Galvin said that Mr. Meehan would need a license and it's not always granted but has been in the past as long as it was not impacting the right of way and the person understood that it may have to be removed at their expense at any time. He said they indemnify the Town in case of accident or injury. Mr. Stiles said the Board doesn't have jurisdiction over this and Mr. Galvin agreed. Mr. B. Murphy said that they had eight feet (8') and they went to six feet (6'). Mr. Galvin said when the decision is written that it should note the Board had no authority to approve it at that location without approval from the Board of Selectmen. He is improving the situation but he needs legal authority to have it there and the Board can't grant that. Mr. Galvin suggested that he contact Mr. Maresco to review it and put it on the Selectmen's agenda for a potential license. Mr. Stiles asked Mr. Meehan if he understood that and Mr. Meehan said he did not. Mr. Galvin said the Town Administrator is the gatekeeper for the Selectmen so in order to get permission to have this; he needs to make an appointment with the Town Administrator and show him plans/pictures of what is existing and what is planned. If Mr. Maresco says yes, then he will bring it to the Selectmen for the license. Mr. Galvin asked if this was a public way and a friend/abutter of Mr. Meehan incorrectly stated that it was private; Mr. Galvin said it was public. The friend/abutter asked if Mr. Meehan could get a Special Permit and Mr. Stiles said no, he needed to get a license. Mr. Galvin also said the Board could not do a Special Permit and the Mr. Meehan needs a license. Ms. Fidler said for the purpose they are here tonight they will dismiss this without prejudice because it is moot. Mr. Keane asked if this would be considered emergency egress and he should point that out to the Selectmen.

**VRT Corporation/0 Enterprise Drive:** Due to the requirements of other permits and construction logistics, the Petitioner is requesting a one (1) year extension on the Variance dated November 27, 2018.



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Ms. Fidler said that they received a letter from Attorney Walter Sullivan regarding an extension for **Case #18-71**. She read the letter which stated that due to the requirements of other permits and construction logistics they are requesting a year's extension. She asked if there were any comments or questions. Mr. R. Murphy said that at previous meetings it was mentioned that a Variance once granted was in perpetuity as long as it was exercised. Mr. Galvin said that it could be abandoned and cited an example from Island Street where there was a nonconforming structure that didn't meet side and front setbacks, was falling down and needed to be rebuilt. They were granted a Variance to move it to a different location on the lot which took care of a setback issue but created a new one in the rear. They got the Variance and a building permit, tore the house down but ran into financial difficulty and lost the house in foreclosure. Six (6) or seven (7) years went by, the building permit lapsed and another developer came in and was denied a Variance. The property was then sold by the bank to a third party who was also denied a Variance; this was Daniels v. Marshfield Zoning Board of Appeals. In this case there was so passage of time from when the Variance was issued that it was considered abandonment of the rights. Mr. Galvin said Mr. R. Murphy was correct when he said Variances once exercised are irrevocable except when they are abandoned.

Mr. Galvin said the Board has the ability to extend a Variance and our practice is that they usually only get one, one six (6) month extension or they would have to come back and get the Variance reauthorized. Ms. Fidler said the Board recently gave a six (6) month extension on a 40B and asked if that lends itself to this rather than offering a year. Mr. Galvin said you could give someone a hundred (100) year extension but if someone challenges it...the practice has been that extensions are given for six (6) months. Ms. Fidler asked if there were any questions and there were none and asked if they were leaning toward a year. Mr. B. Murphy said he was willing to go a year and Mr. Keane agreed. Mr. Stiles asked what parcel and Ms. Fidler replied it was the billboard parcel. She made a motion to grant a one (1) year extension for the Variance and Site Plan which was seconded and all were in favor.

**#19-70: Stephen and Elizabeth Howley:** The Marshfield Board of Appeals will hold a Public Hearing on October 22, 2019 at 7:00 P.M. pursuant to the Marshfield Municipal Code in accordance with a Remand Order by the Land Court in the case of Donald Almeida, Jeremiah Eck, Kevin Sullivan, and Kenneth Meuser v. Zoning Board of Appeals of Marshfield, Lynne E. Fiddler, Francis X. Hubbard, Mark Styles, Richard Murphy, and Brian P. Murphy as they are members of the Zoning Board of Appeals of Marshfield, Stephen Howley and Elizabeth Howley (Land Court No. 17 MISC 000652 (HPS)). This matter arose out of an appeal filed by Donald Almeida, et al., regarding the Zoning Board of Appeals grant of zoning relief to Stephen and Elizabeth Howley. This hearing is to consider the modified plans for a Special Permit/Finding/Variance and/or any other relief deemed necessary to raze and reconstruct the dwelling on the property located at **225 Bay Avenue**, parcel M05-10-37, which is located in an R-3 zoning district. Public Hearings were previously held for Cases #17-33, #17-43 and #17-51.

Ms. Fidler read **Case #19-70** into the record and said there was some history to this which she will leave to the attorneys to discuss. Attorney Jeff Delisi was with Mr. Howley and said they are here to bring this long drawn out saga to conclusion. He said he would give a brief overview of the property and how they got here. He said it is a preexisting lot and dwelling with the house



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presently located on very old pilings in the middle of the Cut River. It was severely damaged by storms years ago. His client bought the property and came before the Board to raze and rebuild. There will be two (2) pilings further into the Cut River to support a ramp and pier. The Board granted Special Permits for the house and the pilings and denied a Variance in October 2017; the project was also approved by the Conservation Commission and then the lawsuits ensued. There were two (2) lawsuits and a departmental action; the ZBA decision was appealed. During the process the applicant agreed to go smaller in scale to satisfy Chapter 91. Both court actions have issued orders to remand the modified plans, which are almost the same, back to the Zoning Board. The height of the building was drastically reduced from approximately forty feet (40') to twenty-five feet (25'). It is more modest in height but essentially the same project. Mr. Delisi noted that there is a typo on the plan in red; it says four feet (4') but it should be five feet (5'). Darren Grady said the height is now 26.5'.

Mr. Delisi said it is fairly straightforward and they will petition the Conservation Commission shortly for the same purpose. Ms. Fidler said the Site Plan was modified on September 25, 2019 and noted "DEP". She asked if they had the architectural and Mr. Delisi said they did not. Ms. Fidler said if they considered this as brand new they would need architectural but would defer to Town Counsel in light of what is going on. She stated that there is no overhead projector and said she would like to continue the hearing; she would like the Board to take some time with this. Mr. Delisi said he would like this hearing to end, that after today it will be closed. Mr. Galvin said they could close it for the purposes of new information and Mr. Delisi said unless Town Counsel tells them they need to provide architectural renderings. Ms. Fidler said she wasn't exactly sure and Attorney Jon Witten is not here this evening for her to ask specific questions. Mr. B. Murphy said they close it and make an exception about accepting new information.

Ms. Fidler asked if there were any questions from the public. Jeremiah Eck, 227 Bay Avenue, had a question for the engineer and asked what the red line above the flat roof was. Mr. Grady said the proposed structure was in black but it was difficult to hear the explanation for the red. Mr. Eck asked if that was in compliance with Chapter 91 and Mr. Grady said it was. Mr. Stiles said that he assumes the new design is more favorable. Kevin Sullivan said he agreed with Mr. Delisi that this was a long drawn out process. He said the Massachusetts DEP has agreed to a modified plan and he is in favor. It was noted that the Zoning Board issued a decision for the dock with a Special Permit and not a Variance. Mr. Sullivan said that one thing that Mr. Delisi left out of the process was the reduction in size and scope wasn't an election by the applicant it was a mandate by the state. At previous hearings he had mentioned there was another house up the street that was a project also subject to Chapter 81 jurisdiction and that project had been subject to a ten percent (10%) limitation on height increase and footprint increase; it was reasonable and likely the same limits would be put on this project. The Board has the ability in cases where a Coastal Wetlands Special Permit is requested to condition its approval on receipt of approval from the Massachusetts DEP, state jurisdiction trumps Town. Mr. Stiles asked if the Board's decision had that and Mr. Sullivan said no, it issued a standalone Special Permit for a two and a half (2½) story building. Mr. Stiles said it was subject to the approval of a Chapter 91 license. Mr. Sullivan said that they wouldn't be able to get a building permit without that because the Board issued the Special Permit essentially disregarding the state requirements as opposed to conditioning the submission of an application. The Board effectively forced the



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abutters who are challenging the project to preserve rights relative to the permits and to spend tens of thousands of dollars in doing so before they could see any clarity to a reasonable path. They were forced into a very expensive process as was the applicant; it could have been avoided if it was conditioned upon state approval. Mr. Sullivan said it got to the DEP and they said it was roughly two and a half (2½) times the size they could build; the project was not eligible for a Variance. Now they have spent all of this time and had to appeal to the courts to preserve our rights under the Special Permit lest they would lose their right to challenge. He said they were forced into a very expensive process as was the applicant; it could have been avoided if the Board had conditioned its action on receipt of a state permit.

Mr. Stiles asked Mr. Sullivan if he and the neighbors were satisfied with the plans they are now and Mr. Sullivan said yes but he could only speak for himself. Mr. Stiles asked Mr. Eck if he supported it and Mr. Eck said that he was a little poorer and he didn't want to make enemies over this. Mr. Stiles asked if he supported the new plans and Mr. Eck said absolutely. Mike Duane said he bought the Almeida property at 221 Bay Avenue and he does not have a problem with this at all. Mr. Sullivan started to ask Mr. Galvin if they closed the hearing and requested elevations and Mr. Galvin said they had to leave it open. Mr. Delisi said the plans are essentially the same building footprint with reduced height. He said the change is insignificant and the permit could be issued tonight; they don't have the plans formulated as yet. Mr. B. Murphy said they could close the hearing and let it come in with the building permit. Ms. Fidler said she would like to close based on a conversation with Attorney Witten. She said that she sees three (3) people talking for themselves tonight and before there was a roomful. She made a motion to close and Mr. Stiles asked about Mr. Witten; Ms. Fidler said he was working on this from the beginning. She made a motion to close Case #19-70 which was seconded and all were in favor. Mr. B. Murphy said they would take it under advisement and Ms. Porreca said there were two (2) meetings left in the year – November 26<sup>th</sup> and December 10<sup>th</sup>.

Ms. Fidler advised Health Circle, Inc., Case #19-55, that there were only four (4) members available – Fidler, B. Murphy, R. Murphy and Keane; Mr. Stiles is recused. Mr. Romano asked to speak with Mr. Galvin. When Mr. Romano returned and said he was concerned given the makeup of the Board and requested to continue this portion of the hearing to November 26<sup>th</sup> where medical use and two primary uses are on the Agenda. Ms. Fidler said they would put all three (3) at the back and made a motion to continue the hearing to November 26<sup>th</sup> which was seconded and all were in favor. Mr. Romano said it would be Special Permit, Site Plan and Variance. Ms. Fidler asked if we had a letter from the police and Mr. Romano said Frank Matthews, Director of Security, spoke with Chief Tavares and he said he would follow up with the Board.

Mr. Romano said another Board concern was the site plan and they have submitted updated site plans that show lighting, the demarcation of the two (2) lots, storage. Ms. Fidler said her notes have dimensional parking, landscaping, security, surveillance, gates. She said that there is a bond required for traffic under Section 12.05; it mentions three (3) written bids. Mr. Romano said they were under the impression that they didn't have to submit an updated traffic study. Ms. Fidler said her notes say there is conflicting information and Mr. Guimond said there was conflicting information. Mr. B. Murphy said he thought it was the parking between the buildings that was the issue; the traffic study has been done by Modera and this would be a small impact.



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Mr. R. Murphy said that he thought traffic was fine, that it was an issue with the demarcation of parking. He thought there was a “handshake” deal about the handling of traffic during the opening weeks. Mr. Romano said he thought the Board would make it a condition of the permit that they would pay to have off-duty law enforcement for the first few weeks. They have looked at the parking. There are twenty-three (23) spaces required and they striped out twenty-five (25) spots. Ms. Fidler said she does want to review the traffic study. Mr. Romano said when they first started discussion Ms. Fidler read from a list; Ms. Fidler said they were her own notes about dimensional parking, landscaping, signage, security, surveillance, gates, traffic and bond issues. The meeting was continued to November 26<sup>th</sup>.

**#19-66: VRT Corporation:** The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-11.05.B “Planned Mixed Use Development - Process” which requires a minimum of seven (7) acres of land in consolidated ownership to qualify for a Special Permit within the Planned Mixed Use District on the property located at **751 Plain Street** which is further identified on the Assessors’ Maps as being on parcel D10-03-10 and is located in the I-1 zoning district. This parcel has been isolated from a larger parcel as a result of land taking connected with the widening of Route 139.

**#19-71: Benzine Development, L.L.C. and VRT Corporation:** The Petitioners are seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-6.02 “Table of Dimensional and Density Regulations” that require a minimum lot area of 40,000 square feet and a lot width of 150 feet on the property located at **751 Plain Street** which is further identified on the Assessors’ Maps as being on parcel D10-03-10 and is located in the I-1 zoning district. This parcel has been isolated from a larger parcel as a result of land taking connected with the widening of Route 139.

Ms. Fidler said they also have continued **Case #19-66** in conjunction with **Case #19-71** for Benzine Development and VRT Corporation. She believes they kept the discussion open, they didn’t deliberate and there were a few questions. Mr. Galvin said that Mr. Sullivan emailed the decisions to him and he made edits on one decision that also goes for the other decision and then emailed them back. Ms. Fidler said for the purposes of this meeting they are missing some folks.

Mr. Galvin asked if they had already voted and Mr. Fidler said they had not; they kept it open to make sure they had the language right. Mr. B. Murphy thought they had voted and left it up to Mr. Galvin for the decision. Ms. Fidler said they didn’t vote; she thought they would have it on the projector and then vote. Mr. Galvin said what he received from Mr. Sullivan was fair and he made clarifying edits. Ms. Fidler said they didn’t really go over the consolidated ownership of the parcels. Kayla MacLeod was there for Walter Sullivan and with Michael Verrochi. Ms. Fidler said it was clear in the documents that it was consolidated ownership on the parcels identified. Because of parcel IDs and references to them, she knows they are referencing D10-03-10 in a couple of instances. Ms. MacLeod said that all of the parcels are reflected on the Site Plan in the top right corner. Ms. Fidler said they were discussing the Site Plan page 4 of 15 which identifies the map and block numbers for the site at 751 Plain Street. She asked if there was a deed and there was; Ms. Porreca said the deed did not mention the parcels and Ms. Fidler

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said it probably references lot numbers. Mr. Verrochi said this was related to the widening of Route 139. Ms. Fidler concurred and stated that this was one large parcel and the entrance to Enterprise changed and now it has become two (2) parcels. The parcel IDs identified for where the bank will be located is correct as noted in the plan and the other acreage on the opposite side of the road will be another parcel ID. Ms. MacLeod said she believes it is reflected on the plan as "a portion of". Ms. Fidler said they would look into that. Ms. Fidler asked what they would do with these cases where they don't have enough votes. Mr. B. Murphy said that Mr. Keane was on this case and Mr. Keane agreed that he had heard these cases.

Ms. Fidler made a motion to close Case #19-66 which is the Variance on the seven (7) acre parcel. This was seconded and all were in favor. She made a motion to close Case #19-71 which is the minimum lot area and square footage of the lot width. This was also seconded and all were in favor. She said they didn't have the board to work with so she would refer to the applicant's Form 2B to go through the statements. She feels that since this is a Variance they should go through them individually.

Number 1, that the following circumstances relating to the soil conditions, shape or topography especially affect the land or structure(s) in questions, but do not affect generally the zoning district in which the land or structure(s) are located. Ms. Fidler said that the applicant referenced the shape of the lot and said it has a roadway layout on all sides and can no longer be considered part of the larger parcel. Ms. Fidler asked if the Board agreed with this and they replied yes.

Number 2, that a literal enforcement of the provisions of the Zoning By-law would involve substantial hardship, financial or otherwise, to the undersigned. Ms. Fidler said the applicant has stated that this lot was in full compliance with PMUD zoning and would have all the same rights and values as other lands within the same district. The applicant also answered that strict compliance would result in the lot being unusable. Ms. Fidler asked if the Board agreed and they replied yes.

Number 3, that relief may be granted without substantial detriment to the public good for the following reasons. The granting of this Variance will only allow for this parcel to go through the standard site plan review therefore the review process is designed to ensure it would not cause substantial detriment to the public. Ms. Fidler asked if the Board agreed and they replied yes.

Number 4, that relief may be granted without nullifying or substantially derogating from the intent or purposes of the Zoning By-law for the following reasons. When Town Meeting voted the new PMUD Bylaw this parcel was specifically included in the district and at the time was in full compliance with the intents and purposes of the Zoning Bylaw. The granting of this Variance will allow for the permitting of the land as Town Meeting intended. Ms. Fidler asked if the Board agreed and they replied yes.

Number 5, that strict application of the provisions of the By-law would deprive the undersigned of reasonable use of the lot or structure in a manner equivalent to the use permitted to be made by other owners of their neighborhood lands or structures in the same district for the following reasons. After the land taking this became the only undeveloped parcel, etc. and has no abutting land; it is only surrounded by the old Enterprise Drive, the new Enterprise Drive and Route 139.



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Zoning requires seven (7) contiguous acres; strict application of the Bylaw would deprive the applicant of reasonable use of the lot in a manner equivalent to the use permitted to other owners.

Number 6, that the conditions and circumstances are not the result of the actions of the undersigned taken subsequent to the adoption of this By-law for the following reasons. The applicant has owned this property since 1976; in 2008 when PMUD zoning was voted in this parcel was connected to a larger parcel and met all zoning requirements. The taking of the applicant's land which is now the new Enterprise Drive was done exclusively by the state on behalf of the Town and was not a result of any action taken by the applicant. Mr. Galvin asked if that was the application and Ms. Fidler said it was; he said the decision draft is a little different. Ms. Fidler said this was #19-66, the seven (7) acres. Mr. B. Murphy said they were just saying if they meet the standards.

Number 7, that relief if approved will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the same district for the following reasons. The granting of the Variance would only allow for this parcel to be permitted in the exact same manner as other lands in the PMUD that were not subject to the land taking. She asked if all agreed and they replied yes.

Ms. Fidler stated that Case #19-66 will go to the Planning Board and they will work through the specifics for permitting for this project. She said that they have agreed that all seven (7) requirements have been met and asked if the Board agreed to the Variance; they replied yes. Mr. B. Murphy said that they agree with that and any edits Mr. Galvin may have. Mr. Galvin said the conditions in the draft decision are that the project is to be built in conformity with approved plans; obtain site approval and a Special Permit from the Planning Board and all other applicable permits and approvals; the Variance needs to be recorded at the Registry of Deeds to become effective and rights will lapse if not exercised within one (1) year. Mr. Galvin said there are slightly different reasons but they follow along with the rationale. Ms. Fidler made a motion to grant the Variance for 751 Plain Street; this was seconded and all were in favor.

Ms. Fidler said Case #19-71 will go through a similar procedure and she will itemize. This is in regards to the lot width due to the taking of the land.

Number 1, that the following circumstances relating to the soil conditions, shape or topography especially affect the land or structure(s) in questions, but do not affect generally the zoning district in which the land or structure(s) are located. Ms. Fidler said the reason, again, is the taking of the land resulted in the lot's width, shape and size being altered and no longer contiguous. Ms. Fidler asked if the Board agreed with this and they replied yes.

Number 2, that a literal enforcement of the provisions of the Zoning By-law would involve substantial hardship, financial or otherwise, to the undersigned. The applicant says that strict conformance with 305-11.05 will result in the lot being unable to be developed despite being in conformance with PMUD zoning prior to the 2011 taking; this will cause the applicant substantial financial harm. She asked if the Board agreed and they replied yes.

Number 3, that relief may be granted without substantial detriment to the public good for the following reasons. They are subject to the same Site Plan review and Special Permit process as



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any other applicant. The Planning Board will work through the element plan and will be concerned for the public good. Ms. Fidler asked if the Board agreed and they replied yes.

Number 4, that relief may be granted without nullifying or substantially derogating from the intent or purposes of the Zoning By-law for the following reasons. The PMUD Bylaw was voted into effect and the lot was included in the overlay district and at that time was in conformance. Chapter 305-6.06 states, "for purposes of dimensional and density requirements the portion taken shall be considered as part of the lot". She said she doesn't really understand what the portion taken means; the part taken for the Department of Transportation (DOT) was that actual square footage. Mr. Galvin asked if there was a lot width issue and Ms. Fidler said width and size. Ms. Fidler asked if the Board agreed and they replied yes.

Number 5, that strict application of the provisions of the By-law would deprive the undersigned of reasonable use of the lot or structure in a manner equivalent to the use permitted to be made by other owners of their neighborhood lands or structures in the same district for the following reasons. With the DOT taking, strict compliance will deprive the applicant of the ability to develop this lot. Ms. Fidler asked if the Board agreed and they replied yes.

Number 6, that the conditions and circumstances are not the result of the actions of the undersigned taken subsequent to the adoption of this By-law for the following reasons. The DOT taking of the land created the conditions and circumstances. Mr. Galvin asked if that was the application and Ms. Fidler said it was; he said the decision draft is a little different. Ms. Fidler said this was #19-66, the seven (7) acres. Mr. B. Murphy said they were just saying if they meet the standards. Ms. Fidler asked the Board they agreed with number 6 and they replied yes.

Number 7, that relief if approved will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the same district for the following reasons. The current lot area and the width not being in strict compliance with Chapter 305-6.02 are results of the DOT taking. She asked if all agreed and they replied yes.

Ms. Fidler said that they agreed on all seven and made a motion to grant the Variance for Case #19-71 for Benzine Development and VRT Corporation for relief from Chapter 305-6.02, the minimum lot area and minimum width. The motion was seconded and all were in favor.

Meeting adjourned 8:20 P.M.

Respectfully submitted,



Nanci M. Porreca  
Zoning Administrator

I attest the foregoing minutes were approved by the Zoning Board of Appeals at their  
02/11/2020 meeting by a 5-0 vote.

Signed:  Date: 02/11/2020