

**Town of Marshfield
Development Review Board
122 School Street, Room 1
Marshfield, Vermont 05658
(802) 426-3305**

January 10, 2017

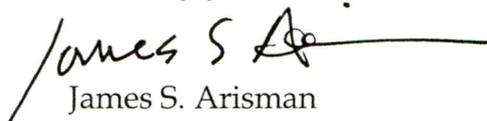
Mr. Peter Lloyd
Lloyd Plumbing, Heating & Gas Service, LLC
P.O. Box 92
Cabot, Vermont 05647

Dear Mr. Lloyd:

Enclosed, please find the decision and order of the Marshfield Development Review Board (DRB) regarding your application for Conditional Use Permit and Site Plan Review. For the reasons stated in the decision, the DRB has **disapproved** your applications.

The DRB thanks you for your cooperation and testimony during the hearing process.

Sincerely yours,



James S. Arisman
Acting Chair
Development Review Board

Enclosure

cc (w/ hard copies of decision):

Darrell and Adair Burkhalter, P.O. Box 43, Marshfield, VT 05658
Liza and Lincoln Earle-Centers, 71 Church St., Marshfield, VT 05658
Robert Light, Zoning Administrator
DRB Members Leach and Snow; Faeterri Silver

**TOWN OF MARSHFIELD
DEVELOPMENT REVIEW BOARD**

Peter Lloyd (Applicant)
P.O. Box 92
Cabot, VT 05647

Darrell & Adair Burkhalter (Landowners)
P.O. Box 43
Marshfield, VT 05658

re: 64 Church Street, Marshfield, Vermont 05658
Marshfield Parcel ID# SC006
Site Plan Review, Conditional Use Permit,
Zoning Permit

Findings of Fact, Conclusions of Law, and Order

I. Background and Procedural History, Findings.

Pursuant to Town of Marshfield, Vermont Zoning Regulations, Section 235, and other authority therein, the Development Review Board (DRB) finds as follows based on the testimony, evidence, and record in this matter.

A. Background.

1. Landowners Darrell and Adair Burkhalter (hereafter "Burkhalter") own an approximately 0.89-acre residential parcel located at 64 Church Street, Marshfield, Vermont. The Burkhalter property includes a home and a two-story accessory building (i.e., garage). Peter Lloyd (hereinafter "Lloyd" or "Applicant Lloyd") is the owner and principal of Lloyd Plumbing & Gas Service, LLC. The Burkhalter parcel is located within the Village Residential zoning district.

2. Mr. Lloyd is presently using a large accessory building and grounds that are on the Burkhalters' property as the central location for the operation of his plumbing business, including use as an office, workshop, and warehouse and distribution center for parts and materials related to his business. Mr. Lloyd also is using grounds adjacent or near to the accessory building for vehicle parking associated with his business. The Town of Marshfield has not issued a zoning permit for such uses by Mr. Lloyd (or otherwise approved such uses).

3. In early or mid-September 2016, Marshfield Zoning Administrator (ZA) Robert Light learned that the accessory building on the Burkhalter's parcel was being used by Peter Lloyd Plumbing, Heating, & Gas Service in a commercial operation. ZA Light spoke with Liza Earle-Centers, a Church Street resident, who expressed concern regarding the commercial operation and questioned whether it was consistent with Town zoning requirements. Ms. Earle-Centers lives at 71 Church Street, across from the accessory building.

4. ZA Light spoke with Peter Lloyd regarding his use of the accessory building for commercial purposes. Mr. Lloyd was cooperative and stated to the ZA that he had not realized that he needed to apply for a zoning permit before undertaking such use. ZA Light informed Mr. Lloyd that to use the renovated accessory building for commercial purposes, i.e., as a center of operations for Lloyd Plumbing, that Mr. Lloyd needed to apply to the Marshfield Development review Board (DRB) for Conditional Use approval and for Site Plan Review. Under the Town's zoning regulations, no zoning permit could be issued for the commercial use of the accessory building without such DRB review and approval. Marshfield Zoning Regulations at Sections 225, 245 & 250.

5. Subsequently, the following applications were filed in this matter: Application for Zoning Permit (filed 9/13/16); Conditional Use Permit Application (filed 9/23/16); Application for Site Plan Review (filed 9/23/16). These applications listed the Burkhalter's as landowners and Peter Lloyd/Lloyd Plumbing & Heating as applicant. ZA Light referred the Conditional Use and Site Plan applications to the DRB for review, hearing, and determination. Marshfield Zoning Regulations at Sections 225, 245 & 250.

B. The DRB Hearing.

6. After due public notice, the applications of Mr. Lloyd were reviewed and considered by the DRB in public hearing under the site plan and conditional use standards of the Town of Marshfield Zoning Regulations. The DRB members for the hearing were: James Arisman, Gary Leach, Les Snow, and Faeterri Silver (Alternate, specially appointed). Also present for hearing in this matter were Bob Light, Zoning Administrator; Seth Donlon, Acting DRB Clerk; Darrell Burkhalter; Peter Lloyd; Lincoln Earle-Centers; Liza Earle-Centers; Jessica Lloyd; Gregory Glossford; Derrick Burnett; Joshua Bencanaan; Rebekah Bencanaan; Rich Gouge; Rick Lloyd; Teri Lloyd; Grace Gouge; Jacob Gouge, and R. Dutil.

7. The Marshfield Development Review Board heard this matter beginning on November 10, 2016 and continuing on December 8, 2016. The DRB also carried out a site visit at the Burkhalter property on November 26, 2016. The

DRB's findings are based on hearing testimony, site visit, and the record and submissions in this matter. During the DRB hearing, Darrell Burkhalter and Peter Lloyd presented testimony and submitted written materials in this matter on behalf of the applications. In addition, Mr. Lloyd during the November 26 site visit completed his original applications with the required site plan materials. These were accepted and entered into the record in this matter. For the purposes of this written decision, the Marshfield Development Review Board has weighed together as one the representations of both Mr. Burkhalter in support of Mr. Lloyd's application and those of Mr. Lloyd in considering this matter.

8. The parcel in question and the subject accessory building are located within the Marshfield Village Residential zoning district. During the summer of 2016, the accessory building was repaired, insulated, and the interior reconfigured and updated by Applicant Lloyd, including the installation of a heating system, all such work carried out with the knowledge and permission of Mr. Burkhalter.

9. Liza and Lincoln Earle-Centers are property owners and neighbors on Church Street, whose home is located immediately opposite the Burkhalter property and the subject large accessory building. The construction and renovation work that was being carried out on the accessory building had been noted by the Earle-Centers, who were surprised because they had no prior knowledge or notice of any work that was being carried out or the reason for it. When they first observed work being done on the accessory building, the Earle-Centers had no specific knowledge that Lloyd Plumbing planned to move its day-to-day commercial business and plumbing operations into the building.

10. The Earle-Centers contacted the Marshfield Town Clerk in an effort to obtain information regarding the work that was being done at the accessory building located opposite their property. They testified that they were told that the accessory building was being converted to commercial use. Such actual use began on or about late-August 2016. Mr. Earle-Centers testified that in his view Lloyd Plumbing had simply moved its business into the Church Street neighborhood without giving notice of its plans to others in the area, such as themselves, and without determining first the applicable Town zoning requirements and complying with these. He testified in summary that Lloyd Plumbing had begun its use of the building and property without first obtaining a zoning permit.

11. Zoning Administrator Light testified that he had communicated with Mr. Lloyd regarding the work that had been done on the subject accessory building and regarding Mr. Lloyd's intended use of the structure. The ZA testified that Mr. Lloyd was cooperative regarding the matter of permits. Mr.

Lloyd testified that he had not realized that he needed a zoning permit. The ZA testified that issuance of a zoning permit to Mr. Lloyd would first require application to the DRB for both a Conditional Use approval and a Site Plan Review because the building was undergoing a change of use. The ZA told Mr. Lloyd that “time was of the essence” with regard to the need to apply for zoning approval. The ZA testified that under the Town’s zoning regulations the building in question could not legally be occupied and used until a Certificate of Occupancy had been first issued by the ZA. A Certificate of Occupancy could not be issued until a Zoning Permit had been issued. The ZA testified that he had not issued a zoning permit or a Certificate of Occupancy for the commercial use of the renovated accessory building.¹

12. The ZA found that the accessory building was already in use in September 2016 by Lloyd Plumbing and added, specifically, that Mr. Lloyd had not applied for a zoning permit prior to beginning his occupancy and use of the structure, including vehicle parking on its grounds.² Mr. Lloyd himself testified that he had first begun use of the office within the building in August 2016 and also had begun to move in stock at the same time.

13. The ZA testified that interior renovations of the accessory building did not require his approval. Until the accessory building was ready for and in actual use by Lloyd Plumbing, there was no “change of use” and thus, no basis to require applications for Conditional Use approval or Site Plan Review. ZA Light testified that the Earle-Centers expressed frustration to him that he, as Zoning Administrator, had not issued an order to Lloyd Plumbing to cease and desist from its ongoing commercial use and occupancy of the accessory building, in light of Lloyd’s failure to apply for the required DRB review and a zoning permit. The ZA testified that he had not ordered or otherwise acted to require Lloyd to halt its use of the accessory building. ZA Light testified that he felt that such an action would in likelihood have resulted only in an appeal to the DRB by Lloyd Plumbing and a public hearing, such as the DRB was then undertaking on

1. Peter Lloyd testified that if his application were approved by the Town for a zoning permit, the Vermont Division of Fire Safety would then also have to review and approve the use of the building for his business.

2. The DRB notes that with regard to parking spaces for his business, Mr. Lloyd’s applications, as initially filed, did not address or propose the possible addition of or location of new parking spaces or parking areas that would be needed to accommodate his business vehicles and the personal vehicles of his employees. The only reference to parking was a conclusory statement by Darrell and Adair Burkhalter (included with the applications) that “Ample existing graveled parking space is already available to accommodate additional vehicles and is, for the most part, not visible from adjoining parcels.”

the same matter. The ZA testified that the hearing before the DRB on the Lloyd applications provided for public process and allowed a review and determination by the DRB regarding the impact on the immediate area of the commercial use of the Burkhalters' accessory building and property.

14. The Earle-Centers testified regarding their concern that Lloyd Plumbing already had moved in to the accessory building and had been using the building as its headquarters and center of operations for approximately four months, without a zoning permit and other required approvals. The Earle-Centers noted that Lloyd Plumbing had put significant time, resources, and money into remodeling the accessory building for its own use. They testified that they were concerned that this action by Mr. Lloyd had placed them at a procedural disadvantage in the public hearing because of the possibility that the DRB might feel pressured by this *fait accompli* on the part of Lloyd to approve what was already in place and in operation. Darrell Burkhalter strongly disagreed with this concern and disputed any inference that there had been any attempt by anyone to "circumvent" the required public zoning process. The DRB makes no determination herein regarding these views.

C. Impact of Commercial Use of the Accessory Building and Parking.

15. Peter Lloyd testified that his company, Lloyd Plumbing, Heating & Gas Service, recently had doubled in size and consisted of 9 employees (10 employees, if Mr. Lloyd is included). Because of his expanded business, Lloyd Plumbing had outgrown its previous headquarters site and now required a larger working space that could be used for storage, a shop, and an office. Darrell Burkhalter, a family friend, offered the use of a portion of his unattached accessory building, i.e., a large two-story garage, on his property on Church Street. Mr. Lloyd explained that he carried out interior construction work and renovation on the building during the summer of 2016, preparing it for his own use. There was no change in exterior size to the structure. Mr. Lloyd added that he had installed insulation and an efficient heat pump in the building.

16. Mr. Lloyd testified that for the 9 employees of his business he has provided 10 designated parking spaces. Mr. Lloyd stated that the parking spaces are not visible to others because of their location. His hours of business operation are approximately 7 a.m. to 5 p.m., but that his business activity also includes emergency service work and calls. Employees arrive in the morning in their personal vehicles or company trucks, leave the operations center in a company vehicle to go to their assigned work sites, later return in the company vehicle to the operations center, and drive away from the operations center at the end of the day. Mr. Lloyd himself arrives at the location at 6:30 a.m. Two to four trucks a day may return to the accessory building during the day to pick up and load

additional material needed for offsite jobs. Finally, as many as three deliveries a day of materials may be made to the accessory building by suppliers. Routine work at the accessory building includes loading equipment and materials, as well as scrapping metal on site in preparation for its later removal.

17. Town ZA Light testified that his regulatory concerns were with regard to any adverse impact on the neighborhood from the Lloyd Plumbing business, including noise, and whether residents were concerned about having this business operating within their neighborhood.

18. Mr. Lloyd testified that Church Street is, in his words, "primarily residential" in character. He explained that because of this fact, he tries to keep his employees quiet when on site, including urging them to keep down the volume of their recorded music in their cars when they are in the area. Mr. Burkhalter agreed that the area is "mostly residential".

19. Darrell Burkhalter, landowner and the owner of the accessory building in question, testified that he had lived on Church Street for 27 years. He stated that he had run a one-man construction business from his building, had an office there, and also operated a ham radio station in the location. His building also had been used for storage. He stated that his construction business had no employees other than himself. He testified that his own business had begun to drop in intensity about five years earlier. Mr. Burkhalter testified that he believes the character of the Village District is based on commerce rather than on residences.

20. Mr. Burkhalter testified that the immediate neighborhood has roughly 17 vehicles that travel through it regularly, not including routine deliveries. Mr. Burkhalter emphasized that not all traffic on Church Street is related to the Lloyd Plumbing business and stated that Church Street is both narrow and "in need of an upgrade" by the Town. Other witnesses testified that while there is "lots" of residential traffic, the area is "quiet" and "not very noisy". One resident, Rich Gouge, stated that he had concerns regarding travel being blocked by parked vehicles related to the Lloyd business, as well as plowing difficulties, and road deterioration, but that Peter Lloyd had been responsive to these concerns, i.e., by directing his employees to park in different locations. One employee testified that he himself is a "pain in the butt" when driving on the hill because of his driving and his loud music in his car when he comes to work.

21. Liza Earle-Centers testified that she and her husband have their home on Church Street, opposite the building in question. They bought their home in 2010. The couple has been in their present home for approximately six-and-a-half years. Their purchase was motivated by the quiet nature of the neighborhood, with minimal traffic and the fact that their home was not

disturbed by the downhill traffic noise of Route 2. Church Street is a "dead end" street, and does not experience "cut-through" traffic. The neighborhood at the time of their move-in had been "just residential" and had remained so up until this past summer when she and her husband began to see unexplained construction activity at the Burkhalter accessory building. Ms. Earle-Centers stated that no one had spoken to them regarding the reason for the construction or notified them of any plan for Lloyd Plumbing to move its business operations into the building. When the Earle-Centers later spoke with Mr. Burkhalter about this activity, they felt he was not immediately and fully forthcoming about what was planned.

22. Ms. Earle-Centers expressed concern regarding the impact of increased traffic from the Lloyd Plumbing business on what, heretofore, had been a residential neighborhood. She testified that the Lloyd work crew arrives at 6:30 a.m. at the building and is noisy, disturbing her family while they are still asleep. Mr. Earle-Centers added that the last worker is often leaving at or around 6:30 p.m. Ms. Earle-Centers also was concerned regarding the safety of her three children (ages 4, 10, and 12) who play in and around the road. She testified that truck traffic, including large trucks, and deliveries related to the Lloyd business occur throughout the day. (The Earle-Centers, however, later conceded that their observations regarding traffic on a particular day are essentially anecdotal and do not constitute evidence such as would be developed through a professional "traffic count".) Ms. Earle-Centers also testified that Church Street is narrow, hilly, and unpaved, with two cars unable to pass one another side by side. She stated that the road makes a steep climb up from Route 2 and is dangerous in the winter, requiring vehicles to accelerate sharply after turning sharply from Route 2 to gain speed before driving up the hill.

23. Lincoln Earle-Centers also testified about traffic related to Lloyd Plumbing. Before Lloyd Plumbing moved into the Burkhalter accessory building the area had been a quiet residential location. At first there had been only one dumpster and that number later increased to three. (Other testimony indicated that only two of the three dumpsters belong to Lloyd Plumbing.) Since the arrival of the Lloyd business there is now more traffic and "there has been a big shift"-- the neighborhood now feels as if his family is living "in a commercial zone" because of increased traffic, trucks, and deliveries. He testified that road traffic has increased and deliveries by large trucks and trailers have resulted in deterioration of the unpaved surface of Church Street.

24. Mr. Earle-Centers testified that the operations of Lloyd Plumbing from the accessory building had produced a significant difference in the feel of day-to-day life in the neighborhood. The Lloyd business had resulted in the coming and going of 9 to 10 vehicles daily, as well as deliveries to the accessory building. The difference had become a matter of scale and volume. While all the residents of

the Church Street neighborhood operated home businesses, Lloyd Plumbing is significantly different in scale. It is not a home-based business, and with 9 or 10 employees, could be characterized as relatively “big” and large enough in scale to have already outgrown the building located on Mr. Lloyd’s own residential property. Mr. Earle-Centers testified that Lloyd Plumbing had simply taken over the two-story garage owned by Darrell Burkhalter and asserted that they now “used it as their own”. He testified that Lloyd Plumbing had moved into the neighborhood without notice and without checking the zoning requirements and without seeking a zoning permit. The Church Street neighborhood previously had been “not private, but low-key”. He testified, however, that the operations of Lloyd Plumbing now had resulted in traffic increases, with multiple trucks coming and going daily immediately in front of his home, as well as Lloyd’s employees in their private vehicles.

25. Mr. Lloyd testified that his business is consistent with stimulation of the economy and the provision of opportunities for individuals to establish locally based business ventures, a goal of the Town Plan. He testified that in his opinion his business was not making a “drastic change” to the neighborhood as long as it fit within the existing building. He stated that concerns regarding travel on the narrow, unpaved, and hilly Church Street could be resolved by a “plan” that he would suggest in which residents would voluntarily acknowledge the need for cooperation with one another and agreement as to when to yield in traveling up and down the hill.³ Mr. Lloyd testified that the Town of Marshfield does a “good job” of maintaining and plowing Church Street. Darrell Burkhalter, however, added that Church Street is narrow and has long needed widening, but the Town has not responded to this need.

26. Mr. Lloyd testified that traffic on Church Street is due to at least five houses and their occupants in the neighborhood that contribute to daily travel and deliveries on the street. He emphasized that the level of traffic activity on Church Street cannot be attributed solely to the presence of Lloyd Plumbing. Mr. Lloyd summarized his view regarding the daily traffic on Church Street as follows: there is usually no more than one delivery made to his business per day, but on a busy day there may be three. If UPS or FedEx deliveries are being made, often a truck is “already there” for the purpose of delivering packages for other Church Street residences. Customers of his business come to the site very rarely. As to employee traffic, 9-10 vehicles arrive between 6:30 a.m. and 7:00 a.m., and by 8:00 a.m. the employees have departed except for three office staff who remain there. Three to four vehicles remain in the parking lot during the day because most employees drive company vehicles to and from work, and then

3. The DRB during its site visit to the Church Street location on November 26, 2016 confirmed the narrowness of the street, its steepness, and its unpaved condition. In addition, the DRB members noted that a sharp turn in is required from Route 2 and that the street includes a potentially dangerous blind spot for drivers going up or down due to the steep grade and a significant upward angle of pitch at one point.

drive these vehicles home at night. Company vehicles may drop off parts or paperwork in the evening between 4:00 p.m. and 5:00 p.m. but then leave. Two to three vehicles remain in the parking lot on a continuous basis. An average of two company vehicles per day stop by in the middle of the day.

27. Mr. Lloyd testified that his use of the accessory building as a business headquarters was a solution that “works” for him and also contributes to the local economy. After his business recently merged with Heating and More Plumbing, his operations outgrew his previous workspace, located at his home in Cabot. His move to and use of the Burkhalters’ accessory building is intended as a “temporary” measure to resolve his need for additional workspace. Mr. Lloyd testified, however, that there is no timeframe for his use of the term “temporary”. In answering a follow-up Board question on this point, Mr. Lloyd testified that this temporary period might range from three to five years in length.

28. Lincoln and Liza Earle-Centers reiterated their opposition to a conditional use approval based on the size and scale of the impact of the Lloyd business on themselves as “close neighbors” with a direct view of the accessory building and the commercial activity there. The Earle-Centers also again expressed concern about the early morning arrivals of workers, early snowplowing for parking for the numerous vehicles involved in the Lloyd business, and daytime deliveries. The Earle-Centers stated that they had bought their home on “a low-traffic [dead end] side street in the village”. They stated that they had done so with the expectation that only the permitted uses listed in the Zoning Regulations at Section 410 would be allowed; in the Village District, commercial and industrial uses are not listed among those activities that are specifically permitted.⁴ The Earle-Centers urged that the DRB recognize that the Lloyd Plumbing business is not a home occupation as recognized and permitted under Marshfield Zoning Regulation Section 304. They reiterated that there were no conditions in their view that would mitigate or correct the adverse effects of the Lloyd business on them and the neighborhood. They stressed again that they regard the impact of the increased traffic on Church Street, as produced by the presence of the Lloyd Plumbing business, as raising safety concerns, especially in winter, as well as disturbing the overall peace and tranquility of the neighborhood.

4. Under Section 410 of the Town Zoning Regulations, commercial and industrial uses are permitted within the Village District only upon an express finding by the DRB, in addition to other necessary findings, that any such use is appropriate to the District and will not have an undue adverse impact within the district or upon adjoining land uses. (Emphasis added.) Here, in the instant matter, the DRB declines to make such a finding of no undue adverse impact.

II. Further Findings and/or Conclusions of Law.

A. Section 245-Conditional Use, General Standards.

29. Under the requirements of the Town of Marshfield Zoning Regulations, all Conditional Use applications are reviewed under the provisions of Section 245. The DRB reviews and enters its findings in determining whether the proposed use will have an undue adverse impact upon: The capacity of community facilities; the character of the area; traffic; bylaws; the capability of the land to support the use; utilization of renewable energy resources; and the goals of the Town Plan. We review the individual Section 245 criteria below with regard to the applications before the DRB.

i. **Capacity of Community facilities:** not applicable.

ii. **Character of the Area:** the Church Street residential neighborhood has been adversely affected by the proposed (and ongoing) use. The subject accessory building has changed in use from home occupation to commercial and introduced into this residential area ongoing, daily commercial activity and increased vehicular traffic. The nature and scale of the Lloyd Plumbing business is substantial and has increased the volume of truck and vehicle traffic and activity in the Church Street neighborhood in the early morning and late afternoon, as well added traffic from deliveries and/or unplanned service calls. The DRB finds that the introduction of the operations of Lloyd Plumbing into the Church Street neighborhood has had an unduly adverse effect upon the character of the area as a result of increased traffic and business activity in what heretofore has been a relatively quiet residential neighborhood with, at most, small home occupation activity at other residences. The Church Street neighborhood lies within the Town's Village District.

The DRB's review of the Town Plan finds no content that specifically and unambiguously supports a commercial use such as Mr. Lloyd has introduced into the Church Street residential neighborhood. The Town plan emphasizes the importance of maintaining the rural character of the community, providing safe and efficient transport, and safe and affordable housing. Stimulation of "appropriate economic development" is to be balanced with maintenance of high environmental standards and existing rural character. Within the Village District, new commercial and industrial uses in the Village District are permitted only if they will not have an undue adverse impact on the District or adjoining land uses.⁵ See Zoning Regulations, Section 410. We find that the presence and

5. In weighing this matter, the DRB also has reviewed and considered the Town Zoning Regulations regarding home occupations, since these were often referred to by the parties during

operations of Lloyd Plumbing within the residential Church Street neighborhood has resulted in an undue adverse impact on this area due to increased traffic and general activity of personnel engaged in this business activity. This is incompatible with the character of this otherwise quiet residential neighborhood. Its rural character has been reduced by the presence of increased truck and vehicle traffic and employees coming and going. Such increased traffic on Church Street also has an undue adverse impact on this road and transit because of legitimate safety concerns related to its steepness, narrowness, and unpaved surface.

iii. **Traffic:** See discussion and findings immediately above. We specifically find that the addition of the repeated arrival and departure of 9 to 10 commercial vehicles on a daily basis to the Church Street neighborhood and its narrow, unpaved road constitutes an undue adverse impact on traffic and the neighborhood.

iv. **Bylaws:** the commercial use of the accessory building was undertaken by the user without filing required applications and seeking a zoning permit. Under Section 410 of the Town Zoning Regulations such a commercial use is expressly permitted only with a prior DRB determination that the use is appropriate to the District and will not have an undue adverse impact on the District and adjoining land uses.

v. **Capability of the Land to Support the Use:** Not applicable: the structure in question is preexisting.

vi. **Utilization of Renewable Energy Resources:** the use of the accessory building does not substantially affect such resources. We note that Mr. Lloyd has installed a high efficiency heat pump in his office within the accessory building.

the hearing in this matter. We emphasize first here and find that Mr. Lloyd's use of the Burkhalter accessory building is not and cannot be considered a "home occupation". Our Zoning Regulations make clear that a home occupation is one carried out by members of the family residing in a dwelling and one which uses a "minor portion" of the dwelling, grounds, or accessory building for the family's own business activity. Our zoning expressly approves and protects such use of private property but also requires that the home occupation carried out by the family be one "which is customary in residential areas and which does not have an undue adverse impact on the character" of the neighborhood. Zoning Regulations, Section 304. Further, a home occupation may not employ more than two non-residents on a day-to-day basis and must not produce factors such as noise or dust, etc. which are "beyond those usually present in residential neighborhoods". While some witnesses in this matter have referred to the common presence of home occupations in the Church Street area, we note, as stated above, that Mr. Lloyd's business is not a home occupation and, even assuming that it were, it exceeds, for example, at a minimum, the employee limits that are identified in the Zoning Regulations.

vii. **Goals of Town Plan:** The use in question has an undue adverse impact on the goals and objectives of the Town Plan. The Town Plan supports maintenance of Marshfield's existing rural character and supports new development that is consistent with the character of the Village Zone. The Town Plan also encourages development that reinforces and complements existing neighborhoods. However, the Town Plan offers no clear encouragement of the kind of commercial development that has occurred in this case. Here, the ongoing commercial activity of Lloyd Plumbing is inconsistent with and has an unduly adverse impact on the rural and residential character of the immediate neighborhood and upon this specific location within the Village.

30. **Overall Conclusion of the DRB, Section 245-Conditional Use, General Standards:** for the reasons and findings set forth above, the use of the subject accessory building by the Applicant, Lloyd Plumbing, the DRB concludes that such use is inconsistent with Section 245 general review criteria, as weighed by the DRB. We conclude that the presence and specific operations of Lloyd Plumbing in this location has resulted and will result, if continued, in undue adverse impact upon the Church Street neighborhood, adjoining land use, and on the Village Zoning District. *And see* Section 410, Marshfield Zoning Regulations.

B. Section 245-Conditional Use, Specific Standards.

31. Pursuant to the requirements of the Zoning Regulations, all Conditional Use applications are reviewed under the specific requirements of this section. The DRB reviews and records its conclusions under standards that include the following: conditions, if any, necessary to prevent or reduce fumes, gas, dust, smoke, odor, noise, vibration, or similar nuisances; to preserve open spaces; to maintain the zoning district character; to promote adequate vehicle circulation, parking, loading; to meet water and sewer standards; setbacks required to accommodate the use; and the design and location of signs and lighting to maintain the character of the neighborhood.

32. **Overall Conclusion of the DRB, Section 245 Specific Standards:** as stated, the DRB concludes that the presence of Lloyd Plumbing, using this location as its operational headquarters, has resulted in an undue adverse impact upon the Church Street neighborhood, adjoining land use, and upon the Village zoning district. Lloyd Plumbing has introduced into this residential area ongoing, daily commercial activity, as well as increased vehicle traffic and parking. The nature and scale of the Lloyd Plumbing business is substantial and has increased the volume of repeated truck and vehicle traffic and activity in the Church Street neighborhood, in the early morning and late afternoon, as well added traffic from deliveries and/or unplanned service calls. Such activity is inconsistent with

the residential character of the neighborhood. We find and **conclude** under the Section 245 Specific Standards, in light of the evidence adduced at hearing regarding Lloyd's day-to-day operations and from our site visit, that there are no practicable conditions that would meaningfully mitigate or prevent such undue adverse impact from Mr. Lloyd's operations and his commercial use of the accessory building if these were permitted to continue.

C. Section 251, Site Plan Review.

33. Pursuant to the requirements of the Town of Marshfield Zoning Regulations, the DRB reviews the site plan map and supporting data before approval, or approval with stated conditions, or disapproval, is rendered, taking into consideration the following objectives in its determination.

i. **Compatibility between the proposed use and existing adjacent uses:** we note that the Applicant's "proposed use" of the Burkhalter accessory building has already begun and is ongoing. The Church Street neighborhood previously was residential and characterized as relatively quiet by witnesses, albeit with local traffic. The DRB members observed the location on a Saturday afternoon and found it quiet and without notable traffic. Church Street is a dead end street that heretofore has had limited traffic. The only commerce prior to Mr. Lloyd's business were small home occupations. However, Applicant Lloyd now has introduced an active commercial plumbing business among the residential properties on Church Street. The principal opposition to Mr. Lloyd's application comes from the homeowners (the Earle-Centers) who live opposite the accessory building that is the center of operations for Mr. Lloyd's business. Mr. Lloyd and 9 employees generally begin their business day at the location in the morning, as early as 6:30 a.m. The testimony of Earle-Centers stressed that the daily arrival of employees in their vehicles and the subsequent departure of work trucks has altered the quiet character of the neighborhood. During the day, some additional deliveries of parts and materials are made by suppliers and employees may return to pick up parts, according to witnesses. We find accordingly, based on testimony of both Mr. Lloyd and the Earle-Centers.

The closest neighbors, the Earle-Centers live opposite the accessory building and are most affected of those living in the neighborhood by the traffic and activity of Mr. Lloyd's business and employees. The DRB credits the testimony of the Earle-Centers regarding the adverse effect of Mr. Lloyd's business on the neighborhood and themselves. During the DRB site visit to the neighborhood, the members were able to take note of the narrowness of the street and the relatively short distance that separates the Earle-Centers' home from the location of the accessory building. The increased traffic and parking requirements that result from Mr. Lloyd's necessarily are visible and disturbing

in a residential neighborhood and incompatible with the quiet, rural character of this location in the Village District. **Conclusion of the DRB:** As previously found by the DRB, the proposed use is incompatible with the existing adjacent uses. *And see*, immediately below.

ii. **Maximum safety of vehicular and pedestrian circulation between the site and roads:** the scale of the Lloyd Plumbing business is sufficiently substantial to have increased the volume of repeating truck and vehicle traffic and business-related activity in the Church Street neighborhood in the early morning and late afternoon, as well added traffic from deliveries and/or unplanned service calls. Church Street is a narrow and unpaved side street that is entered via a sharp turn in from Route 2. It extends uphill and lacks sidewalks or walking space for pedestrians. The substantial increase in truck and vehicle traffic on Church Street, due to the operations of Lloyd Plumbing, raises substantial and legitimate safety concerns in light of the road's steepness, narrowness, unpaved surface, and blind spot(s). Both vehicles and pedestrians are adversely affected by such compromised safety. **Conclusion of the DRB:** The continued operation of Mr. Lloyd's plumbing business and the related increase in traffic using a steep, narrow, unpaved street in residential neighborhood compromises vehicular and pedestrian safety in this location.

iii. **Adequacy of circulation[,] parking and loading facilities:** Church Street is a dead end, residential street. It is narrow, unpaved, and lacks sidewalks or shoulders. Neither Church Street nor the grounds surrounding the accessory building appear to have been developed with a plan for or expectation of regular commercial traffic and use. Once traffic enters Church Street it can exit the neighborhood only by means of turning around and driving back to U.S. Route 2. In the immediate area of the subject accessory building, stopped vehicles either must partially block Church Street, make three point turns, or back into the road. The parking spaces identified by Mr. Lloyd are immediately close to the edge of the traveled way. As depicted by Mr. Lloyd on a survey map he submitted during the DRB site visit, his plan for parking can be reasonably expected to result in vehicles related to his business backing in or out of a narrow gravel drive that is used by other neighbors to reach their homes. (This gravel drive is not maintained by the Town and is not a Town road). The accessory building does not have a loading dock. Doors on the northwest side of the building (along the gravel drive) are approached by a short, but relatively steep rise leading up to doors. This rise, in winter, presents a hazard for foot traffic or trucks backing up to the doors for deliveries. **Conclusion of the DRB:** Traffic circulation, parking, and the loading facilities in the area of the accessory build-

ing are not adequate or safe for the neighborhood and for such a commercial operation.

iv. **Adequacy of landscaping, screening, setbacks, and architectural design, and location of signs and outdoor lighting, with regard to achieving compatibility with and protection of adjacent property:** Applicant Lloyd generally has not proposed such remedies as part of his applications, nor does the DRB conclude from the evidence and its site visit that such steps would accomplish “maximum compatibility with and protection of adjacent property.” We note that Mr. Lloyd has testified that he will not post signage at the accessory building and will attempt to minimize the visibility of parked vehicles and trucks. We do not find these accommodations sufficient by themselves to achieve compatibility with and protection of adjacent homes and property in this Village Zone, residential neighborhood on a quiet side street. **Conclusion of the DRB:** Applicant Lloyd has not proposed remedial measures that would achieve maximum compatibility of his business with adjacent property or protection of it.

v. **Protection of the utilization of renewable energy resources:** as noted previously, above, the use of the accessory building by Mr. Lloyd does not substantially affect such resources. Again, we note, that Mr. Lloyd has installed a high efficiency heat pump in his office within the accessory building. **Conclusion of the DRB:** Applicant Lloyd has installed and is making use of heat pump heating for his office area. The DRB finds that this contributes at least minimally to the protection of renewable energy resources.

34. **Overall Conclusion of the DRB, as to Section 251, Site Plan Review:** the DRB concludes from the above facts and conclusions that the application submitted by Mr. Lloyd, considered as a whole, is not consistent with the Site Plan criteria of Section 251. Criteria i, ii, iii, and iv, are not satisfied. On this basis, the Marshfield Development Review Board, pursuant to Section 251 of the Zoning Regulations, disapproves Mr. Lloyd’s Site Plan application for commercial use of the Burkhalter accessory building by his plumbing business.

III. Decision and Order.

For the reasons set forth above, the Applications of Peter Lloyd/Peter Lloyd Plumbing, Heating and Gas Service for Conditional Use Permit and Site Plan Review are hereby **disapproved** and **so ordered** by the Marshfield Development Review Board. Accordingly, the Zoning Administrator shall

review this decision and order of the DRB and take such action, as he deems appropriate, consistent with the findings, conclusions, and order herein.⁶

Voting to Disapprove: James Arisman, Gary Leach, Les Snow, and Faeterri Silver (Alternate DRB Member, Specially Assigned).

Voting to Approve: None.

Recused: Michael Schumacher. **Not Present:** Jenny Warshow.

So Ordered, at Marshfield, Vermont, this 10th day of January 2017.

By: 
James Arisman, Acting Chair
for the Development Review Board

NOTICE OF RIGHT TO APPEAL: In accordance with 24 V.S.A. §§ 4471 and 4472, this decision may be appealed to the Vermont Environmental Court within 30 days of the date of this decision. Notice of appeal shall be filed by certified mailing, with fees, to the Vermont Environmental Court and by mailing a copy of the appeal to the Marshfield Town Clerk. Failure of any interested person to appeal this decision to the Vermont Environmental Court within the specified 30-day period shall result in such interested person being bound by this decision or act of the DRB. Thereafter, such an interested person shall not contest, either directly or indirectly, the decision or act of the DRB in any subsequent proceeding, including any enforcement action brought under the provisions of Title 24, Chapter 117 of the Vermont Statutes Annotated. *And see* Town of Marshfield Zoning Regulations at §235 (Appeals to Environmental Court). Under 24 V.S.A. §4471(c), the hearing participants identified in Paragraph 6, above, are persons who may be deemed by the Court to be an "interested person" as to these proceedings, as defined in 24 V.S.A. §4465(b), by virtue of such participation, should this matter be appealed to the Vermont Environmental Court.

6. While the DRB does not condone the manner in which Mr. Lloyd came to occupy and make use of for commercial purposes the accessory building and parking areas on the Burkhalter property, the DRB members recognize that relocation of his business operations from this site can be expected to work at least a short term hardship upon him and his business. Advance communication with the Zoning Administrator and careful compliance with the Town's Zoning Regulations and its public review procedures are intended to provide steps to help residents and applicants to avoid surprises. The DRB members further recognize that in light of our decision above, the Zoning Administrator, under 24 V.S.A. §§ 4451 and 4452, is required to follow the law and enforcement procedures set forth therein. The DRB possesses no authority to order or to act to the contrary of these specific provisions of law, which set forth the required steps and actions to be taken by the Zoning Administrator.