

**ZONING BOARD OF APPEALS MEETING PLACE: HEARING ROOM 3
MARSHFIELD TOWN HALL SEPTEMBER 24, 2019 7:00 P.M.
MEETING MINUTES**

Members Present:

*Lynne Fidler
Brian Murphy
Heidi Conway
Mark Stiles
Stephen Feeney*

Also Present:

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

Ms. Fidler called the meeting to order at 7:00 P.M. and advised that the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were being recorded.

Ms. Fidler stated that this would be a short evening and there were a few Agenda changes. She stated that D.H. Smith, **Case # 19-50**, has requested to continue this hearing to the December 10th meeting. She asked if she needed a vote to do that and Mr. Galvin said they didn't have a quorum so they could not take any action on a Special Permit. Ms. Conway asked if they could move something to a different date and Mr. Galvin said that they could do that. He explained that in order to have a legal vote on a Special Permit, the Board needed four (4) members and there were only three (3) here now and two (2) were on the way. Mr. Phelan asked if the Board was waiting. Ms. Fidler said they would do their business and Mr. Galvin said Mr. Phelan will want to wait legally. Ms. Fidler made a motion to move **Case #19-50**, D.H. Smith and Sons, to December 10th; this was seconded and all were in favor.

Ms. Fidler said that at the last meeting the Board had continued **Case #19-60** James Curley, Trustee/Pest Trust #8; the Petitioner has now requested to withdraw the case. She made a motion to close the case which was seconded and all were in favor.

Mr. Stiles arrived and Mr. B. Murphy stated that Mr. Feeney was on the way. Ms. Fidler started to explain the options that they could start with four (4) members when Mr. B. Murphy said that he had to recuse himself from this hearing. She asked if he could do the second hearing and he replied that he could. Mr. Phelan stated the other hearing could go before theirs. Ms. Fidler advised Ms. Ryan that she could proceed with the hearing with four (4) members or she could wait five (5) minutes for the fifth member to arrive; Ms. Ryan advised she would wait. Mr. B. Murphy explained to Mr. Phelan that one member just left (Mr. Stiles who also recused himself from the hearing) and they were waiting for another one; Mr. Feeney arrived at this point.

#19-62: David and Pamela Phelan: The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 21' x 14' second story addition with a 5' x 20' second story deck and a 5' x 13' first floor deck on the property located at **269 Elm Street** which is further identified on the Assessors' Maps as being on parcel H16-03-11 and is located in an R-3 zoning district.

Mr. B. Murphy and Mr. Stiles recused themselves from **Case #19-62** and Ms. Conway said the Board couldn't do it anyway; Ms. Fidler said that they don't have enough members. Mr. Galvin said that one (1) of the two (2) could invoke the Rule of Necessity so they would have four (4)

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votes and he left the room to speak with Mr. B. Murphy and Mr. Stiles. While Mr. Galvin was speaking with Mr. B. Murphy and Mr. Stiles, Mr. Folkard stated that Mr. B. Murphy didn't have to recuse himself from the Foster Ave hearing; Ms. Fidler said they were all set with Mr. B. Murphy on Foster but not on Elm Street.

Mr. Galvin returned, introduced himself and spoke to the Phelans. As Town Counsel he explained in order to act on their Special Permit they would need at least four (4) members and all four (4) would have to vote unanimously in favor. The Board has five (5) members and some associates but the last associate's position hasn't been filled yet but it is about to be filled. He explained that the two (2) Board members, Mr. B. Murphy and Mr. Stiles, both have conflicts of interest; Mr. Murphy has a past interest in the property and Mr. Stiles has an interest in the property next door. They both feel that there is a conflict of interest and do not want to sit on this hearing. Mr. Galvin said that no matter what they do someone will be unhappy. He explained the Rule of Necessity but they both don't think that was fair given their interest in the area; so the Board cannot act on this tonight. He explained the option would be to have it heard at the next meeting and said that nobody can order them to sit on a matter where they feel they may not be impartial. Mr. Phelan said he was under the impression that there were seven (7) members; Mr. Galvin said they currently have six (6), one is missing and the other associate position has not been filled. Mr. Galvin thinks it would be best to reschedule until October 8th and it would be put at the top of the Agenda. They will have a full Board to hear their matter; the three (3) members here that don't have a conflict are happy to hear it but can't. The Board is favorably dispositive to Special Permits. Mr. Phelan said he isn't going out of the footprint, just going up. Mr. Galvin said he should be fine but the Board really can't hear it; Mr. Phelan said he understood and will take the option to move to October 22nd.

Mr. Folkard advised that at the next hearing they would need a framing plan and an elevation plan, not a narrative. Mr. Phelan said that wasn't what he was going for and that he had spoken to Andrew Stewart. Mr. Folkard explained what Mr. Phelan submitted was a narrative and the Board will want to see more than that. They will need to show the proposed change on the plot plan and will need it for the next meeting. Mr. Phelan asked Mr. Folkard what he meant by proposed. Mr. Folkard said they have a plot plan, an Assessors plan and a septic plan but none of them show where the new two (2) story deck is going. Mr. Phelan said it would be on top of the house and Mr. Folkard said it needs to show where it's encroaching; Mr. Phelan said he was not encroaching because he was going up. Mr. Folkard said that was okay and they would need elevations and plans. Mr. Phelan said he had seven foot (7') walls and a five foot (5') roof going on there; Mr. Folkard said if that's what he wants to bring. Mr. Phelan asked if that was sufficient and Mr. Folkard said it was not. Ms. Conway suggested that Mr. Phelan and Mr. Folkard meet the next day; Mr. Folkard told Mr. Phelan to stop by the office; Mr. Galvin said they were trying to make it easy for him. Mr. Phelan said he had pictures but he is not a professional drawer. He said that Mr. Stewart had talked to "Scott" about the side deck and he was fine with what Scott proposed on the drawing. Mr. Folkard advised Mr. Phelan again to come in the next day and he will get it squared away for the next meeting and we would have him out in no time.

#19-40A: Andrea Ryan: The Petitioner is seeking a Special Permit in accordance with

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§305-9.02 of the Marshfield Municipal Code to construct a 14' x 19.3' deck on the ocean side of the property located at **212 Foster Avenue** which is further identified on the Assessors' Maps as being on parcel L10-24-05 and is located in an R-3 zoning district.

Ms. Fidler read **Case #19-40A** into the record. Richard Servant of Stenbeck & Taylor said that he worked with Andrea Ryan and was before the Board for a similar project for what was supposed to be a seven foot (7') cantilevered deck; the previous request was approved by the Zoning Board of Appeals and the Conservation Commission. During the process the structural engineer took a closer look when it got to him and he had issues with supporting a cantilevered deck because they are in the Velocity Zone and felt it needed ground supports. Mr. Servant said the team looked at it again and they are proposing three (3) helical screws instead of the driven wooden piles because of access issues getting equipment out there. At the same time, they figured they had to go through the process again and now that they can support a deck, they decided to go with a bigger deck. They are now proposing a 14' x 19.3' deck and will be stepping it in on the right side to make sure they don't get any closer to the right sideline. They make the rear setback by about six feet (6') and they are increasing the existing setback on the left side of the house by 7.3 feet. There will be a new set of stairs on the north side of the house that mirror steps on the south side. Ms. Fidler asked Mr. Folkard if he had any issues and he replied that he does not have any problems and had spoken to Conservation. The Board reviewed the previously approved decision on the screen. Ms. Fidler asked if there were 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 accept Case #19-40A as a modification to Case #19-40 which is extending the deck at 212 Foster Avenue. This was seconded and all were in favor.

Ms. Fidler stated the next meeting is October 8th and that is when they will hear Phelan. She asked if Bay Avenue was on that night and Ms. Porreca said it was on for the October 22nd meeting. Mr. B. Murphy said he was just down there today and Mr. Galvin asked if it had been settled; Mr. Murphy said they had. Ms. Porreca said that Mr. Witten sent an email approximately ten (10) days ago that said the Court had remanded the case back to the Zoning Board and a new Public Hearing on the revised plans needed to be held within sixty (60) days; it was too late to file for the October 8th meeting. Ms. Fidler asked Ms. Porreca if she were following up with Mr. Witten; Ms. Porreca said she advised Mr. Witten of the deadline for filing which is September 25th. Mr. Galvin said that he was meeting with Mr. Witten the next day and he would ask him. Ms. Fidler said they would need to know if they should have an Executive Session or if they should just go right to the hearing.

Mr. Folkard asked Mr. Galvin how they could get D.H. Smith and Sons to stop digging and said that he has told them they need to go before the Board of Selectmen and get a permit. They filed for a permit but never submitted any documentation; Mr. Galvin said they submitted some documentation that was being reviewed; when Mr. Folkard spoke to them before they had not submitted it. Mr. Galvin said the Rick Grady had sent something in; he talked to him and was told it was topsoil that was purchased and brought there that it wasn't topsoil from the site. Mr. Galvin said he told him that if it was topsoil from the site it can't leave under any circumstances. Mr. Folkard said there are pictures of them sifting; Mr. Stewart followed a truck from Smith to Scituate. Mr. Galvin asked if we knew that was stuff he bought; did he buy it and bring it in and

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process it? Mr. Folkard said he didn't know and Mr. Galvin said it makes a difference if the top soil is from that site; they can't remove it. Mr. Folkard said the hole they dug had about 14' of topsoil on it that had to go somewhere. Mr. Galvin said it could be stockpiled on site. Mr. B. Murphy asked Mr. Galvin if they just shelve this until it works through the cycle. Mr. Galvin said the Selectmen have to finish the earth removal hearing; Mr. Murphy asked if they just let him operate. Ms. Fidler said if the Selectmen had hired someone to review, that would have taken care of our Special Permits; Mr. Galvin said probably not. Ms. Fidler asked if it would be advisable to have someone review the current state of these Special Permits and what has been done; she said she knew Mr. Folkard has an As-Built on the front building. Mr. Galvin asked if there was an occupancy permit for the second building and Mr. Folkard said there was not. There has not been a final inspection, just for the fire alarm only. Mr. Galvin said he would prepare a review of all so the Board will have it. Ms. Fidler said they are supposed to have a paved road that goes around the entire parcel.

Mr. Folkard asked Mr. Galvin if he had received his note about the roasted coffee beans. He said that at Levitate there is Slack Tide, kids who started roasting coffee beans in their garage and there business is growing. Mr. Smith told them that he has an empty building and they could go in there. Mr. Galvin said he mentioned that to Rick Grady and told him under no terms could they rent storage space; that would be the fourth use. He said the allegation is that equipment being sold is only 12.5% of his business; Mr. Murphy asked if that was still not allowed. He asked Mr. Galvin if it was because he said it might be because he's not wood processing, it's Construction. Mr. Galvin said if you look at the original application it has Construction Industry Suppliers and not wood processing but the Board approved it as wood processing when you look at the decision. Mr. Murphy asked if they could amend the decision and wanted to know how they could fix this. Mr. Galvin said if they granted them a Special Permit, that's what they granted them regardless of what they applied for.

Mr. Galvin said there is a letter from the Pembroke Conservation Commission who went to the Marshfield Conservation Commission that says the area where he wants to process the material is close to First Herring Brook which they are pretty upset about. Mr. Feeney asked if that was at the back of the property. Mr. Galvin said there is a stream that goes under the highway that that goes into Pembroke but this is a Conservation issue. Ms. Fidler said when he comes back in front of them for the building for the storage of his wood chips, it would be his third building and he hasn't started it. She said that building moved out near the expressway on the Connors parcel. She asked if the smartest thing to do would be to regroup and ask. Mr. Galvin asked if that required a building permit and Mr. Folkard said that it does. Mr. Murphy said he thought it was a hoop house and they brought the pamphlet that showed everything; Mr. Folkard said they never put that up. Mr. Murphy said he thought it was a plastic building or something but it sits on a foundation. Mr. Folkard said it was one of those temporary buildings and he never put it up. Mr. Galvin said he would do a review on the whole thing.

Mr. Murphy asked Mr. Galvin if they ran into any problems with the new property and asked if they could put more than one building on the property. Mr. Galvin said they can have an accessory building but you can only have one principal building on a lot. Ms. Fidler said right now there are two (2); his principal building is the one in the front; the other is the accessory

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building where he doesn't have the occupancy and the third building is what he proposed as the hoop house to store wood chips, 40' x 100' (Case #19-18 heard on March 6th). Mr. Folkard said he hasn't done that one and now he is proposing the new sawmill in the back; Ms. Fidler said he's really not taking the original hearing for the hoop house and taking that...Mr. Folkard said he is proposing another whole building; Ms. Fidler said the square footage is different and everything was different. Mr. Folkard said there was the one that was the sawmill, the one that is supposed to be empty but he is using it. Ms. Fidler said it was almost like this is off the table, the Case #19-18 hearing where he asked for a Variance and a Special Permit. Mr. Folkard said he really isn't switching buildings, he isn't changing that building. He hasn't done it but it sounds like he is moving the sawmill from the building without the occupancy permit. Mr. Folkard said he is leaving that building and putting another building down in the back corner and they will need that bridge to get to it. Ms. Fidler said they should do a site visit and get a list of the things that they need; Mr. Galvin said they should do a site visit. Mr. Murphy asked Mr. Galvin if it was okay that they approved the hoop house and Mr. Galvin said yes, it was done. Mr. Murphy said now they are looking at the third or fourth building; Mr. Folkard said that's the one has to build the bridge to get to. Ms. Fidler asked if they were doing the hoop house; Mr. Folkard said he isn't saying they aren't doing it he is saying they haven't done it as yet. Mr. Galvin said he has two (2) years to do it.

Ms. Fidler said that they are seeking Site Plan approval to reconstruct, relocate a previously approved 2400 square foot sawmill building and asked if they were referring to the hoop house. Mr. Folkard said no, they are referring to that second building that was originally going to be the sawmill; that's the building they don't have the okay on. He separated it with two (2) permits so he could get occupancy on the front building and open his business; he has a second permit on that. Mr. Galvin asked what the second building would be used for and Mr. Folkard said that nobody seems to know. Mr. Galvin said but it's not going to be a sawmill and Mr. Folkard said it was not. Mr. Folkard said that Mr. Smith needed the front going so that he can get the money and Mr. Folkard said they should finish the inspection on that. He said that Mr. Smith said to have that finished up and have an electrician in there – the sprinkler system is all done – it would take four (4) to five (5) days. Mr. Folkard said it would take that time to get a permit and that was ignored. Mr. Folkard said he just wanted it separated, he has a purpose for that; roast coffee beans in there. Mr. Folkard said they were using it and he asked them to get the people out of there. Mr. Galvin asked if they had an occupancy permit on the first building and Mr. Folkard said that the first building does and that is where they are running the business. Mr. Galvin stated that they don't have an occupancy permit for the second building but they are using it; Mr. Folkard said they have machines in there. Mr. Galvin said that he was at that meeting and he remembers that Mr. Folkard said he didn't want them there. Mr. Folkard said that Aldo (Bertoni, Plumbing Inspector) called them and said they needed to have a bathroom in there and he was told they can walk sixty feet (60') across the road. Mr. Folkard said they can't do that. Mr. Galvin said that he knew, that the same issue came up with Roht Marine when they didn't have a bathroom. They had to build a temporary bathroom and they had to get a state waiver from the plumbing code.

Mr. Murphy said that they had approved the two (2) buildings and the hoop house and asked if those were safe; Mr. Galvin said they were. Mr. Murphy asked if they wanted a fourth building;

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Ms. Fidler said they are saying they want to reconstruct/relocate a previously approved building. Mr. Galvin said they weren't reconstructing because he is not moving a building. Ms. Fidler said they need to identify exactly what is going on because it doesn't read like that. Mr. Murphy asked if they connected the other two (2) buildings together, would they be able to put the other building in back. Mr. Galvin said he would bring in the permits and will let them know what is and what is not allowed. Mr. Folkard asked if they would do a site visit and was told yes. Mr. Murphy and Ms. Fidler said they should go out as a group and do it; Mr. Galvin also said they should go at the same time. Mr. Murphy asked if they just needed to announce that and Mr. Galvin said Ms. Porreca can exchange an email with the board about arranging a site visit. There are no Open Meeting laws by doing that. He suggested that Ms. Porreca contact Mr. Smith and ask him for whatever date works for everybody; they didn't want to get into the winter because everybody has different things going on; he suggested a Friday afternoon or Saturday morning. Mr. Murphy said that Ms. Fidler has already seen the site. Mr. Galvin said that Ms. Porreca could contact Mr. Smith and say the Board thinks that a site visit would be helpful before the next meeting. Those who can't go on that day can go on another day. Mr. Galvin said they are just going to look and ask questions; they aren't deliberating, just looking through everything to get an idea about what is out there. Ms. Fidler asked Mr. Galvin if they could freely ask questions when they are together and Mr. Galvin said yes, they just can't deliberate. They will take what they see and bring it to a hearing and discuss it. Mr. Murphy said like they did with the Bridgeway. Mr. Folkard said he has a right to go in there because they have an open permit and the Code allows him to go in. Mr. Murphy said he would be invited anyway.

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

Meeting adjourned at 7:45 P.M.


Respectfully submitted,



Nanci M. Porreca
Zoning Administrator

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

May 24, 2022 meeting by a 5-0 vote.

Signed:  Date: 5/24/22