



TOWN OF MARION
ZONING BOARD OF APPEALS
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MINUTES OF MEETING MARCH 12, 2015

The Marion Zoning Board of Appeals convened at 7:30 p.m. on Thursday, March 12, 2015 in the main conference room of the Marion Town House to hear case numbers:

- Case #700 (Modification to Case # 693), that of Bernard & Eileen Bowers of 14 Bayview Road, to modify the approved footprint by changing the dimensions of the proposed addition from 14 feet to 16 feet on the northeast side property line and to change the proposed round stone patio on the same side to a rectangular wood deck with the same overall dimensions. The modifications requested do not have an effect on the front yard setback which was approved to continue as a pre-existing non-confirming setback. The property is further identified on Assessors' Plan 19 as Lot 131; and
- Case #701, that of Mary Lou Hanlon of 11 Shady Lane, application for Special Permit under section 9 of the zoning by-law for a kennel license to allow for dog care.

Zoning Board members present were Chairman Eric V. Pierce, Betsy Dunn, Michelle Ouellette and Marc Leblanc.

Also present:

Bernie & Eileen Bowers	14 Bayview Road
Anthi Frangiadis	11 Spring Street
Debra A. Hopkins	26 Dexter Road
Steve Whittaker	26 Dexter Road
Thomas Lovett	131 Dexter Road
Elena Louch	131 Dexter Road
Mary Ross	10 Doran Way
Margaret Gray	16 Wilson Road
Tom Gray	16 Wilson Road
T. Terrell	6 Wilson Road

Mary Terrell	6 Wilson Road
Kurt Seifert	15 Dexter Road
Karen Marotta	9 Wilson Road
Daniel Roveda	14 Doran Way
Ernest Yeaw	26 Doran Way
Nicholas Mitcheson	18 Wilson Road
Matthew Bernat	Sippican Week
Ken Steen	Dartmouth, MA
John W. Doran	120 Dexter Road

Upon arrival the Board was presented with the following information for the evenings Business:

- Agenda
- Materials for case #700, which include:
 - Legal Notice
 - Application form
 - Memo from Marion Conservation Commission dated February 26, 2015
 - Assessors Field Card
 - Revised Plan dated February 2, 2015
- Materials for case #701, which include:
 - Legal Notice
 - Application form
 - Memo from Marion Conservation Commission dated February 18, 2015
 - Assessors Field Card
 - Photographs of the property
 - Eight letters from neighbors (attached)
 - One petition signed by 48 neighbors (attached)

At 7:30pm, Mr. Pierce opened the hearing of case number 700, that of Bernard & Eileen Bowers of 14 Bayview Road, to modify a previously approved (Special Permit for Case # 693) footprint by changing the dimensions of the proposed addition from 14 feet to 16 feet on the northeast side property line and to change the proposed round stone patio on the same side to a rectangular wood deck with the same overall dimensions. The modifications requested do not have an effect on the front yard setback which was approved to continue as a pre-existing non-confirming setback. Mr. Pierce read the Legal Notice for Case #700. He also read the memo from the Conservation Commission. The Bowers received approval from the Conservation Commission for this change. Anthi Frangiadis, Architect was present as were Mr. & Mrs. Bowers. Ms. Frangiadis described the change from 14' to 16', the stone round patio will now be a wood rectangular desk. The elevation of the deck will remain the same as on the original approved plan.

The reason they were before the Zoning Board before was for the preexisting nonconforming

setback on the front side yard. That dimension is not changing with this proposed modification. She said the changes are to the side yard setback. Ms. Frangiadis said that they still meet the side setbacks. Mr. Pierce clarified that it is not creating a new nonconformance. Ms. Frangiadis said that is correct.

Mr. Pierce asked if the deck would be open or covered. Ms. Frangiadis said that it is an open deck. The elevation hasn't changed, the material and shape has. She noted that they did go before the Conservation Commission and they did approve the change on their end.

Mr. Pierce asked if there were any questions from the audience. There were none. Mr. Pierce noted that this was in essence what was permitted before but with an updated plan. He motioned that the board take this case under advisement; Ms. Ouellette seconded; voted unanimously.

At 7:40pm, Mr. Pierce opened the hearing of case number 701, that of Mary Lou Hanlon for a special permit under section 9 of the zoning by-law for a kennel license to allow for dog care at 11 Shady Lane. He also read a memo from the Conservation Commission stating that they had no comment at this time. Mr. Pierce said that nine letters were received. These letters would normally be read into the minutes but in this case, they will be made part of the minutes. Mr. Pierce had read through the letters quickly and all nine letters are opposed to having the kennel in the neighborhood. There were a variety of reasons listed. There was also a petition signed by approximately 48 people. Mr. Pierce read the reasons for opposition listed on the petition.

Mary Lou Hanlon addressed the board and the audience. She said she moved to Marion seven months ago. She loves the town and her neighborhood. Ms. Hanlon said that she loves dogs and has always had dogs from childhood to adulthood. She stated that she held a kennel license in a previous town. She had five dogs of her own and she said it worked out just fine.

She would like to care for a couple of dogs in her home as a business. Ms. Hanlon said she would treat them as her own and give them excellent care. She applied for the kennel license so she was following proper channels. She only intends on having no more than 3 dogs at a time, including her own dog. Ms. Hanlon also mentioned that she taken a pet first aid class in the past.

Mr. Pierce noted that the board will have to look at the specific points of use within the by-law. He asked if the board had any questions at this time. There were none. He then asked if there were any questions or comments from the audience.

Ernest Yeaw on behalf of his in-laws, Mr. & Mrs. Parsons, read a letter in opposition of the kennel. Resident Tom Lovett asked the board if the special permit were granted, how many dogs would be allowed. Mr. Pierce read aloud from the by-laws. If this special permit were granted, Ms. Hanlon could have four to five dogs. Ms. Hanlon confirmed that yes it would be a business kennel and not a hobby kennel. Her intention is to have no more than 3 dogs at a time.

Steve Whittaker of 26 Dexter Road asked if the clients would be dropping the dogs off at the property. He was concerned with possible traffic, cars driving up and down the dead end private road. He has spoken with his insurance company and they stated that if this kennel license is

granted and the road becomes public access that his liability insurance will go up. Mr. Whittaker asked what the frequency of clients dropping dogs off would be and what the usage of the dead-end road would be. Ms. Hanlon said that the drop off schedule would depend on the need of the clients. Ms. Hanlon was under the understanding that the public would have access to roads in the private complex. Mr. Whittaker and other audience members replied that no the public would not have access, just guests and residents. Ms. Hanlon felt that the dogs and clients would be guests of hers. Mr. Pierce disagreed and said that since money would be changing hands, it would not be a guest but a client. He also said that it is sticky issue with privately maintained roads and the question of added traffic and maintenance costs.

Ms. Hanlon asked how many other residents have home businesses that have clients come to their home. She mentioned a landscaper that has a business in the neighborhood. It was mentioned that the landscaper's clients do not visit him but he goes to them for his business.

John Doran of 120 Dexter Road spoke on behalf of himself and his parents that live at 106 Dexter Road. He said that he respects Ms. Hanlon's her background and her love of dogs but as father of young children his main concern is their safety. He felt that she could not vouch for all of her potential clients and their backgrounds, etc. He also had concerns as to the visiting dogs would behave with her own dog and the safety aspect of things. Ms. Hanlon said that she plans on doing a thorough screening process with each of the dogs. She described the procedure which included a meet and greet process. Ms. Hanlon also described the 6' fence in the backyard that will have a padlock secured from the inside of the yard. She also noted that she is planning being very selective in which breeds. She will not take in anything that she could not handle.

There was also the question of dogs barking at early hours of the morning. Ms. Hanlon described how she plans on screening the dogs and she does not plan on taking in dogs that could be loud. The concern of dogs getting loose was also discussed. Kurt Seifert of 15 Dexter Road said the one time Ms. Hanlon's dog got loose and he had to call her to pick the dog up. Ms. Hanlon explained that situation. It was the day she moved in and the dog got out by mistake. Margaret Gray of 16 Wilson Road expressed concern about the noise. She also asked the board, being an association and having by-laws, voting on things and having a board of their own, how much weight does that petition bear on any decision and who would make the final decision on this kennel. Mr. Pierce said that the Zoning Board has been asked to make a decision on the allowability. Part of the reason they are there is to listen to the public comments. He also said there are the legal aspect as well as a subjective part of it as well. Mr. Pierce said they are also there to protect the right of the applicants to make sure they get their full plan laid out and get the full benefit of doubt wherever possible. Mr. Pierce said as for the association question that is between the association board and the members. He said it depends on how the association papers had been written up.

Ms. Gray noted that with the road being private she was not aware that the area could be zoned for business. Mr. Pierce said that frequently "cottage businesses" are allowed, but he would have to look into to further, but within the association that is another issue. Ms. Gray mentioned that

the landscaper business in the neighborhood and how she has only seen his one work vehicle come in and out. There was discussion as to how the business was listed in the phone book, whether it is a P. O. Box or street address. Ms. Hanlon noted that the business is listed as a landscaping business in the Marion phone book with the street address listed.

Mr. Yeaw asked Ms. Hanlon how the business would be listed. Would it be DBA Ms. Hanlon or would it have a name? Ms. Hanlon said it would be called "Mary Lou's Dog Care". There was a brief discussion about the difference. The traffic concerns were mentioned again.

Ms. Gray asked the board if the neighborhood association should look into the by-laws to see if there is something about private use only, should they come back to the board to let them know. Mr. Pierce said that would be between the association board and Ms. Hanlon.

Mr. Yeaw asked if the permit could be granted once this meeting is over and everyone has left. Mr. Pierce said yes, that is accurate. He mentioned that there is another kennel in town and there was controversy over that as well. The board did grant that license based on the space around and the size of the operation. They decided that it was not going to be a major public inconvenience. He did say that was a different case and each one is unique. Mr. Pierce noted that they have been in the Dexter Beach area recently to look at other properties.

Elena Lovett of 131 Dexter Road noted that space is an issue in the Dexter Beach area compared to where the other kennel is. She said it is a much smaller area. Ms. Hanlon mentioned that technically she can own three dogs of her own without a kennel license. She urged neighbors to look at this as if she had three dogs of her own. There will not be an outdoor kennel. She will care for them as they were her own dogs and she will not take in more than she can handle.

Karen Marotta of 9 Wilson Road said that it was nice to hear about Ms. Hanlon's background. She asked if Ms. Hanlon would have liability insurance. She said yes. Ms. Marotta also asked about paperwork on the dogs, etc. Ms. Hanlon said yes she would have complete health information, etc. It will be required. Ms. Marotta read aloud an excerpt from Mass. State Law Chapter 40A, Section 10 in reference to a resident's right to quiet enjoyment. Ms. Hanlon again discussed the noise concern. She said she would not allow excessive barking.

Ms. Hanlon reiterated her intent to take no more than two dogs that are not her own, for a total of three dogs at any time. Mr. Pierce stated that if they were to grant a special permit they could stipulate a lower limit than the four to five that are allowed under the by-law.

Mr. Pierce said that many points of concern have been made about safety, noise, cleanliness, disruption, maintenance, and activities. Ms. Hanlon addressed the concern about waste. She has spoken to the Board of Health regarding this. She described the procedure she would use and the frequency of removing waste from her yard.

Mr. Pierce said that all matters will be discussed by the board. Mrs. Dunn moved to take case #701 under advisement; Ms. Ouellette seconded; voted unanimously.

In other matters, Mr. Pierce moved that Minutes from January 22, 2015 be accepted; Ms. Ouellette seconded; voted unanimously. Mrs. Dunn moved that minutes from February 26, 2015 be accepted as written; Ms. Ouellette seconded; voted unanimously.

At 8:25pm, Ken Steen from Baywatch Realty explained the question of Lot B at Marion Village Estates. The board has been asked to vote on a document with clarification regarding Lot B and the Comprehensive Permit. He presented the board with a plan to review. Mr. Steen showed the notes listed on the plan regarding Lot B and explained the process that happened when the lots were split. Mr. Pierce thanked Mr. Steen for the explanation. Mr. Pierce read the draft vote. The board agreed to ask Town Counsel to review the document as written. It will be discussed again at the April 9, 2015 meeting.

The board revisited case #700 for the Bowers at 14 Bayview Road. Mr. Pierce reviewed the plans with Mrs. Dunn since she was not present at the original meeting. The board did not have questions. Mr. Pierce moved to grant the special permit based on the fact that it will not exacerbate pre-existing non-conformances and will not be a detriment to the neighborhood; Mrs. Dunn seconded; voted unanimously.

The board then revisited case #701 for Hanlon at 11 Shady Lane. Discussion was had regarding the kennel special permit request. Mr. Pierce motioned to deny the special permit due to the fact that it would be detrimental to the neighborhood; Ms. Ouellette seconded; voted unanimously.

With no other business before the Board the meeting was adjourned at 8:45 p.m.

Approved on April 9, 2015

Submitted by:
Eric V. Pierce, Chairman

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