



TOWN OF MARION  
ZONING BOARD OF APPEALS  
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## MINUTES OF MEETING January 22, 2015

The Marion Zoning Board of Appeals convened at 7:30 p.m. on Thursday, January 22, 2015 in the main conference room of the Marion Town House to hear case numbers:

- 695, that of the Marion Planning Board seeking relief from the following action by the Building Inspector: Issuance of Building Permit #B1438 dated November 24, 2014 to Dale & Laura Briggs – County Road, is further identified on Assessors' Plan 21 as Lot 17; and
- Continued from January 8, 2015: 697, that of Jon Delli Priscoli for a Special Permit under section 6.1.3 of the zoning by-law to allow extension, alteration or change to a non-conforming single family structure (minor change). The property, located at 91 Water Street, is further identified on Assessors Plan 16 as Lot 178; and

Zoning Board members present were Chairman Eric V. Pierce, Domingo Alves, Tom Cooper, and Michelle Ouellette.

Also present:

|                     |                   |
|---------------------|-------------------|
| Ham Gravim          | 16 Tucker Lane    |
| Laura & Dale Briggs | 512 County Road   |
| Chris Reagle        | The Sentinel      |
| Rob Lane            | 168 Point Road    |
| J. Ferrari          | 310 Point Road    |
| Jon Delli Priscoli  | 91 Water Street   |
| Richard Schaefer    | 175 Converse Road |
| Jean Perry          | The Wanderer      |

Upon arrival the Board was presented with the following information for the evening's Business:

- Agenda
- Materials for case #695, which include:
  - Legal Notice
  - Application form
  - Memo from Marion Board of Health dated December 8, 2014
  - Memo from Marion Conservation Commission dated January 15, 2015
  - Marion Planning Board Clerks' Certificate of Board Action dated December 2, 2014
  - Copy of email from Bill Saltonstall dated January 9, 2015
  - Copy of email from Jennifer Francis dated December 18, 2014
  - Copy of letter from Planning Board regarding case fee dated December 22, 2014
  - Copy of letter from Planning Board dated November 10, 2014
  
- Materials for case #697, (from January 8, 2015 meeting) which include:
  - Legal notice
  - Memo from the Board of Health dated December 17, 2014, wherein the Board stated they had no objection to the approval of the application, as the house is serviced by Town water and sewer
  - Memo from the Conservation Commission dated December 23, 2014 wherein the Commission states that the Commission has an appointment with Mr. Delli Priscoli on January 14, 2015 for a Request for Determination of Applicability
  - Memo from the Marion Planning Board dated January 8, 2015 noting that the proposed plan extends the volume and the existing nonconformity.
  - Letter from Schaefer & Kunz, P.C. dated January 5, 2015
  - Letter from Schaefer & Kunz, P.C. dated January 8, 2015
  - Assessors Field Card
  - Application Form
  - Proposed Site Plan and First Floor Plan for the property in question showing proposed alterations to residence at 91 Water Street, Lot 178 on Assessors Plan 16
  - Added for the January 22, 2015 meeting: Copy of emails from Richard Schaefer and Jon Delli Priscoli dated January 21, 2015
  - Copy of Plan of Land sent via email dated January 21, 2015
  - Copy of email from Richard Schaefer dated January 21, 2015

At 7:30pm, Mr. Pierce opened the hearing of case number 695, Marion Planning Board, with the reading of the legal notice as well as correspondences from the Board of Health and Conservation Commission. He also read aloud the Clerk Certificate of Board Action that accompanied the application. Mr. Pierce asked the Planning Board to present. Rob Lane, clerk of the Marion Planning Board thanked the Zoning Board for the opportunity to make the presentation. He said that the appeal is not about the variance or the solar farm. The Planning Board is in favor of both. Mr. Lane said that it is about the Planning Board's authority to conduct site plan review under the by-laws. For the record, he pointed out that the vote for this appeal by the Planning Board was 5-2.

Mr. Lane made mention of the variance that was granted on September 15, 2014. On page three under Conditions of Variance Grant, he read number 3 as listed. The next document he referred to was the letter to Scott Shippey, Building Commissioner notifying him that they felt that site plan review was required for this project. Next he read from a letter dated November 23, 2014 to the Planning Board from Jon Whitten, Town Counsel. Mr. Lane read aloud paragraphs two, four, five and six. He made note of the "triggers" mentioned in paragraph four of a minor site plan review where proposed construction "will exceed a total gross floor area of 500 square feet but not exceed a total gross floor are of 2,000 square feet, or will not generate the need for more than ten parking spaces...".

Next, Mr. Lane read aloud from by-law Section 9.1, Applicability. He noted the four terms listed: building, structure, construction and total gross floor area. He read aloud the definition of "structure" as listed on page 110 of the by-laws. He noted that "structure" is a broadly defined term. Again, he mentioned the "trigger" to have site plan review by the Planning Board, and that is square footage. He quoted the definition of "gross floor area" as listed on page 104 of the by-laws and noted that it is a very narrow definition and would lead one to only look at a building. Based on the definition of "gross floor area", the quoted 142+ square feet, Mr. Lane suggested is wrong. He said the square footage of the solar array is zero. He said there is nothing on the solar array plan that meets the definition under gross floor area. Mr. Lane's feeling is it puts the town, Zoning Board and Planning Board in a position of trying to decide which is more significant since it is an inconsistency. Are we looking at a board array of improvements that we discussed under structure or do we go to the definition of the "trigger" which narrows us to a building? Mr. Lane would suggest that of a much broader view of what site plan review is instead of the narrow view which is limited by gross floor area.

Mr. Lane referred to the solar by-law and said that this change anticipated this problem. He quoted Section 16.8. He said the end result for the solar array is going to be the same whether the Zoning Board upholds the Planning Board's appeal or not. He also said that if site plan review was required it would be granted. Mr. Lane said that if their appeal is denied, a precedent is set which limits the possibility of site plan review to the narrow definition under gross floor area. He said if their appeal was granted he felt the Planning Board would expedite any approval, work would then continue and a precedent would be

in place for them to do their job as the Planning Board in protecting the community. Mr. Lane thanked the board for the opportunity to make the presentation and asked if there were any questions. He asked Mr. Lane for a copy of Jon Witten's letter. Mr. Pierce commented on the concept of precedent. He said that the ZBA have to be extraordinarily careful to stay away from precedent and look at each case individually. Mr. Pierce asked if there were any further questions from the audience or the board. Steve Kokkins, Chairman of the Planning Board addressed the board. He made general comments in support of Mr. Lane's presentation. Mr. Lane handed out a packet of information to board members.

With no other questions, Mr. Pierce entertained a motion to take this case under advisement. Ms. Ouellette motioned to take case #695 under advisement; Mr. Cooper seconded; voted unanimously.

At 8:00pm, Mr. Pierce re-opened the continued hearing of case number 697 that was taken under advisement on January 8, 2015. Jon Delli Priscoli handed out copies of the updated Plan. Since the last meeting, surveyors had been out to the property. He noted the lot line was a little further from the garage but essentially the same and it is noted on a certified plot plan. Mr. Delli Priscoli reviewed the existing plan and the new plan that showed the proposed addition. He said that he and the Watermans were in agreement about the lot line. Richard Schaefer, representing the Watermans, said yes they are. Mr. Pierce mentioned the emails that the Board was copied on in regards to verbiage proposed to be part of the special permit if approved. Mr. Schaefer said that they would like the verbiage and plan become part of the special permit and that the Watermans were happy with it. Mr. Delli Priscoli agreed that attaching the plan is a good way to proceed if the board approved.

Mr. Delli Priscoli also noted that the Conservation Commission has approved the project on their end. He said that Commission is requiring wattles be in place during the construction for protection. Mr. Pierce asked about the area between the Watermans and the yacht club and if it will remain open. Mr. Schaefer noted that the area is currently dug up and is being worked on by the town. He believes the plan is to grade it and seed it this spring. He also noted that it is intended to keep it vacant.

Mr. Pierce asked if there were any questions from the audience, there were none. He entertained a motion to take this under advisement. Mr. Cooper motioned to take case # 697 under advisement; Ms. Ouellette seconded; voted unanimously.

Mr. Pierce revisited case # 697. He made note of the email with the phrase to be added into the special permit. He read it aloud. Mr. Pierce said that what they were requesting is that this wording and the picture be submitted as part of the special permit if one was granted.

Mr. Cooper asked if it were creating a new non-conformance. Mr. Pierce and Mr. Shippey discussed the By-laws in general. Ms. Ouellette located by-law 6.1.3, in which this application was submitted under. Mr. Pierce read aloud by-law 6.1.3. There was discussion regarding extension. Mr. Pierce said that the reason he kept asking about the open space between there and the wall, in his opinion, the rules are there to guarantee there is access. He said that lot is extraordinarily open. He felt that it was not a big issue. He also felt that this is such a de minimis addition that it will not hurt the neighborhood.

Mr. Pierce said he would entertain a motion. Ms. Ouellette motioned to issue the special permit for case #697, 91 Water Street, with verbiage and the plan attached that was entered into the file. Also, they must have Conservation Commission approval. Mr. Alves seconded; voted unanimously.

Mr. Pierce opened a discussion about case #695. He noted that Mr. Lane's arguments were very well put together. Mr. Pierce's perception is that the Planning Board's underlying concern is that the board set a precedent by allowing a variance which took away a site plan.

Mr. Pierce said that the purpose of both boards is to protect the town. He noted that the Building Permit was issued on November 24, 2014 and this application was filed on December 2, 2014. It was well within the 30 days to appeal a Building Permit. Mr. Pierce also noted that he would like to talk with Mr. Witten about the fact if the Planning Board is an aggrieved party. If you want to appeal, you have to be an aggrieved party. He felt other than philosophical, there is no pain the board has caused anybody. Mr. Pierce noted that these were his opinions.

Mr. Cooper agreed that it is advisable to talk to Mr. Witten. Mr. Alves asked about Mr. Lane's comments of expediting the process. Mr. Pierce said that there would be a stream lined process where they wouldn't have to come up with wiring plans, etc. Mr. Shippey said that he has all of that if the board required. Mr. Pierce said it was his opinion that the board not overturn the Building Inspector.

Mr. Shippey said, in his opinion, this is a special circumstance because we did not have a by-law at the time this was coming through. By the time this was at its end, we had the solar by-law. Mr. Shippey noted that they met the criteria of the intent of this by-law regarding setbacks, etc. The plan shows exactly what is written in the by-law. The only difference is there wasn't a site plan review. Mr. Pierce said that they were all on the same page. Mr. Cooper mentioned that the applicant down scaled their plans in order to be in compliance with current by-law. Mr. Pierce said he feels for the Planning Board but he felt it was not worth the ongoing bureaucracy. Mr. Alves opinion was to send it back to the Building Inspector.


Mr. Pierce will speak to Mr. Witten and show him the packet that Mr. Lane presented. He also said it is meant with no disrespect but let's move on. Mr. Pierce said he will convey

that to Mr. Witten and have him draft a decision that will effectively deny the appeal. The conversation will continue at the February 26, 2015 meeting.

Regarding the meeting minutes from January 8, 2014 - Ms. Ouellette motioned to accept as written; Mr. Alves seconded; voted unanimously.

Mr. Pierce thanked Mr. Cooper for his years of service. He is stepping down from his seat effective January 31, 2015.

With no other business before the Board the meeting was adjourned at 8:30 p.m.



Donna M. Hemphill, Admin. Assistant

Date: 3/13/15