



TOWN OF MARION
ZONING BOARD OF APPEALS
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MINUTES OF MEETING July 23, 2015

The Marion Zoning Board of Appeals convened at 7:30 p.m. on Thursday, July 23, 2015 in the main conference room of the Marion Town House to hear case numbers:

- Case #654-Modification, that of Baywatch Realty Trust's application to modify a previously granted comprehensive permit for a development off of Front Street in Marion, MA. The modification request pertains to the sale of fee simple lots contained within the proposed development. The property is located off Front Street, Assessors' Plan 24, Lots 27, 28 and 29.
- Case # 705, that of Sippican Preservation, LLC's application for a special permit pursuant to section 6.1.3 of the zoning by-law to reconstruct, alter, extend or change a non-conforming structure and to seek relief from sections 6.5.3 and 6.5.4 (a) of the zoning by-law, in reference to parking.

Zoning Board members present were Chairman Eric Pierce, Betsy Dunn, Bob Alves, Michelle Ouellette, Marc Leblanc, Joanna Wheeler and Kate Mahoney.

Also present:

Jean Perry, The Wanderer; Ken Steen, Baywatch Realty Trust; John Mathieu, 163 Front Street; Christian Loranger, 80 Front Street; Dr. Radin; Christy Dube; Scott Shippey, Marion Building Commissioner; Attorney Barbara Huggins.

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

- Agenda
- Materials for case #654, which include:
 - Legal Notice
 - Field Card
 - Comments from Conservation Commission
 - Comments from the Board of Health
 - Letter from Regnante, Sterio & Osborne LLP
 - Copy of Notice of Decision – Modification of Comprehensive Permit

- Materials for case # 705, which include:
 - Legal Notice
 - Comments from Conservation Commission
 - Comments from the Board of Health
 - Application
 - Field Card
 - Letter from Bill Saltonstall
 - Plans

- Minutes to approve from July 9, 2015

At 7:30pm, Mr. Pierce opened the hearing of case number 654 for a modification to a previously granted comprehensive permit for Baywatch Realty Trust. Ken Steen of Baywatch Realty Trust was present. Mr. Steen said that the currently there are 30 market rate units approved, two are at 80% of median, two are 120% of median and the town has the option to purchase two lots, which he said goes back to the original approval of this permit. Mr. Steen said that they are requesting the change to the permit to now show 27 market rate lots and 9 affordable lots that would have homes constructed at 80% of median.

Mr. Pierce asked for clarification that this is a clerical exercise to have the permit reflect what the town has already voted for. Mr. Steen said yes this is the last part of the process.

Mrs. Dunn asked Attorney Barbara Huggins to describe the term "fee simple" that was listed in the legal notice. Attorney Huggins said that the term fee simple is used to describe ownership unburdened by other rights of other parties, a basic form of ownership.

Mr. Pierce asked if the town has purchased the lots. Mr. Steen said by making the extra lots affordable the town will supplement the process in terms of the finances. If the board approves the modification, Baywatch Realty Trust will go forward with obtaining final approval from the subsidizing agency which can take 60 to 120 days. Then they will apply for the necessary building permits. Also will schedule advertising for a lottery for the nine houses. Mr. Steen said he believed that 70% of the affordable housing can go to local preference. Attorney Huggins asked Mr. Steen if they have had conversations with Mass Housing as of yet. Mr. Steen said no, they were waiting until the modification process was finalized.

Mr. Pierce asked if the board or audience had any questions. There were none. Mrs. Dunn motioned to take the case under advisement; Ms. Ouellette seconded; voted unanimously.

At 7:40pm, Mr. Pierce opened the hearing of case number 705, for the special permit application of Sippican Preservation, LLC, 16 Cottage Street. Mr. Pierce read aloud memos from the Conservation Commission – not within the commission's jurisdiction, and the Board of Health – no objection to the project.

Attorney John Mathieu, Christian Loranger and Albert Meninno were present for Sippican Preservation, LLC. Attorney Mathieu said that the current five unit building has been used as an apartment building for approximately 65 years. It is currently in poor shape. Sippican Preservation, LLC purchased the property July 2014. The intent was to tear the house down and put up a new building for five condominium units with two bedrooms each. The target of the

construction is empty nesters and summer residents. He noted that there is a similar building on Main Street.

Attorney Mathieu said that the applicant has been before the board but they went with their by right plan and obtained a building permit in April 2015 for a five unit building. After obtaining that building permit, the applicant starting having discussions with several of the neighbors regarding some concerns they had. He described the current parking situation which is zoned for approximately five parking spaces. He said that after much negotiation with some of the neighbors the applicant to see if the board would approve this amended plan for the new structure that addresses the neighbors' concerns. The house plan itself was redrafted and will be slid over 10' and it is 10' away from School Street. It will make that setback less nonconforming that it currently is. The setback on the other side of the building has plenty of space, the setback toward the Dube property and on the Cottage Street are the same. With the change, they will need to reconstruct the foundation. Right now the foundation is an old stone foundation with some additions to it. Since they are now looking at moving the building they will rebuild the foundation as well.

Attorney Mathieu said the applicant is looking for a special permit under section 6.1.3. He said that the permitted structure is the same volume as the current structure. The new plan is exactly the same volume and essentially the same footprint; they have straightened a couple of lines out. The height of the new proposed structure is 34.9'. Also part of this application is asking for the two waivers from parking. The first waiver is under section 6.5.3. A new building in the village would require two parking spaces per unit. In order to slide the building over they have had to move the parking. They have put three spaces on Cottage Street and two spaces on School Street. By doing this they have reduced the paved area on the property and have some open space where there is pavement right now. The second waiver is because parking spaces cannot be forward of the front plane of the house. Since this is on a corner lot both parking areas are in front of the front plane of the house. The neighbors have reviewed by this and are in agreement with this plan.

Attorney Mathieu said that they will also have a walkway that would be handicap accessible and a parking spot will be designated accessible if needed. He also described the landscape plan. The neighbors are also on board with the landscaping plan.

Attorney Mathieu said that the current building permit that they have along with the current parking situation (five spaces) is by right. They are asking for the waiver for the new building to keep the same five parking spaces. He also mentioned that the current building is assessed at approximately \$500,000. Once this new building is complete the value will be approximately \$2.5 million. He said that it will be a benefit to the town due to the increased tax revenue. Also, the intent is to service the community with this building. It will allow residents to stay in the village, scale down what they currently own or allow people to use the property as a summer residence.

Mr. Pierce asked if the footprint would be the same square footage but just moved over. Attorney Mathieu said yes. Mrs. Dunn asked what the proposed volume would be. The applicant did not have that information on hand. There was a discussion regarding the handicap space and what would happen with any overflow parking. Attorney Mathieu said any overflow would just park on the street. The same thing would happen if that building were occupied today. Ms. Mahoney asked if the straightening of the lines that was mentioned resulted in an increase of the square footage. Mr. Loranger explained that it was close but he said there was a give and take for the width versus length so it is the same size. There was a discussion regarding the

square footage of the current building, permitted and new plan.

Mr. Pierce asked Mr. Shippey to explain the unfinished basement as part of the volume. He said as per the by-laws you can use unfinished basement as part of the volume. He confirmed this with town counsel. He explained that in order to utilize a basement in the building code only 7' height space is needed. There was a discussion regarding habitatable space.

Mr. Pierce asked if there were any questions from the board. There were none. He asked if there were any questions from the audience. Mr. Saltonstall mentioned the letter that was sent from Margie Baldwin indicates the neighbor's support of the changes in the project.

Mrs. Dunn asked about the impervious service on the lot. Mr. Loranger said it will be less than what is currently there and will be within the zoning guideline.

Mr. Pierce read aloud the letter received from Margie Baldwin. Christy Dube, direct abutter, said that overall she supports the new plan. There is one part that she is not in favor of which are two decks that overlook her backyard. She asked what the process would be for the demolition of the current structure. Mr. Shippey offered to sit with Mr. Loranger and Mrs. Dube to discuss the demolition process. Mr. Loranger said that they have already had the remediation company come in. A Massachusetts state certified company has already been in and removed asbestos from the property.

Mr. Alves asked Mr. Loranger about the decks. Mr. Loranger said he is sure he can work something out. Mr. Pierce said he would like to look at the zoning by-laws in reference to the parking. Also, stamped and signed plans will need to be submitted. There was a discussion regarding the parking spaces and whether it falls within the purview of the Planning Board or the Zoning Board.

Mrs. Dunn motioned to take case # 705 under advisement; Mr. Leblanc seconded; voted unanimously.

There was a brief discussion regarding case #661 for Johnson Family Investments. Back in 2012 a change of use was approved for the former Frigate restaurant location. The applicant has recently been granted an extension with the Planning Board. It was the belief of the board that according to the Permit Extension Act the special permit was automatically extended.

In reference to case # 703 which was taken under advisement at the last meeting, Mr. Pierce asked Mr. Shippey for clarification regarding the current building permit issued for 16 Cottage Street, whether or not if the special permit was granted if that would void the current building permit. Attorney Huggins said that if the board were to grant the special permit it does not make the other permit go away. He could go back to that original building permit if he wanted to. She said that if the new special permit were granted she would recommend having the applicant apply for a new building permit. The current building permit does not become void but it would not be valid for the new structure. It does not disappear by the special permit being granted. Mr. Loranger said that if they were able amend the current building permit he is willing sign anything legally stating that they could not go back to the original plan if the new special permit was granted. There was discussion regarding the time frame needed to make a decision. Mr. Pierce asked what would be the outcome if the board did not make a decision by the end of the 90 period. Attorney Huggins said it doesn't make the building permit disappear but it would be a

constructive overturning of the building permit.

Ms. Ouellette motioned to deny the appeal of the First Congregational Church, case #703, based on the lack of standing; Mr. Leblanc seconded; Mrs. Dunn abstained from voting. Mr. Pierce, Mr. Leblanc and Ms. Ouellette voted to deny the appeal.

Mrs. Dunn motioned to grant the modification to the comprehensive permit for case # 654, Baywatch Realty Trust. Mr. Alves seconded; voted unanimously.

Minutes from Thursday, July 9, 2015 were approved.

With no other business before the Board the meeting was adjourned at 8:30pm

Approved August 13, 2015

Submitted by: Eric Pierce, Chairman

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