

**ZONING BOARD OF APPEALS MEETING PLACE: SELECTMEN'S HEARING  
ROOM, MARSHFIELD TOWN HALL SEPTEMBER 10, 2019 7:00 P.M.  
MEETING MINUTES**

*Members Present:*

*Brian Murphy  
Lynne Fidler  
Heidi Conway  
Richard Murphy  
Mark Stiles*

*Also Present:*

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

Mr. B. Murphy called the meeting to order at 7:01 P.M. and advised that the meeting was being recorded by Marshfield Community Television (MCTV) and voices and images were being recorded.

**#19-56: Town of Marshfield:** The Petitioner is seeking Site Plan approval in accordance with §305-12.02 of the Marshfield Municipal Code to install a fixed frame, shed style canopy measuring approximately 15'3"W x 2'8"H x 3'6" Projection with an additional 10"H fixed front valance and to modify handicapped access to comply with ADA requirements on the property located at **870 Moraine Street**, which is further identified on the Assessors' Map as parcel H07-02-01 and is located in a B-1 zoning district.

Mr. B. Murphy stated that they would take this hearing out of order and read **Case #19-56** into the record. Mr. Folkard spoke on behalf of the Town and said that this was similar to the awning that was put on the rear door on the parking lot side of Town Hall. The Town is modifying access per compliance with the Americans with Disabilities Act (ADA). Mr. Folkard said the canopy will protect the electronics for the automated doors. Mr. B. Murphy asked if there were any questions from the Board, Mr. Galvin or the public and there were none. Mr. Michael Maresco, Town Administrator, said the roof project will start in a few weeks and they are finally putting an elevator in. The door on the parking lot side of the building will be closed during construction and access to the building will be from the Town Green side. Mr. B. Murphy moved to close the hearing which was seconded and all were in favor. He moved to grant Site Plan approval which was also seconded and all were in favor.

**#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.

Mr. B. Murphy read **Case #19-55** into the record. Valerio Romano from the law firm of Vicente Sederberg represented the applicant, Health Circle, said they are seeking Site Plan approval and a Special Permit for the co-location of medical and recreational marijuana dispensaries which are allowed uses. They are proceeding under §305-10.10, §305-12.02, 12.05 and 12.06. They said they have a provisional license for medical in Rockland. He said they were in pretty good shape at the state level and he brought some site plans. Mr. Folkard said that the plans are dated 2016 so they will need to be updated from Mr. Grady; Mr. Romano said they just emailed these plans



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today. Mr. Galvin said there were some updates but they are not stamped. Ms. Fidler said it had been difficult to prepare for this having the site plan for 100 (Enterprise). Michael Westort of Health Circle said he could clarify. He said that the owner owns both properties and one of the buildings did not have a street address and that's why it was originally labelled 100 Enterprise. When Mr. Westort asked the owner he flipped it over. When Mr. Westort spoke with Ms. Porreca, she said the Board would need the most updated plan which is what he got today. Whatever the Board needs is not an issue. Ms. Fidler said the square footage is all over the place. Mr. Paul Jacobsen said they had just under 14,000 square feet, approximately 10,300 square feet on the first floor and 3,600 square feet in the mezzanine. Health Circle is leasing the whole facility and will use approximately 4,000 square feet.

Mr. Romano said they are not seeking a Variance because they are firmly under the Table of Use regulations. The first criteria is that it is that it is essential to public convenience and welfare; we believe it is because it was passed by the voters. They will provide lab-tested, high quality cannabis as opposed to what is out there on the street. There is a lot of talk about vape products in the news now but that isn't a regulated market. He said that there Host Community Agreement says they will provide 10-15 full time jobs and give priority to local vendors and residents in the hiring process. In the Agreement they have also agreed to 3% of their gross sales to go back to the Town which is the most allowed under the statute. Next is that they won't create undue traffic congestion. Under their traffic analysis an extra couple of hundred trip ins to Enterprise Drive will be de minimus. When dispensaries first opened in Massachusetts there was a lot of fear about the traffic and that has changed as more have opened. There are almost thirty (30) now and that should be doubled by the time they open. Next is that they won't overload public water, etc. This will just be retail and they will not be cultivating; there won't be chemicals to dispose of any cannabis it will be taken back to manufacturing; it's just another retail use. There won't be any significant outward changes to the exterior; they are going to put the entrance on a different side of the building. They are in the zone that Marshfield decided to put this allowed use so they will not impair the integrity or welfare of the district. Also under the Marshfield Zoning Bylaws, they will not be near the Boys and Girls Club, not near any offending uses such as schools, daycares, library, athletic facilities, etc.

They will provide lab testing of cannabis and the state oversees all of that. They think of this as a Special Permit and if they do anything to alienate the Host Community they can go to the Cannabis Control Commission and tell them which will create a world of hurt for the operators. Next is the requested extension or alteration of the use will not bring the use into violation or further violation of the regulations set forth in the Bylaws. Mr. Romano said that the Zoning Board is the Special Permit Granting Authority for this so that is why they are here. The signage will comply with Zoning Bylaws and the state signage Bylaws. The extended or altered use will not be substantially different in character; this is where it is zoned; they are where they are supposed to be in Marshfield and won't be substantially different from nearby commercial uses. Mr. Romano said these are the Required Findings for the Special Permit and went on to discuss the Site Plan.

Ms. Fidler said the application for Form 2C is not complete; she doesn't know if she is missing a page from Form 2C, #2, item 1. Mr. Romano said that #1 was the Table of Uses. Ms. Fidler said that #5 is missing which refers to Article 12; it goes from four (4) to six (6). She said this is



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just housekeeping and Mr. Romano should work with Ms. Porreca to update. Mr. Romano said Form 2D, #1, ensures adjoining premises are protected against detrimental or offensive uses on the site. It is an existing standalone structure. It will be a retail dispensary for 21 years and over and medical marijuana for those who are authorized. Mr. Romano said they will not be cultivation or product manufacturing there. All of the marijuana product will arrive pre-packaged; the signage will be discreet. They will work with local law enforcement and professional security people to make sure the security is up to par. Mr. Romano has worked with the state on a lot of these projects. He said there aren't a lot of architects or engineers on the Cannabis Control Commission; there are a lot of law enforcement and security people to make sure security is up to par; security is paramount to them; they will oversee a lot of the security. Mr. Romano said that he has already submitted their security plan and included law enforcement; they can come and go as they please. There will be a box outside with the keys and they will already have the names. He said the impact to vehicular movement will be negligible.

The next Bylaw ensures the adequacy of space for the off-street loading and unloading and there they have designated an area for this Product deliveries will occur two (2) times per week and will come in unmarked vans as per the regulations. Mr. Romano read the next Bylaw which states the plan ensures that all lighting and other sources of illumination are shielded from direct view at eye level and said there will be downcast lighting. Ms. Fidler asked if they had a lighting plan and Mr. Westort said that lighting was included on the Site Plan. Mr. Galvin said one of the requirements is that the lights don't come off the property; they would have to actually show downward illumination. Mr. Romano said that if the Board voted tonight they could make the lighting a condition of the permit; they could satisfy the Building Inspector and the Board with a lighting plan. Ms. Fidler said they need to show parking spaces as well. Mr. Folkard asked if the lot line between 100 and 120 Enterprise was the current lot line or was it moved over to the right. Mr. Jacobsen said that one owner owns both properties. He didn't know if it was moving over to the right because he knew they had an issue with the amount of square footage; he said he could get an answer. Mr. Folkard said he was under the impression that it was moving to the right to get more parking in there. Mr. Jacobsen said that they were told they would get any parking they would need. He said the owner does own both parcels and that they aren't changing hands. Mr. Folkard asked if they had an updated plot plan. He said if they are using this for one use, they can't be parking on the other property; Mr. Jacobsen said that was correct. Mr. Galvin asked if the property was in common ownership; Mr. Jacobsen it was two (2) separate parcels owned by the same person. Mr. Galvin said if it was the same name it would probably have to change because there is only one use per lot; Mr. Westort said he thinks that there are two different LLCs - 100 Enterprise LLC and 120 Enterprise LLC.

Ms. Fidler said the lease is identified as Exhibit C in the application. Mr. Romano said there won't be medical or doctors' offices. The hours of operation are set by the Cannabis Commission and they usually start at 10:00 AM and are Monday to Sunday until 8:00 P.M.; per the Special Permit Granting Authority, they cannot be past 8:00 P.M. or before 8:00 A.M. There will be no offending uses and no onsite consumption which is also a state law. There would need to be a local referendum to have outside consumption; it would have to pass and then go through licensing with the state. There are no residential units in the building. Nobody under the age of 21 is allowed unless they are a patient. They will provide the Marshfield Police



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Department, the Zoning Enforcement Officer and the Board with the names, numbers and email addresses of each officer. The police will have the names and cell numbers of the managers so it would be a direct call.

It's nearly impossible to get the required license from the state because of completed construction and inspections. One suggested condition is that before they open they provide those licenses. Health Circle can't sell any cannabis in Marshfield without those licenses. Mr. Romano said that his suggestion would be that this should be a condition of the permit. He said next is the applicant's right to use the establishment and they have shown their interest in the property. They have submitted security measures to the Marshfield Police Department. The facility will provide services to qualified patients by appointment only; they can go on line or phone to reserve appointment time. He said sometimes appointments work and sometimes they don't. They will have a lot of space in the waiting area but they do not foresee anyone having to queue up outside. There will be free delivery to all qualified patients.

No cannabis can be seen per state regulations. The employees will be 21 and over. He said going back to the mandatory findings, they do not about the Boys and Girls Club. They will work with the Cannabis Commission and the police to make sure security measures remain strict. The applicant demonstrates that all requirements of all applicable agencies of the Commonwealth feel that they have satisfied other conditions. He said if the Board votes tonight they will update their application with any deficiencies the Board may see.

A lot of the general requirements for Recreational are the same as Medical; the hours will be 10:00 to 8:00, the building will be secure; they aren't within 500 feet of any offending uses; they won't allow onsite consumption; they won't have a drive through service. The signage will be discreet and they won't store or display any cannabis outside. They don't use pesticides; everything will be prepackaged; the venting and filtration will have normal business smells but they will use a filter to make sure.

Ms. Fidler asked if the Board was privy to the provisional license that Mr. Romero mentioned. He said that it was provided in the materials under the list in Exhibit B. Ms. Fidler asked if they could look at it online and Mr. Romero said yes, they are listed on the spreadsheet and the medical use application is linked there. He said they would be happy to provide any letters from the Cannabis Commission if the Board wanted them. Ms. Fidler asked if they were in a preliminary stage at this point and Mr. Romero said it was provisional. He said if a new applicant were to walk in and submit an application today and had a Host Agreement and a binding interest in a property and a business plan, they would be looking at nine (9) months before they would get a provisional license. He said they are at least that far along.

Ms. Fidler asked if they had a community outreach meeting and they said that there are two (2) community meetings that are required; they got the slips back but nobody came. They have talked to people in other places; Mr. Westort said that they put it in the paper twice. Ms. Fidler asked if the Host Agreement was through the Zoning Board and Mr. Galvin said it was through the Board of Selectmen. Mr. Romano said that they have provided security procedures to the Marshfield Police. He also said if the Board were to choose to vote tonight they would take conditions for any deficiencies.



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Mr. B. Murphy said that since this is new to the Board they will have Town Counsel speak. Mr. Galvin said that there is only one use per lot except in the Planned Use Mixed Development (PMUD) overlay. He said this looks like a combined medical and recreational use and they may need a Variance to locate them on the same property. Mr. Romano said that it is two (2) uses as Mr. Galvin said. Mr. Galvin said he was not suggesting the Board would not look at it favorably. He said there were questions on the traffic report and asked if Mr. Capochetti was a Professional Engineer. He said that it may not be required that he is but at the firm should review it and sign off. Mr. Galvin then read from the report. He said it seems to be a destination place and not a "pass by" place. Ms. Fidler asked about photometrics and asked if they needed a drainage study.

Mr. R. Murphy said that he knows the area because he has been to Stellwagen for special events and it gets tight. Kids are on the fields especially with Saturday sports. Mr. Galvin said that he thinks they meet that requirement because they are more than 500 feet; Mr. R. Murphy said he was looking at one (1) particular moment. Mr. Romano said they would be happy to volunteer for the first month they are open to have someone monitor the traffic, maybe off-duty police officers. Ms. Fidler said that maybe they could get a recommendation from the Chief.

Ms. Conway said that they stated they would use 4,000 square feet and asked who will use the rest of the space; Mr. Romano said they were not planning on having another tenant; Ms. Conway said there were a lot of doors. Mr. Romano said if a new tenant does come in they would need to be fully vetted and they would work with the police if there is a new tenant.

Ms. Fidler asked what they would do about the separation of parcels and Mr. B. Murphy said they were already separated; Ms. Fidler said it was not part of the Site Plan. Mr. B. Murphy pointed out the parking on the screen and asked Mr. Folkard if he had any questions. Mr. Folkard said that there was a question about the lot line. He said that it's a new building and a roofing company was in there; he asked where they will go. Mr. Westort said that they are building a new building.

Mr. B. Murphy asked if there were any questions from the Board and Ms. Fidler said she did not have any at this time and this was a lot to go over. He asked if there were questions from the audience and Greg Guimond, Town Planner, said that there is 4,000 square feet not being uses; they were a single use and they can't have another use there. He said he would recommend that the Board condition that. Mr. Guimond also said that the curb cut was shared and there isn't a fence. As for parking, they provided fifteen (15) spaces that will be needed for employees which leaves them with seven (7) spaces for customers which seems wrong. He asked about signage and said they are not allowed to have neon signs anywhere. He said the state will take care of the interior. As for the exterior they will need to show a revised Site Plan which the Board should get before they close the Public Hearing. Mr. Guimond also recommended a full traffic study. He said that he just met with the DPW and Modera last week and they admit they still have issues. He also asked what the percentage of mitigation would be. He said it won't be just for Marshfield because people from surrounding towns will go there. Mr. Guimond recommended that the Board take their time as this is the first one.

Mr. Romano said that there are no requirements to have adjoining uses and no requirement for a fence. He will leave it to the Board's discretion about a traffic study. He said they will put in their fair share and will be the biggest taxpayer. Mr. Romano said that they will put together an



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updated Site Plan and that this might be a new use in Marshfield but it's not a new use in the Commonwealth.

Mr. B. Murphy asked if there were any questions and Mr. Ed Perry, owner of the WATD building, said that he would like to present a bit of history. He said that twelve (12) or thirteen (13) years ago he was approached by the Town to see if they agreed to have an industrial park designed for adult use. He said the brewery is one (1) building down and they are the closest to the facility. Mr. Perry said this is the place to put it; Marshfield is the third or fourth largest town in Plymouth County and he has no objection having it beside their building. He said the brewery has had a positive impact in the park. Mr. Perry said he has purchased two (2) parcels and will make them available for parking if necessary. Mr. B. Murphy asked if the audience of the applicant had any questions.

Mr. Galvin said if they are coming back for a Variance they should do it when this is continued. He said the use limitation is definitive and there has never been anything like this before. Mr. Romano said they could either withdraw the medical application or apply for a Variance. Mr. Galvin asked if they operated the same way. Mr. Romano said for adult use, or recreational, it is 21 and over; medical needs to be for qualifying patients. He said state law says they need a separation inside; it could be just a stanchion. There are three (3) opportunities to check identification. Mr. Galvin asked if the same employees could wait on both customers. Mr. Romano said that they would need a patient consultation room with medical; some employees will have more training to talk to such people. Mr. R. Murphy said he didn't know if there were different licenses. Mr. Romano said the Cannabis Control Commission is big on training but they don't require separate licenses.

Mr. B. Murphy moved to continue the hearing to October 22, 2019; this was seconded and all were in favor. Mr. Romano said that he wasn't sure what the Board was looking for. Mr. Stiles had recused himself.

**#19-57: Mark G. Worster, Trustee/TAJ Family Trust:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 33' x 38.5' two and a half (2½) story single family dwelling with a 9' x 33' deck to replace a previously razed dwelling that was determined by FEMA to be a total loss on the property located at **328 Ocean Street** which is further identified on the Assessors' Maps as being on parcel M08-51-14 and is located in an R-3 zoning district.

Mr. B. Murphy read **Case #19-57** into the record. James Marathas, owner of 328 Ocean Street, said the property was purchased after a total loss from the storms of 2017. He said that half of the seawall broke in front of the property; they were advised that this was an unsafe structure and needed to be taken down. Prior to taking it down they hired Stenbeck & Taylor to complete an As-Built plan showing the footprint of the existing structure; they submitted that plan to the Building Commissioner before the property was demolished. He said they were assured that they could use those boundaries to build a new structure. Ms. Fidler asked if there was a deed; Mr. Marathas said he had the original deed that he submitted to Ms. Porreca who made a copy. Ms. Fidler asked if the deed was fine and Ms. Porreca passed it to her for review. Mr. Marathas said that along with the plan he submitted an elevation certificate; the property is in a VE and an AE zone at elevations 16 and 19 so they are proposing the new structure be three feet (3') above



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the Base Flood Elevation (BFE) so the lowest number would be BFE 21. Ms. Fidler asked about parking and Mr. Marathas said it would be under the house; the way the property is designed is to have parking underneath similar to the condos and other houses. Ms. Fidler asked if the entrance to the first level would come off the parking; would they come in the front door and go upstairs to the first level. Mr. Marathas said that was correct; there is a door underneath in the middle of the parking.

Ms. Fidler asked Mr. Folkard if he had anything. Mr. Folkard said the only thing would be on the building side on the right; they would have some extra requirements. On the zoning side because it is a restoration under a natural disaster, there is a time limit and it is really close. He said the Building Commissioner can extend it for a year but it needs to be started as soon as possible without any more delays. Mr. Marathas said that since they purchased the property they have been going full speed ahead; they got an architect and engineer on board right away. They had to demolish the property and the demolition was a painstaking event; they are ready to go. He said they will obviously ask for an extension and would draft a letter the next day; he said they will need some time because it's an extensive project. Mr. Folkard said they would look at when the storm was and what time it was and they can ask for an extension just before that time ends; there shouldn't be a problem with the extension as long as they have started the work. Mr. Marathas said they were hoping to get the pilings in before winter so they can start framing immediately in the spring. Mr. B. Murphy and Ms. Fidler asked if the floor below was 66% (2/3); Mr. Folkard said the floor immediately below. Mr. B. Murphy asked if there were any questions from the Board or audience and there were none. He made a motion to close the hearing which was seconded and all were in favor. He made a motion to accept the Special Permit which was also seconded and all were in favor.

**#19-58: Christopher Susi:** The Petitioner is seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct a 33' x 21' addition on the single family dwelling on the property located at **65 Pownal Street** which is further identified on the Assessors' Maps as being on parcel K05-01-20 and is located in an R-2 zoning district.

Mr. B. Murphy read **Case #19-58** into the record and turned the hearing over to Mr. Susi of United Consultants who was there with Christopher Susi who is the property owner. Mr. Susi said that they were here a few years ago for an addition off the back of the existing house and the addition for that permit has been built. What they would like to do now is go straight up on the original house and add a second story to it. Mr. B. Murphy asked if they were staying within the footprint and Mr. Susi said it was the original footprint with no additional impervious surface, no physical changes to the footprint; they are just adding a second story to the house. Mr. B. Murphy asked Mr. Folkard if he had any questions. Mr. Folkard said that they are not encroaching into the setback with the proposed second story addition but they are with the front entry. Mr. Folkard said they are putting in a new front entry with a roof on it. Mr. Susi asked if it was over the stairs and Mr. Folkard said yes and they only have six feet (6'). Mr. Folkard said they were nonconforming now but will be more nonconforming by putting the roof on; a means of egress would be allowed in the setback. Mr. Susi said if they take the roof off they would



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have the existing stairs. Mr. Folkard said they should look at the bottom step on the plot plan. Mr. Susi said that technically it goes into the right of way. What they could do is when they reconstruct the front stairs is to make sure that the last step stays on the property. Mr. B. Murphy asked if it was currently sitting in the right of way and Mr. Susi replied that it was. He said there is a platform and you can see that the last step is just over the right of way line. Mr. Folkard asked if the driveway were on the left side and Mr. Susi said it was on the right side; Mr. Folkard asked if that was the eleven foot (11') side and Mr. Susi said it was. Mr. Folkard then asked about turning the stairs off the platform; they would go parallel to the house and wouldn't be encroaching the right of way. Mr. B. Murphy asked Mr. Galvin if for zoning purposes were they allowed to leave that "as is" in the right of way. Mr. Galvin said for zoning purposes they were but probably not for legal purposes. Mr. Folkard said that as long as it's there they can encroach but if they take it down it would eliminate the encroachment. Mr. B. Murphy said for zoning purposes they could rebuild it in that spot; he said that Mr. Galvin is saying for **legal** purposes. Mr. Galvin said that if it's within the layout of the street they don't technically have a right to build it into the street. He said if they have done it then it may have been obviously imperceptible that it was noticed and now it has come up. He asked if the Applicant understood what was being said about twisting the stairs and Mr. Susi said that he did; he will pull them back so the last step is before the Right of Way. Mr. Folkard said the he could come out his front door, take a left and the stairs could go there; then there will not be a problem with encroachment. Mr. B. Murphy asked Mr. Susi if he was agreeable to that and Mr. Susi said that he was. He also said they were agreeable to remove the roof over the stairs so that they are not further nonconforming. Mr. Folkard said they have a little roof sticking out there now that is existing; it doesn't have points or knee brackets. A motion was made and seconded and all were in favor.

**#19-59: Dr. Kathleen Keating-Thomas:** The Petitioner is seeking a Variance in accordance with §305-10.11 of the Marshfield Municipal Code to change the use of an unfinished second floor of an office building to two (2) residential units which is currently not an allowed use on the property located at **57 Forest Street** which is further identified on the Assessors' Maps as being on parcel E10-03-11 and is located in an OP zoning district.

Ms. Fidler read **Case #19-59** into the record; she said that she went out to the property, looked at it and went upstairs. She turned the hearing over to the applicant. Dennis Murphy from Hill Law who was there with Dr. Keating. Mr. D. Murphy said that in his ten (10) years in their seats, he never once heard a Use Variance much less grant one. He said it's not something you see every day and he was a little suspect when his client came to him. He said that he has come around and he hopes to bring the Board around as well. He said that Dr. Keating's practice has been there for over a decade and she owns the building. He said parking requirements under the Bylaw is one space for every 500 gross floor area which amounts to two (2) spaces per 1,000 which is for a broader range of uses including office use, retail and a number of others in §305-8.01. The International Transport Engineers (ITE) manual specifies that a medical use office needs 4.5 spaces per 1000 feet. It does not get more specific about medical spaces but because of that they find themselves with a lot with a conforming number of spaces but not enough to put



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a second dental office on the second floor. Mr. D. Murphy said the building has been occupied for approximately twelve (12) years by Dr. Keating's practice and the second floor has been vacant for most of that time. She has actively been trying to market it for at least seven (7) years using three (3) different brokers. She has had several other medical, orthodontic and others who turned it down because the parking is not adequate. Dr. Keating's staff alone takes up eight (8) of the 21 or 22 spaces. Depending on how many hygienists you have, if you have another medical practice that has similar staff then two thirds (2/3) of the parking spaces are being used by staff.

Mr. D. Murphy said this was a unique kind of Variance situation because they aren't looking for a more intensive use of the site, they are looking to be less intensive. The value of the second floor space is greatly diminished if converted to residential. They have a son who may be moving home and they may downsize themselves someday. The problem is they have been carrying this space for over a decade and haven't been able to find another compatible use for the office district it is in. This is not a self-created hardship, the building was already built. There will be a loss of income because what you could rent it for residentially will be a lot less than what you would get from another dentist or similar medical use. Mr. D. Murphy said they have letters from two (2) abutting dental practices who have more than double the parking. There would be no harm to the public, no disruption to the intent of the Bylaw. Mr. Galvin asked the Board to remember the hardship has to be connected to the unique circumstances which is the toughest part of a use Variance. Mr. D. Murphy said they looked at increasing the parking but that would violate setbacks. He said the hardship is how the lot is shaped; it's cut off. The lack of parking makes it impossible to put in a medical office. Mr. R. Murphy said he struggled with this but the use is not allowed and that the Office Park (OP) zone was in place when the applicant purchased the property. Ms. Fidler said this was a difficult one.

Dr. Mark Molesky, an abutting dentist, said this would be detrimental to the area. He has two (2) other business upstairs, one an acupuncturist. There could be a liability with kids playing, or someone cooking burgers in their back yard. This was zoned commercial and should stay commercial. Greg Guimond said that district was created around 1971; it was decided an Office Park would be a good idea rather than industrial. Mr. D. Murphy said that it is Dr. Keating's building, she owns it and now she wants to put her son there instead of moving back home. This isn't going on Craigslist as a short term rental. Mr. B. Murphy said that he wanted Mr. D. Murphy to understand that they needed a super majority and there are only four (4) members present. Mr. D. Murphy asked if the Mullins Rule was in effect in Marshfield and Mr. Galvin replied that it was and Mr. Feeney could vote. Mr. D. Murphy asked if he could get a straw vote and Mr. Murphy asked who would be in favor of this. Ms. Fidler said it is something the Town needs to vote on. Mr. B. Murphy said it was allowed in the PMUD which is across the street and they have Modera; Mr. Galvin said Modera is a 40B. Mr. D. Murphy advised the Board they would like to withdraw without prejudice which was approved.

**#19-60: James Curley, Trustee/Pest Trust #8:** In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioner is seeking an Appeal of the Building Commissioner's decision to issue a Stop Work Order for working without the benefit of the proper permits and/or prior to the building permits being issued and the determination



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that the apartment does not contain the necessary means of egress on the property located at **468 Plain Street** which is further identified on the Assessors' Maps as being on parcel E10-03-07 and is located in an OP zoning district.

Mr. B. Murphy read **Case #19-60** into the record. Attorney Sheehy represented Mr. Curley who was also in attendance. Mr. Sheehy said that as part of the eviction process the Health Department issued violations for the people being evicted. He said that Mr. Curley was trying to install an egress window and a Stop Work order was issued. At the same time Mr. Curley was trying to install an egress window he was delinquent in taxes and the Treasurer put the kibosh on it. Mr. Curley hired Mr. Sheehy and he couldn't find anything that had changed with the building. He looked further at zoning and the only thing available was to file for an appeal. Mr. Curley is limited with the Stop Work order and health code violations. There is another unit with an egress problem and that matter is before the criminal court in Plymouth. There was a show cause and they felt much of the material he submitted should go before a judge in a criminal court. In 1975 there were two (2) residential units in the building and four (4) business units. There are building permits in his information, one for a shed dormer and one for what is now in question; there were two (2) building permits issued for the two (2) units. Mr. Sheehy is respectfully requesting that a decision be made that this building is grandfathered. Mr. Folkard said that on the Building Inspector's notice it said he could appeal to Zoning or the BBRS. Mr. Folkard said that this is in an Office Park zone. He has an occupancy permit from 1975 which allows one (1) apartment. The second apartment has a spiral staircase which is against code; it's 19 inches wide. Mr. Folkard said that Mr. Sheehy says this is grandfathered but the building was built in 1850 and it was not built with a spiral staircase. Mr. Sheehy said that the building code was done in 1954. This was a barn and they only way it could be built was with a building permit. Mr. Folkard said they modernized the existing building and he has an occupancy permit for that one. If the work has been done by doesn't he have an occupancy permit. Mr. Curley said that it has been misplaced and Mr. Folkard must have one in the files. Mr. Sheehy said the building permit for the shed dormer is the one they will be in court for on Monday. He said the only way to put a 25'x19' unit up there was to do the spiral staircase. Per Mr. Sheehy, the Health Department said it was down to one (1) issue, the egress issue. Mr. Folkard asked if the applicant had any plans; Mr. Curley said that all he could say was the staircase was built in Pembroke. Mr. Sheehy said it was the upstairs of a barn; Mr. Folkard said then it wasn't a residence. Mr. Sheehy asked Mr. Curley if there was a pre-existing stairway and he said yes. Mr. Sheehy said that at that time there was no requirement for a second means of egress. They see the egress issue on there; it doesn't say this egress was approved in 1975. Mr. Sheehy said they should look at the language of the Appeal and the Board can make a decision. Mr. Curley said he has a discussion thread about the whole matter; Mr. Sheehy said he has internet postings of people with similar minds. Mr. Sheehy does not dispute that these apartments would be safer if built by Code by today's standards. Mr. Curley said if people listen to Mr. Folkard everyone would have to put a staircase on the second floor. Mr. Sheehy said the only reason Mr. Curley put the window in was because he was told to; maybe by changing the window he stepped over the line. Ms. Fidler said that the Board hears both sides; they can see the frustration and there's a disconnect. She said that they just received paperwork and they hadn't had a chance to look at it. Mr. Sheehy said he just did the paperwork and asked Mr. Folkard if the appeal process for the



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BBRS was also 30 days; Mr. Folkard said it was 45 days. Mr. B. Murphy suggested that they continue this to September 24<sup>th</sup> 2019; it was seconded and all were in favor

**#19-50: D.H. Smith and Sons:** The Petitioner is seeking Site Plan approval under §305-12.02 of the Marshfield Municipal Code to reconstruct/relocate a previously approved 2400 square foot sawmill building to a different location on the property and use the sawmill yard to process and store lumber and raw materials associated with the facility on the property located at **795 and 887 Plain Street** which are further identified on the Assessors' Maps as being on parcels D10-02-03 and D10-02-07C and is located in an I-1 zoning district.

Mr. Murphy said that D.H. Smith asked to continue **Case #19-50** to September 24<sup>th</sup> 2019; this was seconded and all were in favor.

**#19-53: Edward and Molly Fogarty:** The Petitioners are seeking a Special Permit in accordance with §305-10.12 of the Marshfield Municipal Code to construct an 8' x 32' three (3) season porch on the existing deck on the property located at **19 Bayview Street** which is further identified on the Assessors' Maps as being on parcel K12-03-15 and is located in an R-3 zoning district. (10/14)

Mr. Murphy said that the Fogartys asked to withdraw this petition without prejudice; it was seconded and all were in favor.

**0 Enterprise Drive/VRT Corporation:** The Petitioner is seeking the Board's opinion as to whether relocating the first half of the driveway length to an easement over the Columbia Gas Company (Bay State) property would be considered a minor modification; modification will increase the wetland/driveway setback and reduce grading in the buffer zone.

Mr. Murphy said that 0 Enterprise Drive/VRT Corporation asked to continue to October 22, 2019; this was seconded and all were in favor.

**#19-49: Kathleen Lavrentios and John Cusick:** In accordance with §305-10.09 of the Marshfield Municipal Code the Petitioners are seeking an Appeal of the Building Commissioner's decisions to decline to order the removal of two (2) structures/gated fences installed on Kent Avenue between parcels K11-29-07C and K11-27-10 and on Waterman Avenue between parcels K11-27-05 and K11-25-05.

Mr. Murphy said that the only item left is **Case #19-49** which is closed and under advisement. He read it into the record again and stated that it had to be decided that night because they were out of time. He asked Mr. Galvin for a synopsis and his opinion. Mr. Galvin said that what he has said before was that he felt this was based on what the Building Commissioner has seen and



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observed. He understands how Mr. Folkard and other building inspectors have acted is that not every fence requires a permit; Mr. Folkard felt that this type of fence didn't require a permit and that is within the scope of his discretion; that's how Mr. Galvin looked at it. Mr. B. Murphy asked Mr. Folkard if he had anything else and asked the Board if they had an opinion. Mr. B. Murphy said his opinion is that in this town, we don't need a fence permit unless the fence is over six (6) feet. Ms. Fidler said there was a lot of discussion on both sides; the nuts and bolts of it is a fence or a gate it is okay without a building permit; it's okay within the parameters. Mr. B. Murphy said the Board needs to decide if they required a permit. Ms. Conway said that if that's the only argument then she doesn't think it did. Mr. B. Murphy asked Mr. R. Murphy how he felt and he said he felt the same way. Mr. Stiles thinks they are in the wrong venue. Mr. B. Murphy agrees and asked Mr. Galvin for help with the motion. Mr. Galvin said it's an Appeal of the Building Commissioner's determination. If they feel his decision was correct then they affirm his decision. He said that he simplified tonight and said not every fence requires a building permit. A structure can also include a tent and we don't require every family that camps in their backyard to get a building permit. The substance of Mr. Folkard's opinion was that they did not need a building permit. The Board affirms the Building Commissioner's determination based on the reasons he stated in his original opinion. A motion was made to affirm the decision as written; the motion was seconded and all were in favor.

The Board held an election for the 2019-2020 Officers. Mr. B. Murphy recommended that Ms. Fidler be Chair, he would be Vice Chair and Ms. Conway be the Clerk. He made a motion to close which was seconded and all were in favor.

Meeting adjourned at 8:35 P.M.

Respectfully submitted,




Nanci M. Porreca  
Zoning Administrator

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

11-22-2022 meeting by a 5-0 vote.

Signed: \_\_\_\_\_



Date: 11-22-22