

**ZONING BOARD OF APPEALS MEETING PLACE: SELECTMEN'S HEARING  
ROOM, MARSHFIELD TOWN HALL NOVEMBER 26, 2019 7:00 P.M.  
MEETING MINUTES**

*Members Present:*

*Lynn Fidler  
Brian Murphy  
Heidi Conway  
Richard Murphy  
Mark Stiles  
Larry Keane  
Stephen Feeney*

*Also Present:*

*Robert Galvin, Town Counsel  
Jeremiah Folkard, Building Commissioner*

MARSHFIELD TOWN CLERK  
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Ms. Fidler called the meeting to order at 7:05 P.M. advised that she is the Chair and other members are signified by their nameplates. She said that one Associate member was not here at the moment but there is a full Board with full time members. Town Counsel is also here. She stated the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were being recorded. Ms. Fidler also stated that there was a projector this evening.

**#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 said that she has been back and forth with Jon Witten, Town Counsel for Case #19-70, Stephen and Elizabeth Howley. She wanted to remind the Board that this was closed last week without getting any architectural renderings. She moved to reopen Case #19-70 which was seconded by Mr. B. Murphy; Ms. Fidler asked if she needed to read it into the record again. Ms. Fidler explained to the public that this case was remanded back from Land Court. She said they would re-advertise this to the public and hear it again at the earliest convenience; unfortunately they are running into the holidays. Mr. R. Murphy asked why there need to be notification; Ms. Fidler stated Open Meeting Law and the public needs to be privy to the architectural. Mr. Galvin said the abutters have a right to be present; it doesn't mean they will be there or object. Mr. Howley said that he thought it was closed the last time. Ms. Fidler said it was closed but they didn't have Town Counsel at the meeting and apologized for closing it. It was brought to her attention that they should not have closed it without some sort of architectural rendering. Unfortunately, she feels the Howleys' pain. This is a continuation of a legal situation. Ms. Fidler asked Ms. Porreca and she replied that it would be January 14<sup>th</sup>, 2020; there is only one

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(1) hearing in December. Ms. Conway asked if they could have a special meeting.

Ms. Fidler does not think it has to be advertised. Br. R. Murphy asked how long it needed to be advertised; Ms. Porreca said they would need more than twenty (20) days because the Mariner publishes on a Wednesday and the meetings are on a Tuesday. Mr. Galvin said it could be published in the Ledger. Ms. Porreca said they could do the Ledger and Mr. B. Murphy asked if they could put just one (1) thing on. Ms. Fidler said the Board would make itself available; Mr. Galvin said they could do it at any time of day as long as it is done at Town Hall; they could do morning or night. Mr. B. Murphy said they should do that if it's the quickest. Mr. Galvin said that if it went to the newspaper on Thursday or Friday; usually at noon of the prior day. Ms. Porreca needed to confirm any holiday deadline. If she gets it to the Ledger the next day (Wednesday) Mr. Galvin said it could be published Thursday and they could do it the following Friday which would be the thirteenth (13<sup>th</sup>). Ms. Conway said they would try for the thirteenth (13<sup>th</sup>) and Mr. Galvin said if they can't publish it then publish it on Friday and to the meeting on Monday the eighteenth (18<sup>th</sup>).

Mr. R. Murphy wanted to confirm that there was no way they could hear it if they reopened the meeting. Mr. Galvin said there could be no comment until after it was advertised. If not it would be procedurally defective. Mr. Galvin asked if the Board had renderings and Ms. Fidler said they did not, they have a narrative and the elevations have changed. Mr. R. Murphy asked if there was any way to open the meeting now and ask for the documents. Mr. Galvin said they could receive them any time after it is reopened but can't take any comments until it is re-advertised because on some remote chance an abutter objects, and he doesn't think that is the case, it would be procedurally defective. Ms. Fidler said they had a site plan and the height. Mr. B. Murphy asked if they needed the renderings. Ms. Fidler said she was told they did by Town Counsel that it was part of this; she understands his point but she is going with Town Counsel's advice on this. She asked Ms. Porreca to pull up the previous permit to show the Board and the new member. Mr. B. Murphy asked Mr. Galvin if generally speaking they have a Special Permit do they have to have renderings; he thought they could do it with the foundation. Mr. Galvin said that he didn't know if the Remand order required it but we customarily get a rendition and they make reference to it in the plans. Mr. Howley said he sent it to Town Counsel. Mr. B. Murphy asked if that was in the Court's decision and Mr. Galvin asked if the Order of Agreement was in the file. Mr. Galvin also said the re-advertising would be paid by the Town. Ms. Fidler asked if they could condition it with the Building permit; Mr. Galvin said if Attorney Witten told them not to do it...and he asked to see what was included on the letter.

Mr. Howley said that Mr. Witten was Town Counsel for this matter and asked if there was a reason that he couldn't be here; he wasn't hear last time and Mr. Howley thinks this is the third meeting that he could not make. Ms. Fidler said Mr. Howley was correct that Mr. Witten wasn't here at the last meeting but she doesn't know the reason why. She doesn't think Mr. Witten not being here tonight would have solved the issue of the Open Meeting Law. Mr. Galvin offered to call Mr. Witten and left the room to do so. Ms. Fidler said if they have done something wrong in the past it doesn't mean they are supposed to repeat it. She said that Mr. Witten is suggesting that they should not be conditioning architectural plans. Ms. B. Murphy said it should be based on the foundation. He asked Mr. Howley if he had told the Board they didn't do new drawings



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yet because they didn't want to waste the money if it wasn't going to be approved for the elevations. Mr. B. Murphy said it was roughly the same looking building with different elevations. He said it was discussed in the meeting and the neighbors spoke to that effect and said they were okay with it without the drawings. Mr. Howley said Town Counsel has the elevations. Mr. B. Murphy said they had them and Mr. Fidler said there was a narrative with the architectural. The issue is with this case having been remanded back; it's to protect the Board, the Town and the Howleys. She adjourned for five (5) minutes.

Ms. Fidler returned the meeting to order at 7:30. She said she had a discussion with Town Counsel and if she understands it, they will take a vote to see if the Board feels architectural renderings are necessary to close out the hearing. Mr. Galvin said if the Board decides they aren't necessary then they don't have to reopen the hearing and can proceed. Ms. Fidler said Ms. Conway was recused so she would ask the full members and Mr. Feeney to vote. Mr. Feeney said that he would let Mr. Keane vote on this since he missed the beginning of the meeting. Mr. Galvin said that with a Remand a member even though you didn't hear the original part, you can still participate because it is like a brand new Public Hearing and nobody has missed any hearings.

Ms. Fidler asked the Board if the felt renderings were necessary and they voted one to four (1-4) that they were not necessary. Ms. Fidler voted that they were necessary and Mr. B. Murphy, Mr. R. Murphy, Mr. Stiles and Mr. Keane voting that they were not. She then stated that they could continue to vote on Case #19-70. She said they had reopened the hearing and she would now close it. Mr. Galvin said technically she didn't reopen the hearing because they aren't taking new information. He said they were rescinding the previous motion to open the hearing based on the vote of the Board that renderings were not necessary; they will now deliberate to make a decision. Ms. Fidler asked the Board to approve the Remand order by the Land Court in the case of Donald Almeida, Jeremiah Eck, Kevin Sullivan, Kenneth Meuse and the Zoning Board of Appeals, etc. to consider the modified plans of the Special Permit, Variance and/or any other relief deemed necessary to raze and reconstruct the dwelling on the property located at 225 Bay Avenue as shown on the plan submitted by the applicant. This was seconded and all were in favor.

**#19-64A: Kathleen Fox and Terrance Power:** The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 7'8" x 12' garage addition and an 8' x 12' roof deck on the property located at **2193 Main Street** which is further identified on the Assessors' Maps as being on parcel E20-01-02 and is located in an R-1 zoning district.

Ms. Fidler read **Case #19-64A** into the record and turned the hearing over to the applicant. Ms. Fox said that there is garage space under the house for one (1) car and they would like to expand it another seven and a half feet (7½') so that they can park two (2) cars in tandem. They are also planning to put a deck on the left part of the main house; the garage is located on the right side.

Ms. Fox said they aren't changing the driveway, egress, sidewalk or anything. Ms. Fidler asked Mr. Folkard if he had looked at this and Mr. Folkard said that he had and he doesn't have a

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problem. He said it was necessary because it was the only place to expand the garage. Ms. Fidler asked if there were questions from the Board or audience 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.

**#19-75: Thomas and Mary Ann Digan:** The Petitioners are seeking a Special Permit in accordance with §305-13.02.C.01 and §305-10.12 and a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-6.07 to construct an 8' x15' float, a 15' ramp and a 72' pier on the property located at **1327 Union Street** which is further identified on the Assessors' Maps as being on parcel B18-01-01 and is located in an R-1 zoning district.

Ms. Fidler read **Case #19-75** into the record and turned the hearing over to Gene Guimond and Jed Hannon who were representing the applicants. Mr. Guimond said the Digans were out of town and Mr. Hannon was there to answer the technical questions. He said Mr. Hannon's late father worked on the projects with all of the different Boards and Commissions. This project has the approval of the North River Commission and an Order of Conditions from the Conservation Commission and an Army Corps permit. He said the Harbormaster has reviewed it and had no issues or problems with the project as proposed in relation to navigational issues or the water depth. They have a Chapter 91 Waterways license pending; Chapter 91 can't issue until they get the certificate from the Zoning Board. Mr. Guimond said it was brought to their attention that they needed a Variance for the setback and also a Special Permit for constructing the pier. The Board through the application has all of the findings in order to make the Variance and Special Permit determinations. He wasn't sure how in depth the Board wanted him to go. He said in the Coastal Wetlands District they obviously have to violate the rear yard setback to get a dock in there. He said all of the other regulations require them to be out in the water at a certain depth.

Ms. Fidler said they would look at the information and Mr. Guimond said it should be two (2) pages. He said the rear setback on this project would be the mean low watermark on the river so it extends out beyond that; Mr. Hannon said it would be approximately twenty feet (20'). Mr. Guimond said it needs to go out three feet (3') past that to prevent scouring. Mr. B. Murphy stated that you can't do docks without violating this. Ms. Fidler asked if there would be lighting and Mr. Guimond said no lighting is proposed except for some safety lighting. Ms. Fidler said one of the Board's conditions has been to allow access to the Harbormaster and she read through some additional conditions; Mr. Guimond said they do not have a problem with the conditions.

Ms. Fidler asked if there were any comments or questions from the Board and Mr. Keane said this is actually very common in that area. Mr. Guimond said this location has changed from the original location. He said if anyone was familiar with the Norwell side they have a park with a walking trail and that has a dock that extends out; the original location was going to be there. Ms. Fidler said there were other conditions but she wouldn't read through them (they were displayed on the screen) and Mr. Guimond said he has seen them in prior decisions and has reviewed them with the applicants. Ms. Fidler asked if there were any questions from the Board or the public and there were none. She asked Ms. Porreca if there were more conditions to



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display and there were none. Ms. Fidler made a motion to close the hearings for the Special Permit and the Variance which was seconded and all were in favor. She made a motion to grant the Special Permit which was seconded and all were in favor. Ms. Fidler made a motion to grant the Variance which was also seconded and all were in favor.

**#19-76: Guy Tassinari:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 6.5' x 18' second story addition on the front of the dwelling, a 7' x 26' single story addition on the right and a 39' x 18' second story addition over the existing first floor on the property located at **89 Standish Street** which is further identified on the Assessors' Maps as being on parcel K12-02-49 and is located in an R-3 zoning district.

Ms. Fidler read **Case #19-76** into the record; Mr. B. Murphy was recused. Philip Aker represented the applicant and said they were here because they are nonconforming on the right; the setback is 12.5 feet. They will be rebuilding the right hand side and will still conform to the front setback. Mr. Aker said the bold area on the site plan is where they are building the second story. The bump-out on the right is existing and they are rebuilding that to make it a better structure; right now it is falling off the foundation. They are conforming on the front, rear and left sides and need relief on the right side. Ms. Fidler asked if they were creating any new nonconformity and they are not. She asked if there were any 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.

**#19-77: Robert and Susan Herlihy:** The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 18' x 21' one story addition and a 6' x 10' covered porch on the rear of the dwelling on the property located at **675 Ocean Street** which is further identified on the Assessors' Maps as being on parcel L09-15-15 and is located in an R-3 zoning district.

Ms. Fidler read **Case #19-77** into the record; Mr. B. Murphy was recused. Philip Aker from Rockwood Design represented the applicants. He said they are proposing to build an 18' x 21' one (1) story addition and a 6' x 10' covered porch in the rear. They will be conforming on the left side at 15.1 feet. They will be extending the nonconformity to 14.6 feet in the bottom corner but they are at 13.7 feet in the front corner so it will not be any more nonconforming. Ms. Fidler asked the Board or Mr. Folkard if they had any questions. Mr. Folkard said that when the applicant is in the appeal period they can come to the Building Department. He said they are in a flood zone AE14 plus one (1) so half of the assessed value of the house will not cover the cost of the addition so it would be a substantial improvement. He said they could talk about that so they don't have to raise the entire house and just do the addition but they have to follow certain criteria. Ms. Fidler stated the Board will not endorse the shed. Mr. Aker asked if it had to be removed and Ms. Fidler said they don't have to remove it. She asked if there were any questions and there were none. She stated that Mr. Keane voted the last time and Mr. Feeney would vote

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this time. Ms. Fidler moved to close the hearing which was seconded and all were in favor. Ms. Fidler made a motion to grant the Special Permit which was also seconded and all were in favor.

Ms. Fidler asked Mr. Aker if he was here for **Case #16-58** under Other Business on the Agenda and Mr. Aker said that he was. Ms. Fidler said she assumed Mr. B. Murphy did not have to be called back and she read the Agenda note and asked Mr. Folkard to explain. Mr. Folkard said they can't encroach the side setback but as a means of egress they are allowed to encroach the side setback with a minimum width and he asks for 42 inches. He said the Board allows that but more than 42 inches is not allowed and they would need a Variance. Ms. Fidler asked if there were any questions from the Board and Mr. Galvin asked if it was in the setback already; Mr. Folkard believes that it was. Mr. Galvin said if it was already in the setback there is a 2019 case, *Bellalta vs. Brookline ZBA*, that says once you are in it you can get even closer to the lot line with the same type of dimensional nonconformity without getting a Variance. Mr. Galvin said they just can't create a new nonconformity; if you are in the side setback it doesn't mean you can create a new violation in the front setback if you are already nonconforming with a Special Permit. Mr. Folkard said they have a fifteen foot (15') setback and they want to go another two feet (2'); Mr. Folkard corrected that to side setback and not front setback. Mr. Galvin said that it was not substantially more detrimental. Mr. Galvin asked if this was a Special Permit case and Ms. Fidler said it was. Mr. Galvin asked if the new relief could be a minor modification; Ms. Fidler said she feels it is *deminimus* and would poll the Board; five (5) Board members said that it would be considered a minor modification.

**#19-55: Health Circle, Inc.:** The Petitioner is seeking Site Plan approval under §305-12.02 and a Special Permit under §305-10.10 of the Marshfield Municipal Code to locate a co-located retail medical marijuana facility and recreational marijuana retailer at the existing vacant 14,400 square foot industrial building on the property located at **120 Enterprise Drive** which is further identified on the Assessors' Maps as being on parcels D09-01-13B and is located in an I-1 zoning district.

**#19-55A: Health Circle, Inc.:** The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code for relief from §305-201 which defines Medical Marijuana Facilities and Recreational Marijuana Retailers as distinct principal use classifications to allow them to operate both uses contemporaneously on the property located at **120 Enterprise Drive** which is further identified on the Assessors' Maps as being on parcels D09-01-13B and is located in an I-1 zoning district.

Mr. Stiles was recused and Ms. Fidler said the Board had not heard Health Circle, **Case #19-55A**, yet regarding the two (2) principal uses on a property and she read it into the record. Ms. Fidler asked for §305-2.01 to be displayed on the screen. (§305-2.01 defines medical and recreational marijuana facilities.) She stated that the Board has before them requests for a Special Permit and Site Plan approval, specifically for two (2) uses on the same property. Attorney Valerio Romano and Mr. Michael Westort, President of Health Circle and project developer, represented Health Circle. Mr. Romano stated they had been before the Board in September for medical and recreational/retail marijuana facilities; §305-12.05 medical and §305-



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12.06 recreational. They are also asking for relief from §305-2.01 for both principal uses. Mr. Romano said the rollout of cannabis in the Commonwealth was by a ballot initiative in 2012 for medical which was very distinct from adult use. In 2016 voters approved adult use and the Marshfield Zoning By-laws talk about both uses. He said both are compatible and anyone who is going to do both always does them in the same location. Mr. Romano said that after the September meeting they were here at the beginning of this month. Kevin Grady is also in attendance and has submitted a formal site plan by Grady Consulting. Mr. Romano said the site plan has various amendments to the previous site plan that was submitted with the original application. He said one concern the Board had was a clear delineation of the property lines and a distinction of Health Circle's parcel from the abutting property next door. He said they indicate compliance with the Marshfield By-laws and site plan requirements; they have construction drawings depicting drainage, utilities, septic, building and parking with detailed dimensions and a photometric plan for the lighting. Mr. Romano said the two (2) uses will cover medical requirements and adult use. Ms. Fidler asked about signage and Mr. Romano said there was no specific language for adult use and he said that he had a picture of the proposed sign. Mr. Galvin asked if that would be the only sign and Mr. Romano said there may be some directional signs. Ms. Fidler said the original design had the entrance off to the left; Mr. Romano said the entrance for all would be the rear right.

Ms. Fidler asked about the use Variance and Mr. R. Murphy said his thought was that he had a hard time separating the two (2), recreational and medical; he sees it as the same thing but they are two (2) different uses. Ms. Conway said they needed to be mindful of that. Mr. R. Murphy said his opinion is that it's like going to CVS to get your cards and cold medicine; marijuana is marijuana. Mr. Romano said the state said that there needs to be a physical separation like a stanchion in a movie theater. Mr. Keane asked about the space and said that they would only be using 4,000 square feet of the 14,000 square feet. He asked if a medical facility could sustain this and Mr. Romano said that medical was slowly falling off. Mr. Keane said the use of CBD is increasing and asked about taxes. Mr. Romano said the Host will still get three percent (3%) and it would be six percent (6%) with three (3) each from medical and adult. Mr. Keane said it was like a car dealer, there is retail and wholesale; Mr. Romano said that was a good analogy. He said the facilities open for both are in the same place. Mr. Romano said again that it would be a movie theater rope that would separate the two (2); if they get more medical customers they would open up more for medical. He said they have room to do so but would defer to Mr. Galvin about 2500 square feet being devoted to the medical only. (Unknown) said that the Cannabis Commission was more into security than interior design.

Mr. B. Murphy asked if the Board was looking for a straw poll. Ms. Fidler said a Variance is for soil, shape or topography; Mr. B. Murphy thinks it's the same use, the same product. Mr. Feeney asked if on the medical side there was less of a line sometimes but said it was the same product. Mr. Romano said people twenty-one (21) and over don't have to get a medical card; he likes to use "adult use" vs. "recreational". He said more Points of Sale are devoted to adult use; the medical side needs an area for patient consultation. Mr. Keane asked if it was because of HIPAA and Mr. Romano said not necessarily. It's technically not HIPAA because they aren't a health care provider and they aren't transmitting insurance records; it's essentially about privacy.



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Mr. R. Murphy asked if someone walked into the adult side would there be any product they couldn't get; would there be any product they couldn't purchase. Mr. Romano said they need to keep thirty-five percent (35%) of the product available for medical sales; it's a database clip. The Commission wants to make sure that you always have product available for medical sales. Mr. Romano said there wouldn't be anything in there that the adult use patient couldn't buy except they need to keep a percentage of product available for medical. Mr. R. Murphy said that whether it was inventory for medical or for adult it was the same product. Mr. B. Murphy asked if they weren't listed in the By-laws would it be considered accessory use. Mr. Galvin said it isn't listed as an accessory use; he said when medical went in adult use wasn't permitted yet. Mr. Keane said he was asking if adult use would be seventy-five percent (75%) and medical twenty-five percent (25%). Mr. Galvin said in other communities medical is less necessary if adult is available.

Ms. Conway said she thinks the Board needs to be clear that it is two (2) uses. She also said she did not think the applicant met the criteria for a Variance. Ms. Fidler said the applicant's answer to Question #1 does not answer what the Board needs – is it soil, shape or topography? Mr. Romano said his office may have misunderstood. Ms. Fidler said they may want to take some time and talk to Mr. Galvin and the Board took a short recess. Ms. Fidler called the meeting back to order at 8:57 P.M. and gave the floor to the applicant. Mr. Romano said that after a discussion with Mr. Galvin, if the Board would allow it they would like to withdraw the application for a Variance, Special Permit and Site Plan approval for medical and continue with the sole principal use for recreational. Ms. Fidler asked if there were any questions from the Board and Mr. R. Murphy said he was a little disappointed over this; it's the same pie, same product. Another thing he heard tonight is that someone with a medical license looking for advice won't be able to get it. He said it's difficult to stay ahead of change and this is the same product. Mr. Keane said he was disappointed they were withdrawing the medical; if they are going to be in our community he would like to see full service so nobody has to leave town.

Mr. Romano said he tends to agree and they are asking to withdraw without prejudice so that they can come back. He said this is all his office does and this is the first time they have seen the multiple use issue. He said they would come back but would move the project forward with recreational. Ms. Fidler said that Mr. Galvin was back in the room and asked Mr. Romano to reiterate to Mr. Galvin what their plans were. Mr. Romano said their application was deficient, they didn't understand the requirements. To keep the project moving they would like to withdraw without prejudice the application for the Variance and the Special Permit for the medical aspect. Their intention is to come back because as Mr. Keane pointed out, the medical side is also important. Mr. Galvin said the Board could allow that. Mr. Romero said they would move forward on the adult use to keep the project moving; it is essentially the same project; Mr. Galvin said the Board should vote to make that happen. Ms. Fidler confirmed that the applicant wanted to continue with the application for adult use. Mr. Galvin said they would proceed with the adult use/retail as long as the Board agrees to the withdrawal of the medical part; they are requesting to withdraw the Variance and asking for the Special Permit. Ms. Fidler made a motion to accept the request to withdraw without prejudice the medical portion of Case #19-55; this was seconded and all were in favor. Mr. Galvin said they should withdraw the application for the Variance, Case #19-55A, so there is no final negative action. A motion was made to



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approve the applicant's request to withdraw the Variance for two (2) principal uses as a result of the withdrawal of the medical dispensary application; this was also seconded and all were in favor. Mr. Galvin said that now they could go forward with the retail.

Ms. Fidler read Case #19-55 into the record and said that the Board would strike "medical" and "collocated"; Ms. Fidler reiterated that this was read into the record again with the changes. In reference to the Special Permit and Site Plan, there was a letter from the Chief of Police and from Greg Guimond in Planning; Ms. Fidler asked Mr. Romano if he had a chance to review those; Ms. Porreca said they were not forwarded. Ms. Fidler said that what Mr. Guimond says is critical and asked for it to be displayed; Ms. Porreca left to scan the document. Ms. Fidler said it came in this afternoon and she wanted to make sure they were on board and that the Board had it. She said Mr. Guimond's letter dated November 25, 2019 gives recommendations to the Board; she also has a letter from Mr. Guimond dated November 26, 2019 which also refers to the reading of §305-12.05 and §305-12.06. She said they are no longer concerned with §305-12.05 but they do need to be concerned with §305-12.06 which clearly requires the marijuana facility to have and submit the state licenses and permits as part of the submittal to the town for the Special Permit. This will allow the town to see a fully fleshed out plan meeting all state requirements first before the Board gives a final local review. The letter said Mr. Guimond recommends that the Zoning Board of Appeals continue or accept the withdrawal of the Special Permit and Site Plan portions of the marijuana facilities until said state review and issuance of licenses and permits have been submitted. She said they didn't need to discuss the request for a Variance. Ms. Fidler asked Mr. Romano to share his feelings with the Board and Mr. Galvin.

Mr. Romano said that he spoke briefly with Mr. Galvin about this before the hearing and said it was absolutely impossible to get state licensing until they complete their construction and they do their inspections. He said they have done this in numerous cities and towns over the last few years and what is typically done is the state licenses which are natural conditions will become a condition of the permit. Ms. Fidler asked what a provisional license was and Mr. Romano said that a provisional license is approved based on their written application; it's not a license to do anything; can't possess or sell cannabis based on the written application. He said what the Bylaw calls for are copies of all required licenses and permits issued to the applicant by the Commonwealth. He said they can't get their license until they complete construction. Mr. Galvin said they will get the final license when the state comes down for approval; he said the Board cannot enforce this. They have done all they can do but won't get a final license until after they have a site; they will build it and the state will come down for a final inspection. Mr. Galvin said that prior to the commencement of the use they will provide all copies of licenses and permits. Mr. R. Murphy said Certificate of Occupancy and Mr. Galvin said no, commencement of use. They will make a copy of the license and drop it off then they will get the Certificate of Occupancy. Mr. Romano said they won't even get their license before the Certificate of Occupancy and Mr. Folkard said he could issue a temporary one; a temporary one is for thirty (30) days. Mr. Folkard thinks it can be worked out if conditioned on the license.

Ms. Fidler said that she wants to understand the plan for this project and she said that nobody showed up to their community meeting. Mr. Romano said he didn't think there were abutters here tonight either. Ms. Fidler said they have been at this for a while and she has some specific



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questions. Mr. B. Murphy said that he had to leave and would watch the tape; Ms. Fidler asked if he had anything to ask and he said that he did not. Mr. Romano joked about a vote walking out and Ms. Fidler said they would not vote tonight and needed to deliberate. She said she would go down her list quickly. She mentioned a transportation guide to show the ins and outs of the property, where pedestrians would be walking, people coming in and out, parking, the lining going in. She asked for the Site Plan to be displayed. Mr. Romano said they had a plan (on a board) and there was a discussion. Ms. Fidler said to review that Stellwagen was on the right and she reviewed the property boundaries. Mr. Grady pointed out the property line and Ms. Fidler said that wasn't what the Assessor has. Mr. Grady said that they did some ANR adjustments to the lots two (2) years ago and the Assessor has the map downstairs for it. He said this is 40,001 square feet; Ms. Fidler pointed out something to Mr. Grady on a paper copy and Mr. Grady said that had been reconfigured. Ms. Fidler said that Stellwagen parking may be conflicting. She said a potential client would enter at your curb cut and Mr. Grady said there are two (2) curb cuts and pointed them out. He said they could enter here or there (pointed both out) and if they enter to the left the parking will be lined that way; if they enter the right curb cut they will end up parking on the right side of the building in the rear. Ms. Fidler said the Marijuana Bylaw does not give specifics regarding parking and she has an issue with that. She said they have identified twenty-three (23) spaces required and there are twenty-five (25) proposed; she doesn't think that is sufficient to cover the employees and the clients; she asked Mr. Grady if he wanted to address that. Mr. Grady said it's not a typical retail store, there aren't several products the public will be buying. It's retail that sells the same thing, a specialty retail which probably needs less parking than what the Bylaw would require for a CVS, Target or Job Lot. This is closer to an individual doctor's office and not a network office. Mr. Grady said this was the highest density requirement in retail and office; they aren't going to use a lot of office space but are just meeting the Bylaw. He asked Mr. Romano how many employees would be on a single shift; Mr. Romano said it would depend on some security requirements if the Police Chief wanted them to have additional people. He said it would probably be a minimum of six (6) people on any one (1) shift. They can park the employees off-site if necessary and shuttle them in. A lot of the concern with parking and traffic comes from when places first opened; Leicester was in the paper and it was a nightmare. He said the use has calmed down and there are now thirty-three (33) or thirty-four (34) locations open; by the time they open in a year or so there will be fifty (50) or sixty (60) opened. Mr. Romano said the big concern with parking has been eliminated; if you fit the Bylaw for Retail then you fit the Bylaw. During the first week they are open they will work with the Police Chief to have someone on site; they will have an employee there who will watch parking and traffic; it won't be like the first day of Leicester.

Ms. Fidler said she would love to believe them and have that but she needs to understand the backup plan; that's how she feels and isn't sure if the Board feels the same. She needs to understand if there is an influx of folks on a Saturday afternoon and Stellwagen is already capped out and they are parking on the street. People bring their kids in strollers and she wants to know how they are prepared for the influx. Mr. Romano said they can park the employees off-site and shuttle them; they have spoken to the owner of the radio station who is putting in a concert venue and he has agreed to work with them if they need additional parking. Mr. Keane said he mentioned that at the last meeting. Ms. Fidler said perhaps part of the submission process could possibly be that they have a lot identified; she would think that the individual would want to



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know who is parking on his lot; the Board needs to know that Police, Fire and ADA compliance are taken care of.

Mr. Romano said they want a detail there for the first month that they are open or for as long as the Police Chief thinks is necessary to make sure they are satisfying the parking concerns particularly on Saturdays. They can start with a soft opening and not do a lot of fanfare or social media. They have the adjacent lot to park the employees off-site and shuttle them and they will have a detail as long as needed. Mr. R. Murphy said his biggest concerns are traffic and parking; he understands what they are saying, the sizzle may have subsided a lot. But he said the Board needs to prepare for the worst. He would like to see a concerted effort working with Stellwagen and the flag football people because what if they open up when everyone has a special event? He would love some coordination so they don't all have special events. He asked Mr. Folkard about street parking because he has seen it at Stellwagen. Mr. Folkard said they got permission to put the truck out; Mr. R. Murphy said he has seen patrons parked in the street. Billy Last, Jr. from Indiana Street said the property owner that they are leasing from owns three (3) other properties within the park and their primary use is off peak from any of his other buildings; they could very easily get an agreement for forty (40) to fifty (50) parking spaces within two hundred (200) feet of their location. Ms. Fidler said they would come in and maybe there would be an attendant and they would get a parking pass, put it on their dashboard and go down and then walk back? Mr. Last said all employees can go park at the other location. Ms. Fidler said this is on the "to do list" that remains open.

She started to ask about the fire turning radius but Mr. R. Murphy had a question; with state licensing do the patrons have to be on site to purchase and he asked Ms. Porreca what she had just said. Ms. Porreca said that for security, do they have to be parked on the site so security can monitor them while they are there. Mr. Romano said they do not. The location at 21 Milk Street in Boston is an office building and there is one in Harvard Square that also does not have parking so there is no state requirement to have them park on site. Ms. Conway asked if there were state requirements, such as parking, that they needed to be aware of. Mr. Romano said not as far as parking but they need to show ID to get in, there are cameras everywhere except the bathrooms covering every single inch. Retail is dispensing only, everything is packed off site and trucked in with bar codes. They have to show ID to purchase and they have to take returns. They can only purchase a certain amount per day so they can't just keep going back and forth to buy more and more. They have to show ID to get swiped into the database; they don't keep track of adults coming in but the same adult can't keep coming in buying every day. They made an effort to prevent that. They have cameras, security checking people in; there are multiple ID checks. They take debit as well; it's not just a cash business; more than half of the sales are debit. Ms. Fidler asked if it was cash, debit and credit card. Mr. Romano said no credit cards but in a sense a debit card is a credit card but with a pin; they can't take credit cards yet. Ms. Fidler asked if it was just their company and Mr. Romano said it was nationwide unless someone would lie to a credit card company about what their use is. Mr. Keane said he was told by someone in the Department of Revenue yesterday that the cash problem hasn't really turned into a problem. Mr. Romano said it was over half debit and they have banking; they bring their cash to the bank, Century, but there are three (3) banks that take it now. They have payroll, checks and operate like a regular business.



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Ms. Fidler said the Transportation Guide refers to people driving, people walking, bus drop off, taxi, valet and asked about handicapped access to parking; they need to make sure that it's ADA compliant on the side entrance. She said this building was permitted originally based on ADA compliance in the front and she wants to make sure it is compliant on the side as well. She said that she knows in the past people were worried about standing in line outside in 95 degree weather waiting to get in but Mr. Romano is saying that it won't be a dilemma. Mr. Westort said they have a waiting area.

Mr. R. Murphy said they had mentioned medical permit and he asked if there is a higher level of access/construction for medical versus adult. If so, would they build it at the higher standard in anticipation of a medical license. Mr. Romano said the medical requires a patient consultation area and they will build an extra room for that. Mr. R. Murphy asked about any changes outside for it and Mr. Romano said it will already be ADA compliant. Ms. Fidler said that obviously medical was off the table for now and they are discussing permitting for this to save time in the future. She doesn't think it is something that they would require them to do; just having a discussion about how in the future they would be prepared to answer all these questions for the medical situation. Mr. Romano said they would not commit to anything that would preclude medical use; Ms. Fidler said that was her concern and Mr. Romano said they wouldn't do that.

Mr. Folkard said regarding security they had said that there wasn't going to be a crowd but he is worried about that. There is parking there, parking at WATD and parking at Rick's other lot across the street and down Rockwood Drive. He said if you need all of that parking are they responsible for all of that parking if people are letting them use their property. Mr. Folkard asked if they would have security in those areas; someone is buying at their store and then walking across the street down Rockwood Drive to Rick's other place – will there be security there? Mr. Romano said if the Chief wants them to have a parking lot attendance at the overflow spaces they would do what the Chief wants them to do. He used downtown Boston and Harvard Square as examples and said that people are walking from everywhere and those two (2) places aren't securing adjacent lots. If the Chief wants it they will do it until they can make a good argument not to. Mr. Folkard said Boston is mostly walking traffic anyway but here they will walk across to Rockwood Drive which isn't normal walking traffic; he has a concern with people crossing. Mr. Romano said for the soft opening, the first month, they will have a parking lot attendant and will have someone outside to help with people walking back and forth. He didn't know if they had planned on hiring someone to stand in the adjacent lot three hundred (300) feet away particularly if it wasn't needed. Mr. Folkard said he was worried about the foot traffic because people could get hit by cars there.

Ms. Fidler said that Mr. Guimond's recommendation letter also spoke about safety on the side streets, there weren't sidewalks, etc. She said that now that medical is off the table their traffic study was perhaps distorted. She mentioned that there were only four (4) cases (?) on that. Mr. Romano said it was the only IT data and he thinks there are only three (3); it comes out to 143 trip ends. Ms. Fidler said she looked at the book, and it's thick, and said they recently added marijuana dispensary. She feels the actual data provided to the Board was not sufficient but she wasn't a traffic professional. She would like to have a peer review to understand the traffic impact the building will have on Commerce Way and the abutting area and she asked the Board



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if they would accept a peer review of the traffic impact. Ms. Fidler also said that Modera will be in there. Mr. Romano said of course if the Board wants to get this out to an engineer. Ms. Fidler asked if the Board would be in favor of hiring a peer reviewer for the traffic study and said she will look into it to see what it entails and the turnaround time.

Mr. Last said that he did traffic related stuff related to the widening of Route 139; he said their MEFA application and certificate of access requires them to do trip counts and they have to update the state every year with new trip counts and new uses. If they get close to breaking the roadways or an intersection, VRT Corporation has to go back and mitigate. He said VRT is the master developer and they are obligated to make sure traffic doesn't get broken; the state could tell them they can't build anymore in Enterprise Park. Right now they are authorized for twelve thousand (12,000) trips per day. Mr. Last said he understands talking about doing a traffic study but he assured them the real responsibility is the Mass. Access Highway permit of VRT. Mr. Keane stated that Mr. Last pretty much said that area is now below the trips allowed; Mr. Last said they are authorized to put another 12,400 trips a day out onto Route 139. Ms. Fidler said Modera and other developers were going in. Mr. R. Murphy asked if Modera was included in that and Ms. Fidler said no because now it is only employees. Mr. Last said it wasn't really a trip count but what was projected; the only way they can make sure the road doesn't get broken is probably towards the second half of development.

Ms. Fidler said they have been at this for awhile. Someone approached her in the grocery store and made a suggestion – an online, reserve ahead platform using the menu on line and coming in. She mentioned an overview of the procedure and how it will work and said a narrative would be fine. She also mentioned appointments and said she was leaning toward 8:00 to 8:00; Mr. R. Murphy said that was what the Bylaw says. He said that someone mentioned earlier their hours were offset from Health Circle's and asked if they were currently operating. Mr. Westort said they were not operating yet. Mr. R. Murphy asked if they had a sense of their hours and Mr. Romano also said the Bylaw states 8:00 to 8:00. Mr. Romano said that he has been in lots of these in Massachusetts and it depends on the time of day; they requested 10:00 to 8:00 seven (7) days a week. He doesn't think they need earlier but if the Board wants to grant 8:00 to 8:00, that would be great. Mr. Westort said they will know more once they open; he doesn't want to staff it if nobody is there; if it's 5:00 and nobody shows up they can adjust accordingly. Mr. Romano said they will keep that data and share it with the Police Department.

Ms. Fidler said another thing was a landscaping buffer zone between the properties; either a fence or something to work through the overflow from Stellwagen or come up with something else. Mr. R. Murphy asked if it was between the two (2) properties and Ms. Fidler said they absolutely need something because of the parking issue and security. Mr. Westort said that as far as a fence or dividing line, if they talk to Stellwagen and the hours aren't the same as when they will be busy, they could park here and wouldn't they want it to be open. Ms. Fidler believes that Stellwagen has a condition for a certain required number of spaces so your spaces will be sharing with their spaces; it conflicts with our Bylaw; let's revisit this next week. Mr. R. Murphy said that the spaces have to be earmarked but they are talking about flexibility. Mr. Westort said that was right; if they both meet the requirements then they are fine but if they have extra spaces and he (Stellwagen) wants to use them on a Friday because they are closed it would be okay. Ms.



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Fidler said that may be a landlord issue. Mr. Romano understands that they (Stellwagen) have people park there at night after they (Health Circle) would be closed; he doesn't think they would have opposition to that as long as they are closed; they want to be good neighbors. There is no security requirement with the state; he wasn't able to see the Police Chief's letter but he understands it was a favorable recommendation. Kevin Grady said the building is secure.

Ms. Conway said that they know what can happen and what might not happen; nice people can work together but they also know that they don't. They want to make sure these people have a Special Permit based on the spaces and they want to make sure they aren't doing something they aren't supposed which could end up as a bigger problem for everyone. Mr. Last said the same landlord owns both buildings; Ms. Fidler agreed but said that nobody knows what is going to happen. Mr. Grady said they comply on both sites for the required parking and will work on off-site permission from that same owner; they will have some language for that at the next hearing. Ms. Fidler said it was specific for office and warehouse; she wasn't sure how they came up with the spaces. Mr. Grady said they took the highest density and complied with zoning based on square footage. Mr. Keane said people won't be shopping there an hour at a whack; they will order online, come get it and get out; it's not like the slots will be filled up all day. Ms. Fidler brought up access, egress and ADA compliance; the design of the loading zone, refuse and service areas and the landscape design. She wanted some sort of understanding so Mr. Folkard won't be at a loss. Mr. Romano said they want to satisfy the concerns of the Board and asked if the interior was germane to the Special Permit. Mr. Folkard said it was as far as ADA and architectural compliance; Ms. Fidler said the Board has discretion. Mr. Romano said they have an architectural review process with the state. Mr. Folkard said he knows the building pretty well and he is looking for any buildouts they will be doing; Mr. Romano said they could talk offline.

Mr. R. Murphy went back to the Bylaws which read 8:00 to 8:00; he asked if their deliveries and things going back to the warehouse would be done during operational hours or after hours and asked if that was mandated by the state. He said if they are getting deliveries there would be more traffic; Mr. Romano said the deliveries would be during off hours. Mr. Keane said that Mr. Romano said there would be two (2) deliveries per week; Mr. Romano said they don't know exactly what the volume would be but two (2) per week should be sufficient but they may have to do more. Ms. Fidler said the application says two (2) and they have said two (2); she doesn't want to write in a condition that they are mandated for two (2). Mr. Keane said he wants to make sure it's a secure delivery and the Chief is aware; they have the public coming. Mr. Romano said all the state is concerned about is security. Security trucks have to have GPS but it's not like regular GPS; it needs to be hardwired so it can't be taken out. There has to be a camera that actually looks at the product and keeps a recording of it inside the truck. There will be two (2) people driving at all times and they have to randomize their route. If they deviate from their route they have to notify the state and local law enforcement. He said it was over the top for what someone in the room has in their pocket.

Ms. Fidler said they have been at this for awhile and asked if there was anything specific that needed to be addressed before they close for the evening. Mr. Keane said they made a good point regarding parking when they said the hysteria of this has hit its peak already. By the time



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they get this open the state should have roughly one hundred (100) units; Mr. Romano said one hundred and eighty (180). Mr. Keane said he was told there are forty (40) across the state now; Mr. Romano said thirty-three (33) or thirty-four (34) adult use are open today plus medical; there are a few hundred in the pipeline. Mr. Keane said the information he got was that in the next eighteen (18) months there could be over one hundred (100) and the craziness will be over. Mr. Romano said it already was; his clients who are opening today and last week are kicking themselves for not opening a year ago. Mr. Keane said they are basing the parking on retail but people aren't going to be shopping for an hour; they will be in and out. Mr. Romano said there was no consumption allowed and there's no reason to hang around. Mr. Keane said Ms. Conway made a good point, the peak hours will be like a package store after work; Tuesday at noon time will probably be quiet. There are avenues there to correct your parking situation if you need additional parking.

Mr. Romano said they are sharing six percent (6%) with the Town. Mr. Feeney asked if Brockton had both and Mr. Romano said he thought they are getting adult use now if they haven't already. Mr. Romano said Wareham has a couple and Mr. Feeney asked what was on the horizon that he know about or represented. Mr. Romano said Rockland will have a few. Mr. Feeney asked how many parking spaces they had now and Mr. Romano said twenty-five (25) and that twenty-three (23) is the calculation under the most dense part of the Bylaw. He knows this is new but technically they are satisfying the Bylaw; he said he would love to go back and revamp the Bylaw. Ms. Fidler said they really worked hard and did a good job. Mr. Romano said most cities and towns don't have special parking requirements for this use; it just goes by retail. Mr. Grady said he hadn't seen any for liquor stores either; Mr. Last said it was similar to a bank.

Ms. Conway asked if there was a reason they would pick a side entrance as their main entrance. Mr. Paul Jacobsen said it was because of the stairwell in the front. They looked at a couple of different scenarios and this is probably the fourth or fifth rendition. The front creates a few different issues, not only the stairwell but they need to segregate because anyone who comes in for marijuana needs to scan their license to get in the first door. If someone is just going for a UPS delivery or to the front entrance vs. the cannabis side, they would have to do the same thing and they didn't want that. It's very limited in the front; to adapt it for cannabis without adapting the whole building like that with the ID situation. Right now if you came in through the front there is no way to get into the cannabis side without going around. Ms. Fidler asked if there were safety precautions if they had to get out; Mr. Jacobsen said there were. Ms. Conway asked how they were separating a 14,000 square foot building. Mr. Romano said there is no entrance to the rest of the building; you can't sneak in. Mr. Jacobsen pointed out what has already been built out and where walls don't exit; there aren't many changes other than some modification for the bathrooms. What is changing is the wall separating the retail area; right now there are no walls, it's all open. It's a warehouse for a roofing company; the offices are in the front; more than half of back warehouse will have new walls. The entrance on the side is an overhead door now but they will be changing that to a storefront by taking the overhead door out. The opening exists but it will go from the overhead door to a storefront. You can't open the door without showing ID unlike the UPS drivers or mailmen in the front; the office side has nothing to do with the cannabis side. When you first come in there is a person and a pass-through window; you will



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show ID and then be let into a waiting area. If there are too many people they can restrict the next person from coming in and queue them up. They don't want one hundred (100) people sitting there but they can't service them. They are putting in a counseling room even without the medical; it will be an office but will be there when they come back for medical. A lot of medical patients don't want to be seen in the dispensary. If someone goes in for consultation and the person isn't there they can go out through there and not through the dispensary.

Once you go into retail there will be six (6) or seven (7) POS (Point of Sale) stations. If the medical side is there like in Rockland, the counters are set up with two (2) stations. There is no public access behind the sales counter. It is order fulfillment; once they know what they want they can order online. There is a processing area for orders which is only for staff; the doors are card access only. If there is theft they can determine when.

They will be taking up about sixty percent (60%) of the total square footage. Mr. Folkard said his problem is the entrance and exit are too close. Mr. Romano said there will be a man trap/sallyport; Mr. Keane said he went in to a dispensary in Colorado and it was pretty much the same way. Ms. Conway asked if the office space was specifically used for this business and not rented out to anyone else. The reply was that it would not be rented out. Mr. R. Murphy asked about the occupancy according to the architectural but Mr. Romano was not sure. Mr. R. Murphy asked what they would do with the overflow and Mr. Romano said that was why they had the waiting room.

They will still have the back overhead doors for deliveries and nothing will be seen out front. Someone asked about cameras in Rockland and the reply was sixty-eight (68). Mr. Jacobsen said the building has gas traps in it so they can bring a van or some kind of covered truck in. Ms. Fidler said the Site Plan would need to go to the Fire Department for sign off; Mr. Jacobsen said for the Fire Department, it would be the same as it was before. Ms. Fidler asked about lighting and if there would be new wall packs or existing; Mr. Jacobsen said some new ones have to be added. Mr. Jacobsen asked if there were any questions on the interior and Mr. Folkard said they would dissect it when they send the plans to the Building Department. Mr. Jacobsen said that once someone leaves they can't come back in that door. Ms. Fidler thanked everyone and said they will continue this to January 14<sup>th</sup>.

Ms. Fidler made a motion to adjourn but there was one more item on the Agenda.

**#16-58: Charlene and Denis Green, 19 Telephone Street:** request the Board's opinion as to whether an expansion of the entry landing to 6' x 8' as originally requested and referred to in Condition 1 of the November 29, 2016 Special Permit decision would be considered a minor modification. The Condition states "The means of egress, stairs and landing, of greater than 4' in height above grade shall have a 42" maximum framing width into the right side setback (north side)".

The Board determined that egress is currently in the setback and they will not be creating a new nonconformity; they determined that this would be a minor modification.



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Ms. Fidler made a motion to adjourn the meeting which was seconded and all were in favor.

Meeting adjourned 9:45 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: Lynne E. Kelly Date: 02/11/2020