



TOWN OF MARION  
ZONING BOARD OF APPEALS  
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## **MINUTES OF MEETING**

### **October 13, 2016**

The Marion Zoning Board of Appeals convened at 7:30 p.m. on Thursday, October 13, 2016 in the main conference room of the Marion Town House to hear case number:

- Case #728, 418 Point Road Trust, 418 Point Road, Map 2, Lot 15, for a Special Permit under sections 2.3.3, 4.2A and 7.2 of the Zoning By-laws to allow the "Conversation To Two Dwelling Units" as allowed under Section 7 – Uses by Special Permit.
- Case #729, Daniel Gibbs, 4 Derby Lane, Map 11, Lot 18B, for a Special Permit under sections 2.3.3, 4.2A and 7.2 of the Zoning By-laws to allow the "Conversation To Two Dwelling Units" as allowed under Section 7 – Uses by Special Permit.
- Case #730, David Jenney, 818 Point Road, Map 8, Lot 33A, to appeal a Building Inspector Violation Order dated August 9, 2016.
- Case #731, Kenneth & Susan Connor, 466 Front Street, Map 23, Lot 38, for a sections 2.3.3, 4.2A and 7.2 of the Zoning By-laws to allow the "Conversation To Two Dwelling Units" as allowed under Section 7 – Uses by Special Permit.
- Case # 725-Continued from September 22, 2016, Kate Hill, 460 Front Street, Map 23, Lot 41, Reopened Public Hearing for a special permit under section 7.4.1 of the zoning by-law to now allow a three bed and breakfast.

Zoning Board members present were Marc Leblanc – Chairman, Domingo Alves, Michelle Smith, Kate Mahoney and Betsy Dunn.

Also present: Scott C. Shippey, Building Commissioner; Jean Perry, The Wanderer; Bill Notman, 414 Point Road; Lars Olson, 30 Sippican Way; Nancy & Robert Hart, 2 Joanne Drive; Bill Clafin, 418 Delano Road; Ron Barros, 936 Point Road; Rebecca Baldwin, 27 Zora Road; Ted Duncan, 17B Pine Grove Lane; Bob Lane, 168 Point Road; George Gakidis, P.O. Box 1200, Onset; David Mitton, 27 Zora Road; Dave Davignon, Schneider & Associates; Kate & Ryan Hill, 460 Front Street; David Sullivan, 10 Holly Road; Katherine A. Mayer, 20 Jenney Lane; Landis Major, 14 Jenney Lane; Deb Ewing, 8 Jenney Lane; Michael Meachen, 8 Jenney Lane; Nancy Russell, 22 Jenney Lane; Elaine Ferguson, 12 Jenney Lane; Ron Sundberg, 24 Jenney Lane; Warren Ferguson, 12 Jenney Lane; Doug Thackeray, 120 Converse Road; Christopher J. Nye, 35 Ichabod Lane; Richard Schaefer, 175 Converse Road; Norman Johnson, 808 Point Road; Sherman Briggs, 1132 Point Road; Susan Connor, 466 Front Street; Faith Leavitt, 824 Point Road; Rebecca Gehring, 36 Pleasant Street Gail Coble, 125 Cross Neck Road; Dan Gibbs, 4 Derby Lane; Virginia Sundberg, 24 Jenney Lane.

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

- Agenda
- Materials for Case #728, which include:
  - Legal Notice
  - Memo from the Board of Health dated September 13, 2016

- Memo from the Conservation Commission dated October 7, 2016
- Application
- Assessors' Field Card
- Mapgeo.com Map
  
- Materials for Case # 729, which include:
  - Legal Notice
  - Memo from the Board of Health dated September 13, 2016
  - Memo from the Conservation Commission dated October 7, 2016
  - Application
  - Assessors' Field Card
  - Mapgeo.com Map
  
- Materials for Case # 730, which include:
  - Legal Notice
  - Memo from the Board of Health dated September 13, 2016
  - Memo from the Conservation Commission dated October 7, 2016
  - Application
  - Assessors' Field Card
  - Mapgeo.com Map
  
- Materials for Case # 731, which include:
  - Legal Notice
  - Memo from the Board of Health dated September 20, 2016
  - Memo from the Conservation Commission dated October 7, 2016
  - Memo from the Planning Board dated October 12, 2016
  - Application
  - Assessors' Field Card
  - Mapgeo.com Map

At 7:30pm, Mr. Leblanc read aloud the legal notice for Case # 728. He also read aloud a memo from the Board of Health, no objections. A memo from the Conservation Commission stated that a Determination of Applicability was issued for this project on August 25, 2016. Dave Davignon of Schneider & Associates was present. He said the property has 150' of frontage and is 8.4 acres. It contains a single family dwelling and a detached garage. The home owners are proposing to add a two story, three bedroom addition/wing to the house. The addition would be attached with an overhead porch. The structure will be outside of the flood zone. Along with the addition, they will also be installing a new septic system, they are proposing to upgrade the circular driveway and a drainage system as well as update the wiring. The purpose of the addition is for extended family to visit. Mr. Davignon referred to By-laws 2.3.3 and 4.2A. He said that this proposal as no adverse effects to any of the special requirements. He reviewed each one of the points. The proposed septic system upgrade has gone before the Board of Health and they did receive approval. Mr. Leblanc asked if there is any intent to rent? Mr. Davignon said no, it is for family only. Neighbor, Bill Lapham, 414 Point Road, reiterated that yes the home owners have a large family and that it will be used for them. Town Counsel, Jon Witten, said that he and Mr. Shippey, Building Commissioner, have reviewed this and the other cases before the Board for the conversion to two dwelling units. Mr. Witten said that By-law 4.2A "conversion to two dwelling units". He said that "conversion" presumes that there is a preexisting structure. Mr. Witten said the question before the Board is whether you can expand a preexisting structure

and then convert it. An expansion of a preexisting structure would require a by-law change. As it is written now "conversion" is something preexisting that is being converted. Mr. Witten said that the question is whether a proposal as this, a new addition being proposed, can later be converted through a special permit from the Board.

Mr. Alves motioned to continue Case #728 to Thursday, October 27, 2016 at 7:35pm; Mrs. Mahoney seconded the motion; voted unanimously to continue the hearing.

Mr. Leblanc read aloud the legal notice for Case # 729. He also read aloud a memo from the Board of Health, no objections. The Conservation Commission issued a Determination of Applicability for this project on October 9, 2014. Dave Davignon of Schneider & Associates was present. He described the current location and how the lot was created as part of a residential compound subdivision. Mr. Gibbs has constructed a home less than two years ago. He also constructed a garage adjacent to the home. He wishes to turn the area about the garage into a one bedroom apartment so this application was filed to convert the property from a single to two dwelling units. Mr. Gibbs intends to rent the apartment. The lot is 3.8 acres in size and is very private with the exception on one home next door. He has the support of the immediate neighbors. The septic system that was installed was designed for one extra bedroom. Mr. Davignon said that he felt this application met all the required criteria as stated in the by-law.

Mr. Leblanc asked Mr. Witten if this building would fit in the definition of being converted. Mr. Witten had spoken with Mr. Shippey and said that yes this building exists but it has not been given a Certificate of Occupancy (CO). Mr. Witten said since that the CO has not been issued and there is some history as to why it has not been issued yet it is not the perfect candidate for approval. However, he said this case is closer than the prior case because the structure already exists but because CO has not been issued it is not the perfect candidate. His opinion was that the Board could deliberate and issue a special permit if they felt that all the criteria has been met.

Ms. Mahoney asked why the CO has not been issued yet. Mr. Shippey said that according the plans that he was given, the space was supposed to be an office. When the inspectors went to the site they saw that an apartment was being constructed. At that time he verbally told Mr. Gibbs to seek relief from the Zoning Board and that a CO would not be issued until that approval was received.

There were no questions or comments from the audience or the Board. Mr. Alves motioned to take Case #729 under advisement and to close the public hearing; Mrs. Dunn seconded; voted unanimously.

Mr. Leblanc read aloud the legal notice for Case # 730. The Board of Health memo stated that they did not have any objections to the approval of this application. The Conservation Commission did not have any recommendations. Mr. Leblanc noted that an email from Landis Major had been received on October 12, 2016. As part of the application several affidavits were submitted in support of Mr. Jenney and his filing. Attorney Jon Mathieu representing Mr. Jenney said that he is appealing the Violation Order from Mr. Shippey. An inspection had been done based on anonymous complaints. In the letter that Mr. Shippey sent to Mr. Jenney he indicated that Mr. Jenney conducts a logging operation on the site. Attorney Mathieu said that he does not conduct a logging operation there. What he does is process firewood for himself and the excess firewood that he sells. Attorney Mathieu described that this has been the Jenney land since at least 1932. The surrounding lots including The Cove once belonged to the Jenney family.

Attorney Mathieu stated that the cutting of firewood has been taking place on the Jenney property for decades. Mr. Jenney does not process firewood every day. He uses approximately 8 cords a year and the excess he supplies to people in town. Attorney Mathieu said that the Zoning Enabling Act was put into effect August 1954. The Jenneys owned the property prior to that and the Jenneys owned the property prior to the Zoning Enabling Act going into effect. He said that Mr. Jenney's use is a preexisting grandfathered use of the Jenney property. Attorney Mathieu submitted to the Board additional letters of support.

Mr. Shippey said that the issues started back in 2012 at 828 Point Road, the former Jenney Garage. He put a stop work order at that time since logging or processing firewood is not accessory use to a garage and is not an allowable use in that zone. The Jenney's has since sold that property in 2015. Mr. Shippey said that the firewood operation was then moved to the current location at 818 Point Road. He has photos of May and August 2016 that showed substantial amounts of logs at 818 Point Road, more than would be used for personal use. Attorney Mathieu said that in the packet with the application that was submitted included a photo from 1987 showing a pile of logs and cord wood in his backyard. Attorney Mathieu submitted nine additional affidavits in favor of Mr. Jenney.

Elizabeth Smith spoke in favor of Mr. Jenney. She said that he is not running a business and that he has told her that he only sells off firewood that he does not use for himself. Bill Notman said that he does buy firewood from each year. Landis Major, President of The Cove Trust, spoke on behalf of the 22 residents of Jenney Lane. He said that the area is a residential zone and quoted from Article 49 of the Amendments of the Constitution of the Commonwealth of Massachusetts which states in part that people shall have the right from freedom from excessive noise. He also said that the Town By-law 2.1 states that any new or change in nonresidential use of land the building commissioner shall issue a use permit stating that the use is in conformance with the requirements of the zoning by-laws. He described the truckloads of logs, the wood splitting and the loads of firewood being trucked away that in his opinion clearly shows that Mr. Jenney is conducting business at his residence at 818 Point Road. Mr. Major said that the noise has affected home sales in The Cove.

There was a discussion regarding noise during the day. It was noted that trucks drive down Point Road, chainsaws are run during the day, etc. Mr. Shippey said that the initial complaint he received was a noise complaint.

Mr. Shippey reiterated that the logging was done at 828 Point Road and never at 818 Point Road. The property at 828 Point Road has been sold. If Mr. Jenney were to conduct wood cutting for personal use, that is not a problem provided he adheres to reasonable hours of the day. The Town of Marion does not have a noise ordinance but advises that residence use common sense while conducting activities and be mindful of neighbors. However, Mr. Shippey said that if he receives complaints of noise outside of "normal" activity hours then he needs to act on those complaints.

Sherry Jenney, Mr. Jenney's wife, said that 99% of his business is conducted off the property. Occasionally he will receive deliveries that he will cut for his own use. She said that most of the time he gives away extra wood but sometimes he does sell it.

Richard Meyer, 20 Jenney Lane, said that he has seen four to five loads of logs brought onto the property. His opinion is that they are not for personal use. Mr. Meyer said that there was a truck

parked out front of the property with a sign that said "firewood for sale" along with a phone number. He also said that after Mr. Jenney received the cease and desist order that sign changed to "for personal use"

Nancy Hart, 2 Joanne Drive, said that she has known Mr. Jenney for 20 years. She can speak for his character and is proud to know him and his wife. She said that he is not using the property for business.

Mr. Shippey stated that he is not questioning Mr. Jenney's character. He is questioning whether or not this is an allowable use in this zone. He said it clearly states in the By-laws that it is not an allowable use.

Katherine Myers, 20 Jenney Lane, said that there was no evidence of logging on Mr. Jenney's property until just a few years ago. David Mitton, 27 Zora Road, said that he felt that if there is a by-law that doesn't allow people to conduct business that perhaps the by-laws should be changed. Phoebe Dean, 10 Holly Road, has known Mr. Jenney for his whole life. She said the "fabric" of what makes a town like Marion. There are many different people contributing in different ways, the "big picture".

Doug Thackeray has known the Jenney his whole life and he said that cutting has been done on the property for at least 60 years. He felt that this is a small town and a person should be allowed to make a living. Bill Notman said he was one of the people that initially called Mr. Major with the noise concern. He said that Mr. Jenney's equipment does not make a lot of noise. There are things that could be done and he said that Mr. Jenney is willing to make accommodations. Mr. Notman asked about the zoning that states that 2,000 square feet of a property can be used for a business. Mr. Shippey said that the majority of the product has to be from the property itself. Mr. Notman felt this situation could be easily resolved.

Several more residents spoke in favor of Mr. Jenney and his character. Deb Ewing, 8 Jenney Lane, is fond of Mr. Jenney; however she would like to see everyone be respectful to one another. Charles Choples, 824 Point Road, made the point that the garage when it was in full operation it made far more noise than any cutting that Mr. Jenney does on his property.

Mr. Leblanc asked if there were any signs on the property indicating that there is a business. Mrs. Jenney stated that there was not but there was signage on the truck that was parked there. Mr. Leblanc asked Mr. Jenney what his line of work was. Mr. Jenney said it is Forestry and 99% of what he does is within the woods and not on his property. He stockpiles some wood on his property so he can have access to it during the winter months.

Bill Claffin, Delano Road, has known the Jenney family for over 60 years. In his opinion, he believed that it would be wise for a negotiation to take place between Mr. Jenney and the residents of The Cove.

Ron Sundburg, 24 Jenney Lane, questioned the large number of logs and the trucks that go to Mr. Jenney's property. However, he would like a positive and peaceful resolution for all involved.

Mr. Leblanc asked Mr. Jenney if he owns another piece of property that he would be able to store excess materials. He does not. He generally has all of his equipment and does his processing in the woods. If he has cleared a house lot and needs to store the logs he would do so on his property at 818 Point Road.

Attorney Jon Witten stated that the question before the board is Mr. Shippey's interpretation of the Zoning By-law and whether or not the facts before the Board are whether this use is commercial in nature. He also stated that the Board of Appeals does not look at the "big picture", that is not their job. If the By-law is unfair then Town Meeting should change the By-law. Mr. Shippey is just enforcing the By-law that is in place. Attorney Witten told the Board that their role is just to uphold or reverse Mr. Shippey's order. Any suggestions of settlement or negotiation can take place outside of this setting since that is not something the Board would be involved in. If Mr. Jenney would like to negotiate with The Cove then he should ask for a continuance. However, it was Attorney Witten's opinion that Mr. Shippey is correct.

There was further discussion regarding the potential grandfathering of the lot in question. Mr. Shippey's position is that the activity has not taken place at 818 Point Road therefore it is not grandfathered. Mr. Jenney says that this activity has been taking place at this particular location and his counsel needs to prove that. Attorney Witten explained that "grandfathered" means protected from a later adopted zoning change. Mr. Jenney said that he has lived there he whole life, cut wood there the entire time. He said that he is not running a commercial business from 818 Point Road. Mr. Shippey said that it was the property at 828 Point Road that had the grandfathered status not 818 Point Road.

Chris Nye, resident, agreed with Mr. Jenney in that he has been conducting the activity at least since 1979. Rob Lane spoke in favor of Mr. Jenney's counsel and the residents of The Cove working out an agreement. There was further discussion regarding the property at 818 and 828 Point Road and the potential grandfathering status of either. Attorney Witten stated again that Mr. Jenney's counsel must prove that 818 Point Road is grandfathered

Attorney Mathieu asked to continue the hearing to see if they can come up with an amicable solution. Mrs. Dunn motioned to continue Case #730 to Thursday, October 27, 2016 at 7:45pm; Mr. Alves seconded; the Board voted unanimously to continue the hearing.

At 9:02pm, Mr. Leblanc read aloud the legal notice for Case # 731. He also read aloud a memo from the Board of Health, no objections. The Conservation Commission memo stated that they had no recommendations at this time. The memo from the Planning Board commented that the by-law noted on the application was listed as 2.3.5. This is simply a typographical error. It was intended to be listed as 2.3.3. Home owner Susan Connor was present and explained that the dwelling currently has a permitted auxiliary apartment and she would like to convert it to a two family dwelling. There is no construction proposed. Mr. Leblanc asked if the Board were to grant the special permit how does that relate to building specifications. Attorney Witten said that the Board would be permitting the use under the By-law and the Building Commissioner would then have to follow up with Building Code, etc.

There were no further questions from the audience or members. Attorney Witten advised the Board to add findings to the special permit, if or when granted, with or without conditions. Mrs. Smith motioned to take Case #731 under advisement; Mr. Alves seconded; members voted unanimously.

At 9:10pm, Mr. Leblanc read aloud the legal notice for the continued hearing of Case #725. Attorney Richard Schafer was present as was Kate & Ryan Hill. Attorney Schaefer asked that Mrs. Smith not participate since she was not at the first hearing. Attorney Witten said that she may participate in the conversation but she cannot vote.

Mr. Shippey said that if the Board chooses to grant the special permit he has no objection to reviewing the monthly reports that the Hills have offered to supply. He will also continue to conduct his annual inspections. There was a discussion regarding the use of the three bed and breakfast rooms. Mrs. Dunn asked about the sewer and Mr. Shippey said that is being addressed as well. Attorney Witten said that a finding in reference to the sewer can be added to the special permit if it is granted.

There was a brief discussion regarding the original special permit that was granted for the two bedroom bed and breakfast. After that was granted the Hills did some renovations in order to operate as a three bedroom bed and breakfast. Attorney Schaefer referenced the memo that is dated September 20, 2016 in which it states that the Hills meet each of the criteria needed to obtain a special permit.

There was a discussion if the Hills are allowed to rent the entire house as opposed to just the permitted bed and breakfast rooms. The question was raised as to whether or not the entire house is able to be rented out or if they will be limited to just renting the three bedrooms. Attorney Witten said issuance of the special permit once recorded at the Registry of Deeds will limit the whole house rental. Attorney Schaefer believed that they are mutually exclusive. It was noted that a finding could be made as part of a decision that addresses the whole house rental question. Mrs. Hill said that there is a need for whole house rental due to the wedding industry in town. She would be happy to accept as a condition regarding the whole house rental so it can be allowed. Attorney Witten suggested that Attorney Schaefer offer conditions for the Board to impose in its decision that would provide triggering mechanisms for when it shifts from the bed and breakfast to the whole house rental. There was a discussion about the different ways of reporting the information back to Mr. Shippey.

Attorney Schaefer will prepare draft conditions for review by the Board and Attorney Witten. With the applicant's permission, Mrs. Dunn continue to Thursday, October 27, 2016 at 8pm; Ms. Mahoney seconded the motion; Mr. Leblanc, Mr. Alves, Mrs. Dunn, and Ms. Mahoney voted to continue the hearing. Mrs. Smith abstained from voting.

Minutes from September 22, 2016 were approved.

With no other business before the Board the meeting was adjourned at 9:52pm.

Approved: December 8, 2016

Submitted by: Marc Leblanc, Chairman

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