



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

### **October 27, 2016**

The Marion Zoning Board of Appeals convened at 7:30 p.m. on Thursday, October 27, 2016 in the main conference room of the Marion Town House to hear case number:

- Case #732, Moberg G. & Farrington K. TRTS of West Avenue Realty Trust, Map 3, Lot 36, for a Special Permit under section 6.1.3 of the zoning by-law to renovate and extend an existing non-conforming structure at 21 West Avenue.
- Case #728 – Continued from October 13, 2016, 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 #730 – Continued from October 13, 2016, David Jenney, 818 Point Road, Map 8, Lot 33A, to appeal a Building Inspector Violation Order dated August 9, 2016.
- Case # 725-Continued from October 13, 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 # 729 – Taken Under Advisement on October 13, 2016 - Daniel Gibbs, 4 Derby Lane
- Case # 731 – Taken Under Advisement on October 13, 2016 – Kenneth & Susan Connor, 466 Front Street

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

Also present: Scott Shippey, 2 Spring Street; Jan & Roger Taunton-Rigby, 13 Jenney Lane; Warren & Joy Berto, 683 Point Road; Ron Barros, 936 Point Road; Elizabeth A. Muldowney, 122 Register Road; Ted Duncan, 122 Register Road; Richard & Kristine Farrington, 21 West Avenue; Bill Notman, 414 Point Road; Doug Thackeray, 120 Converse Road; Jean Perry, The Wanderer; Nancy & Robert hart, 2 Joanne Drive; Jean & Richard DaSilva, 92 Point Road; W.S. Bradford, 468 Mill Street; John Mathieu, 2 Martha Way, Mattapoisett

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

- Agenda
- Materials for Case #732, which include:
  - Legal Notice
  - Memo from the Board of Health dated October 4, 2016

- o Memo from the Conservation Commission dated October 18, 2016
- o Note from abutter Judith Cope dated October 13, 2016
- o Application including letters of support for the project and plans
- o Assessors' Field Card
- o Mapgeo.com Map

At 7:30pm, Mr. Leblanc read aloud the legal notice for Case #732. He also read aloud a memo from the Board of Health which stated that the current cesspool needs to be upgraded to a compliant Title V septic system. The memo from the Conservation Commission stated that the property is not within its jurisdiction. Will Saltonstall of Saltonstall Architects was present and reviewed the project of the existing nonconforming structure. The homeowners plan on using this as their year round residence. It is currently a Cape style house and the renovation would change it to more of a Colonial style. They are not expanding the footprint but the volume of the dwelling by adding additional space on the second floor.

Mr. Saltonstall reviewed the plans that were submitted in the member's packets. Currently the dwelling is 20' high and the proposed height is 29' which is consistent with neighboring properties. He also mentioned there will be a widow's walk which will add 3' to the height but is still below the required 35'. Included in the packets were a number of letters of support from neighbors. The new house will be 3,600 square feet which is only 322 square feet larger than the current structure.

Hud Plumb, 27 West Avenue, said he had time to review the plans and expressed his support of the project. Mr. Leblanc asked if the engineering had been done for the septic system. Mr. Saltonstall said that the plans are in the works. There were no further questions from the audience or Board members. Mrs. Dunn motioned to take Case #732 under advisement and to close the hearing; Mrs. Smith seconded; all voted in favor.

At 7:40pm, Mr. Leblanc read aloud the legal notice for continued Case #728. The applicant has requested to continue the public hearing to January 12, 2017 at 7:30pm. Mr. Alves motioned to continue as requested; Ms. Mahoney seconded; all voted in favor.

Mr. Leblanc read aloud the legal notice for continued Case #730. Two other letters of support were submitted prior to the hearing and Attorney John Mathieu submitted several more letters of support for Mr. Jenney. Attorney Mathieu said that since the last meeting he and Mr. Shippey had a chance to speak and they are at an impasse. He presented a memo to members and for the file regarding his client's position on grandfathering and the definition of logging. Under the definition of logging, Mr. Jenney is not logging on his property, but processing firewood occasionally for personal use or his will give it away or sell it. He stated that the activities have been going on for decades. Attorney Mathieu referenced Mr. Shippey's cease and desist order which listed By-law 6.4 in the letter. He noted that By-law 6.4 lists Home occupation as allowed for up to 2,000 square feet of the lot to be used by a series of occupations including an "artisan". Attorney Mathieu said that the By-laws do not have a definition of "artisan" so he looked to Black's Law Dictionary. He reviewed the definition as well as the definition of "trade". He felt that based on the definitions that Mr. Jenney is considered a "resident artisan" and is allowed to use his lot. He reminded the board that he only occasionally does this activity on his property. Attorney Mathieu compared his work to that of a carpenter that builds items, such as shelving, on his property that are then brought to another location for installation. In regards to the sale of

firewood, Attorney Mathieu referenced the definition of a nonexempt roadside Farm Stand which allows the sale of several items such as produce, flowers as well as fireplace wood in an area of less than 100 square feet. Based on the use table in the By-laws he said that this is an allowable use in a residential zone. Attorney Mathieu stated that he felt that Mr. Jenney's activities are grandfathered and even if they were not grandfathered that is it Home Occupation. Also, he said that he felt that Mr. Jenney still is allowed to do the firewood cutting for personal use on his property.

Mr. Shippey disagreed on the grandfathering. He stated that the issues with this lot started in 2012 and there was no logging or splitting at that site before that from 1997 to 2011.

Bill Notman, 414 Point Road spoke. He said he tried to help in setting up a meeting between Mr. Jenney and The Cove but he was unsuccessful. He said that Landis Major had told him that the residents did not want to negotiate or discuss the situation. Landis Major of The Cove confirmed that a large number of Cove residents stated that they did not want to negotiate with Mr. Jenney. He reiterated The Cove's position that Mr. Jenney is conducting a business at the site and that from 1997 to 2012 there was never any cutting of wood at that site. It had been a quiet neighborhood. He read from the memo that he had submitted to the Board just prior to the start of this hearing. He pointed out that when Mr. Jenney moved to 818 Point Road in 2012 is when the noise began.

Mr. Alves asked Mr. Jenney about hours of operation. Mr. Jenney said 9am is the earliest start time. He also stated that if he is cutting at his home that may be only one week per month since most of the cutting is done on site in the woods. Ms. Mahoney asked Attorney Mathieu for clarification on his definition of "logging" in his memo. He said that he is a logger at other pieces of property and when he is at home he is not a logger since he is not cutting the trees down at his property but processing firewood. There was a discussion regarding the selling at farm stands and if a certain amount of product must be produced on the property. Mr. Shippey said that the use table references Massachusetts General Law 40A, Section 3 while Attorney Mathieu stated that nonexempt farm stands are allowed by right and that it doesn't say where the materials being sold come from.

Mr. Leblanc asked for clarification on Home Occupation. Attorney Mathieu read aloud a section of By-law 6.4 about Home Occupation and reiterated that Mr. Jenney falls under an "artisan" as listed in this By-law. Mr. Shippey returned to the farm stand issue and read aloud from 6.4 that lists the requirements. One of which is that the major portion of the products sold must be grown on the premises. Attorney Mathieu disagreed with Mr. Shippey on this subject. They had further discussion regarding trades and Home Occupation.

There were no further questions from the Board or the audience. With the application's permission, Mrs. Dunn motioned to continue the public hearing for Case #730 to Thursday, November 10, 2016 at 7:45pm; Ms. Mahoney seconded; all voted in favor.

At 8:20pm, Mr. Leblanc read aloud the legal notice for continued Case #725. The applicant has requested to continue the public hearing to Thursday, November 10, 2016 at 7:30pm. Mrs. Dunn motioned to continue Case #725 as requested; Ms. Mahoney seconded; all voted in favor.

There was a brief discussion regarding Case #732 that had been taken under advisement earlier in the evening. No decisions were made so the discussion will continue at the next meeting.

The minutes from October 13, 2016 were tabled to the next meeting.

The tentative 2017 meeting schedule and the Fiscal Year 2018 Budget Schedule were reviewed.

There was a brief discussion about the meeting that will be held on November 2, 2016 at 5pm in reference to the Conversion to Two Dwelling Units By-law.

With no other business before the Board the meeting was adjourned at 8:32pm.

Approved: December 8, 2016

Submitted by: Marc Leblanc, Chairman

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