



TOWN OF MARION
ZONING BOARD OF APPEALS
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MINUTES OF MEETING

November 10, 2016

The Marion Zoning Board of Appeals convened at 7:30 p.m. on Thursday, November 10, 2016 in the main conference room of the Marion Town House to hear case numbers:

- Case # 725 - Continued from October 27, 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.
- Case #733 – Manuel DeMiranda, 10 Pumping Station Road, Map 23, Lot 25, 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 – Continued from October 27, 2016, David Jenney, 818 Point Road, Map 8, Lot 33A, to appeal a Building Inspector Violation Order dated August 9, 2016.

Zoning Board members present were Marc Leblanc – Chairman, Betsy Dunn, Domingo Alves, and Kate Mahoney. Not present: Michelle Smith.

Also present: Katherine A. & Richard A. Meyer, 20 Jenney Lane; Scott Shippey, 2 Spring Street; Ron Barros, 936 Point Road; Elizabeth Muldowney, 17B Pine Grove Lane; Ted Duncan, 17B Pine Grove Lane; Faith Leavitt, 824 Point Road; Richard Schaefer, 175 Converse Road; Jean Perry, The Wanderer; Robert & Susan Greene, 22 Pumping Station Road; Bill Notman, 414 Point Road; Kate Hill; 460 Front Street; Warren Ferguson, 12 Jenney Lane; Nancy McFadden, 295 Delano Road; Jonathan Howland, 16 Howland Road; David Hubbard, 16 Thomas Lane; Brett Zell, 12 Thomas Lane; Ron & Virginia Sundberg, 24 Jenney Lane; T.J. Walker, 639 Point Road; Nancy & Robert Hart, 2 Joanne Drive

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

- Agenda
- For Case #725, Memo from Richard Schaefer date October 31, 2016
- Materials for Case #733, which include:
 - Legal Notice
 - Memo from the Board of Health dated October 18, 2016
 - Memo from the Conservation Commission dated November 2, 2016
 - Application and plans
 - Assessors' Field Card
 - Mapgeo.com Map

At 7:30pm, Mr. Leblanc read aloud the legal notice for continued Case #725, Kate Hill, 460 Front Street. Attorney Richard Schaefer referenced the memo that was provided for the Board's review on October 31, 2016. The memo included the list of conditions that were discussed at the last meeting. There was a brief discussion regarding the switching of one bedroom on a seasonal basis and how the notification to the Building Commissioner and the Board would take place. There were no further questions from the audience or the Board. Mr. Leblanc motioned to take Case #725 under advisement and to close the public hearing; Mr. Alves seconded; voted unanimously in favor.

Minutes from October 13, 2016 were tabled to the next meeting on Thursday, December 8, 2016.

At 7:40pm, Mr. Leblanc read aloud the legal notice for Case #733, Manuel DeMiranda, 10 Pumping Station Road. The Conservation Commission memo stated that the property was not within its jurisdiction. The Board of Health memo said that they did not have an objection to the application since it is serviced by town water and sewer. George Gakidis of Gakidis & Stewart Design Group was present as was Manuel DeMiranda. Mr. Gakidis explained the current condition of the existing building. He said that it had been there a long time and is in poor shape. Mr. Gakidis said that they are proposing to comply with setbacks and the dwelling will look more like homes in the area. Mr. Leblanc asked Mr. DeMiranda if he planned on living in one unit and renting one. Mr. DeMiranda said he plans on renting out both units. Ms. Mahoney asked about the square footage. Mr. Gakidis stated that the current square footage is 672 and the square footage of the proposed two family dwelling is 1,708. Each unit will have three bedrooms. The plan is to tear down the current structure and rebuild. Mr. DeMiranda stated that he has owned the property for many years but has not lived there in some time.

Bob Green, 22 Pumping Station Road, submitted a letter from Susan Garstang of 13 Pumping Station Road as she was unable to attend the hearing. He (and Ms. Garstang in her letter) objected to this property becoming a two family dwelling. Mr. Green stated his concerns which included that if this were to become a two family dwelling that it would depreciate the value of his and his neighbor's homes. He went on to describe that the lot is small and he submitted to the Board pictures of the current condition of the property. He also had concerns about the number of proposed bedrooms as well as the amount of parking. Brett Zell, 12 Thomas Lane, also expressed his concerns with the road being very narrow and the lack of parking on the street. He said he was in favor of renovating the property but not changing it to a two family dwelling. Mr. Green stated that there are not any two family homes in this neighborhood. Theodore Duncan, 17B Pine Grove Lane, said that the proposed project did not sound like a good fit for the neighborhood. Liz Muldowney agreed. There was a discussion about previous tenants and the condition of the property.

Mr. Gakidis showed the Board and the audience the proposed plan. Ms. Mahoney asked about the parking and Mr. Gakidis said it is directly in front of the dwelling on the lot itself.

Attorney Jon Witten, Town Counsel, explained that as the by-law is written now for the conversion to two dwellings it is required that if the dwelling being converted is an existing dwelling. It cannot be new construction. He said that Scott Shippey, Building Commissioner, will update the Board on further information in reference to this by-law later in the meeting. Also, if a property has been abandoned or not used for two years or more under Massachusetts law any preexisting nonconforming rights that the property had are lost.

Mr. Shippey told the Board about the sub-committee meeting that was held the previous week to address this by-law. By-law 7.4.2 was deleted from the by-laws at Town Meeting but it was not taken out of the Use Table. The intent was to for 7.4.2 to be replaced with by-law 8.6.3 to address accessory apartments. The sub-committee will be meeting again. Mr. Leblanc asked Attorney Witten if a portion of a by-law is stricken can it be assumed that the entire by-law and all references to the by-law have been stricken. Attorney Witten stated that is not assumed and that is the ambiguity with this by-law. He said this is why the sub-committee is meeting and he feels that the sub-committee will recommend to Town Meeting a correction in reference to by-law 7.4.2.

Mr. Alves asked Attorney Witten to clarify the definition of abandonment. He explained that according to Massachusetts law, a property that has been abandoned or not used for two years it loses the preexisting nonconforming zoning status. Mr. Gakidis said that his client has been paying the utilities for the property so it doesn't fall into abandoned status it is just not rented out. Mr. Leblanc pointed out that Mr. Gakidis stated that the house is uninhabitable. Mr. Gakidis and Mr. DeMiranda agreed and said that it needs to be replaced.

At the request of his client, Mr. Gakidis asked to continue the hearing in order to have Mr. DeMiranda's attorney present. Mr. Leblanc motioned to continue the hearing for Case #733 to Thursday, December 8, 2016 at 7:30pm; Ms. Mahoney seconded; all voted in favor to continue as motioned.

At 8:06pm, Mr. Leblanc read aloud the legal notice for continued Case #730. Attorney John Mathieu and David Jenney were present. Attorney Mathieu presented to the Board another letter in support of Mr. Jenney. Attorney Mathieu reviewed the appeal and the materials that have already been provided to the Board at previous hearings. He stated that their position is Mr. Jenney's activities are grandfathered and if they are found not to be his activities are allowed under home occupation.

Mr. Shippey disagreed with Attorney Mathieu and said that home occupation is allowed if the majority of the product is grown on the premises. He said that is listed in the definitions in the by-laws. Mr. Shippey also explained that between 1997 and 2011 little or no firewood production or logging was being done on the property. Mr. Shippey said that in 2011 he issued a cease and desist to Mr. Jenney for the work being done at 828 Point Road and he complied. After that property was sold in 2015, Mr. Jenney moved the operation to 818 Point Road. According to Mr. Shippey, between 2011 and 2015 the operation didn't take place at 818 Point Road. There was further discussion between Attorney Mathieu and Mr. Shippey in reference to their positions on this matter. Attorney Witten explained in reference to the grandfathering question, the Board needs to be given sufficient evidence that states that the operation at 818 Point Road has been ongoing since before the enactment of the by-laws which was in 1954.

Attorney Mathieu stated that he has provided approximately 70 letters most contain information that the Jenney family has conducted the operations for decades. He mentioned previous testimonies that attested to that. There was further discussion regarding logging and cutting firewood.

Mr. Leblanc asked for clarification from Attorney Witten on the grandfathering of a lot that has been divided such as the Jenney lot that is now The Cove and if it would keep it's grandfathering status. Attorney Witten said that generally no. It would have to be shown that the protected operation had to be moved the area of the lot due to reason such as all resources

had been used or flooding had occurred. The fact that the land was divided and sold does not transfer the grandfathering rights of the original lot to the new lot, 818 Point Road. Attorney Mathieu asked if there were case law to support that. Attorney Witten said there is but he didn't have specifics on hand.

There was further discussion about the activities that have taken place. Ms. Mahoney asked for clarification on evidence. Attorney Witten explained that the burden of proof lies with the applicant. Sherry Jenney addressed the Board. She said that she has pictures (on her phone, not printed) from 2011 and 2012 showing wood at 818 Point Road. She said Mr. Jenney had been logging, cutting wood at 828 Point Road until he was told to stop. When he was cutting at 828 Point Road he would take the wood and store it at 818 Point Road. Mrs. Jenney said that wood has always been at 818 Point Road.

Mr. Shippey stated again that it's not the wood being stored at 818 Point Road; it's the processing of the wood at 818 Point Road that is not allowed.

Mr. Jenney said that 90-95% of the work he does is in the woods. He said occasionally he needs to bring some wood home and it is processed there. Doug Thackeray spoke in support of a fair decision for all involved. Bill Notman spoke and explained that Mr. Jenney continued with the family business when his parents passed away. Nancy McFadden said that she has purchased firewood from the Jenneys for years although she doesn't know from which address.

Ms. Mahoney stated that the Board does not have a roll in negotiation and has a very narrow question in front of them. Attorney Witten agreed that the role of the Board is to decide whether or not Mr. Shippey is correct in his violation order. Ron Barros, 936 Point Road, was present at the last two hearings. He expressed his disappointment that The Cove did not want to negotiate with Mr. Jenney. Ron Sundberg, resident of The Cove, stated that it was quiet until 2011-2012. He felt that more business activity has been taking place at 818 Point Road. There was further discussion about the suggestion of negotiations between The Cove and Mr. Jenney outside of this hearing and that they did not take place.

There were no further questions from the audience or the Board. Mrs. Dunn motioned to close the public hearing and take Case #730 under advisement; Ms. Mahoney seconded; all voted in favor.

Informal discussion with Regis Lavoie on a potential project at 19 Shawondasse Road. The property is for sale and Mr. Lavoie is interested but wanted to get a sense of what he could do for renovations before agreeing to purchase. Attorney Witten said that the Board is unable to give an advisory opinion to Mr. Lavoie. He is able to speak to staff for opinions and recommendations but the Board is unable to do so.

Conversation returned to Case #725, Kate Hill, 460 Front Street. Mr. Leblanc read aloud language to be included with the decision. The language will include the procedures for notifying the Building Commissioner and the Board of the change of rooms being used. A draft decision will be prepared and reviewed by Attorney Witten. With the applicant's approval the Board extended the date to file the decision to December 9, 2016. Mr. Leblanc motioned to issue the special permit for Case #725 to now allow a three bedroom bed and breakfast based on the information provided and that all conditions are fulfilled; Ms. Mahoney seconded; all voted in favor to approve the special permit as motioned.

The Board briefly discussed Case #729, Daniel Gibbs, 4 Derby Lane. Mr Leblanc said that conversion to two dwelling units is intended for an existing dwelling. This is new construction. There was discussion as to how this property fits within the by-law as written. The Board decided to table the discussion to the next meeting on Thursday, December 8, 2016.

Discussion returned to Case #731, Kenneth & Susan Connor, 466 Front Street which was taken under advisement on October 13, 2016. Mr. Leblanc noted that this case is a straightforward conversion since it already has a permitted in-law apartment. Members agreed. After a brief discussion Mr. Leblanc motioned to grant the special permit for Case #731 to allow the conversion to two dwelling units as allowed under Section 7 based on information provided and that all criteria as noted in 7.2 are met; Mrs. Dunn seconded; all voted in favor to grant the special permit.

Case # 732, Moberg G. & Farrington, K. TRTs of West Avenue Realty Trust, 21 West Avenue was taken under advisement on October 27, 2016. The Board had a brief discussion and decided to grant the special permit. Mr. Leblanc motioned to grant the special permit for Case #732 under section 6.1.3 of the zoning by-law to renovate and extend an existing non-conforming structure and that it would not be substantially more detrimental than the existing nonconforming structure to the neighborhood; Ms. Mahoney seconded; all voted in favor to grant the special permit.

Discussion returned to Case #730, David Jenney, 818 Point Road, which was taken under advisement earlier in the evening. After a lengthy discussion and review of some of the letters that had been submitted by the applicant, the Board decided to continue the discussion to the next meeting on Thursday, December 8, 2016.

With no other business before the Board the meeting was adjourned at 9:40pm.

Approved: January 26, 2017

Submitted by: Marc Leblanc, Chairman

RECEIVED & FILED
1/27/17
DATE 10³⁰ am
TIME
TOWN CLERK OF MARION