



TOWN OF MARION
ZONING BOARD OF APPEALS
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MINUTES OF MEETING

April 28, 2016

The Marion Zoning Board of Appeals convened at 7:30 p.m. on Thursday, April 28, 2016 in the main conference room of the Marion Town House to hear case numbers:

- Case #722, that of Dianne A. Kelley, Trustee of Margaret A. Nye Realty Trust, 240 Converse Road, for a variance from section 5 of the zoning by-laws to allow for Minimum Lot Area, Minimum Lot Frontage and Side Yard Set Back for the existing house. The property is further identified as Assessors' Map 15, Lot 36.
- Case # 723, that of Dianne A. Kelley, Trustee of Margaret A. Nye Realty Trust, 248 Converse Road, for a variance from section 5 of the zoning by-laws to allow for Minimum Lot Area, Minimum Lot Frontage and Side Yard Set Back for the existing house. The property is further identified as Assessors' Map 15, Lots 35 & 35A
- Case # 724, that of Garrett Bradley, 8 Park Street, for a special permit under section 6.1.3 of the zoning by-law to allow reconstruction and extension of an existing non-conforming accessory structure. The property is further identified as Assessors' Map 14, Lot 21.

Zoning Board members present were Eric Pierce - Chairman, Domingo Alves, Michelle Ouellette, Marc Leblanc and Kate Mahoney.

Also present: Attorney Peter L. Paull, Jr., 700 Pleasant St, New Bedford; Dianne A. Kelly, 240 Converse Road; Walter P. Kelly, 240 Converse Road; Mark H. Gaffey, 647 Mill Street; Garrett Bradley, 8 Park Street; Dena Xifaras, 34 Piney Point Road.

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

- Agenda
- Additional Materials for Case # 722, which include:
 - Legal Notice
 - Memo from the Board of Assessors
 - Memo from the Conservation Commission
 - Memo from the Board of Health
 - Application and supporting documents
 - Field Card

- Locus Maps
- Copy of Land Court Plan of Land for 240 Converse Road
- Additional Materials for Case # 723, which include:
 - Legal Notice
 - Memo from the Board of Health
 - Memo from the Conservation Commission
 - Application and supporting documents
 - Locus Maps
- Additional Materials for Case # 724, which include:
 - Legal Notice
 - Memo from the Board of Health
 - Memo from the Conservation Commission
 - Field Card
 - Application
 - Certified Plot Plan by Thompson Farland
 - Locus Map
- Minutes from April 14, 2016 to be approved

At 7:30pm, Mr. Pierce read aloud the Legal Notice for Case #722 as well as Case #723 since both cases are related. Attorney Peter Paull was present to represent the Kellys who were also present.

Attorney Paull explained that the purpose of the applications is to clear the record title on properties, 240 & 248 Converse Road. He said that back in 1993 a plan was prepared for both properties and the plan was incorrect. For the past 23 years mortgages and deeds have been issued based on this incorrect plan. It was not brought to light until 248 Converse Road was going to be sold, and the bank's the title exam revealed the error. The property line goes directly through the house. Attorney Paull noted that the Board of Assessors office has been looking into this as well and have submitted a letter in support of granting the variances for both properties.

Attorney Paull showed the 1993 plan to the Board. They reviewed the old plan versus the new plan. Lot 1 says unregistered, that is incorrect. Deeds were based on this incorrect plan. He said that both lots are in the family so it will be easy to correct the change of deeds. The new plan needs to be recorded at the Plymouth Registry of Deeds.

Attorney Paull said they went to the Planning Board in the fall for the ANR and they told the Kellys to get variance from the Zoning Board of Appeals before they will be able to sign the new plan. The lots as they are now do not meet the current zoning requires that is why the variances are being requested. He submitted copies of the approved Building Permit and the Certificate of Occupancy issued in 1993 for the house at 248 Converse Road.

There was a brief discussion of the setbacks and area of each lot. There were no questions from the Board or the audience.

Mr. Pierce read aloud a memo in support of the granting of the variances from the Board of

Assessors. The Conservation Commission did not have any recommendations. The Board of Health had no objection to the granting of the variances.

A letter from Attorney Paull requesting a waiver of the fee for the second application was also noted. Mr. Pierce said the Board will discuss a possible waiver. Mr. Alves motioned to take Case # 722 and Case # 723 under advisement; Mr. Leblanc seconded; voted unanimously.

At 7:47pm, Mr. Pierce opened Case #724, Garrett Bradley by reading the Legal Notice. He also read aloud a memo from the Board of Health – no objections and the Conservation Commission – not within their jurisdiction.

Mr. Bradley was present. He mentioned that his previous application had been withdrawn and he has filed a new application with a new plan. He is requesting a special permit to expand the existing garage to make it large enough to fit a vehicle inside. The setbacks will be improved slightly. The current setback is 1.5' from the rear property line and 2.1' to the side property line. The proposed setbacks will be 2.5' from the rear and 3.1' from the side.

Mr. Bradley stated that they reached out to the neighbors again and they are all in support. He submitted a letter in support from neighbor Joan Barry. Mr. Bradley reviewed the plans with the Board. Mr. Pierce asked about the fence behind the structure. Mr. Bradley said they will be replacing it with a vinyl fence.

There were no further questions from the Board or the audience. Ms. Ouellette motioned to take Case # 724 under advisement; Ms. Mahoney seconded; voted unanimously.

Case # 721, Dean Xifaras, 34 Piney Point Road, that was taken under advisement on March 24, 2016 was revisited. Mr. Pierce said he had done some research on the by-law. At the 2012 Town Meeting the language in by-law 8.6.3 was updated. There was a discussion regarding the wording and interpretation. It was the feeling of members that according to the 2012 change the added structure to the property is not disallowed. After further discussion, Ms. Ouellette motioned to grant the special permit for Case #721, to allow the new structure to be used as an accessory apartment provided all subheadings of by-law 8.6 be followed; Mr. Leblanc seconded; voted unanimously.

Case # 715, 20 OIT Realty Trust, c/o J. Gaffey, that was taken under advisement on April 14, 2016 was revisited. Mr. Pierce read aloud a memo received from the Board of Health that stated the applicant had satisfied all concerns that the Board of Health had. It was noted that the applicant did all that the Board had asked regarding engineering, etc. After further discussion, Mr. Pierce motioned to grant the special permit for Case #715, based on the structural plans and engineered drainage plans and the confirmation that the Board of Health concerns had been satisfied; Ms. Mahoney seconded; voted unanimously.

Case # 722 and Case # 723, were revisited. After a brief discussion, Ms. Ouellette motioned to grant variances for Case #722 and Case #723; Mr. Leblanc seconded; voted unanimously. The board also discussed to waive the fee of \$300.00 for the second application and to charge only for advertising and mailing.

Case #724, Garrett Bradley, was revisited. It was noted that the structure will be less nonconforming. After a brief discussion, Ms. Ouellette motioned to grant the special permit for Case # 724, based on the fact that it is a non-exacerbation of a preexisting nonconformance;

Mr. Alves seconded; voted unanimously.

Minutes from April 14, 2016 were approved.

With no other business before the Board the meeting was adjourned at 8:22pm

Approved: May 12, 2016

Submitted by: Eric Pierce, Chairman

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