

# SHAHEEN & GORDON, P.A.

A T T O R N E Y S   A T   L A W

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Karyn P. Forbes  
*Attorney at Law*

December 22, 2017

**VIA EMAIL**

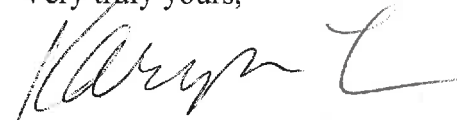
Chairman  
Board of Adjustment  
Town of Tilton  
257 Main Street  
Tilton, NH 03276

Re: Thomas Mead, et al. v. Town of Tilton, et al  
No. 17-10

Dear Sir/Madam:

Enclosed please find Marbo Kaison Realty, LLC's Objection to Motion for Rehearing for filing with the Board.

Very truly yours,



Karyn P. Forbes

[kforbes@shaheengordon.com](mailto:kforbes@shaheengordon.com)

KPF/msd

Enclosure

cc: Biron L. Bedard, Esq.  
John Ratigan, Esq.  
Client

TILTON, NEW HAMPSHIRE  
ZONING BOARD OF ADJUSTMENT

No. 17-10

Thomas Mead and Lenore Mead

v.

Town of Tilton and Town of Tilton Planning Board

**MARBO KAISON REALTY, LLC'S OBJECTION TO MOTION FOR REHEARING**

Marbo Kaison Realty, LLC ("Marbo Kaison ") hereby objects to Thomas & Lenore Mead's ("Meads") Motion for Rehearing, stating as follows:

**I. Introduction**

1. The Mead's Motion for Rehearing should be denied because it fails to state any points of law or fact which have been overlooked or misapprehended by the Tilton Zoning Board of Adjustment ("ZBA"). Rather, the ZBA correctly dismissed the Meads' appeal from the Planning Board's interpretation of the zoning code since the appeal had not been filed within a reasonable time of the Planning Board's May 9, 2017 decision interpreting the zoning code. Moreover, the ZBA was correct in determining that it did not have jurisdiction to hear appeals from the Planning Board regarding planning matters.

Furthermore, the Meads' motion contains no new facts which were not available at the time that it filed their Objection to the Motion to Dismiss.

**II. The Meads did not file their appeal within a reasonable time under RSA 676: 5, III and *Atwater*.**

2. During a public hearing held on May 9, 2017, the Planning Board determined that Marbo Kaison's proposed use would be categorized as an adult care facility.

3. The Meads were present at the May 9, 2017 hearing. An attendee questioned how the Planning Board could make that decision, and whether it could be challenged. Planning Director Dari Sassan stated that the appeal could be taken to the ZBA. *See* Exhibit B to Marbo Kaison Realty, LLC's Motion to Dismiss Appellants' Appeal of Planning Board Decision in Case Number 17-04 ("Motion to Dismiss"), at page 2. The Meads did not appeal the decision. They and their counsel attended numerous follow up Planning Board meetings, where at times members of the public questioned the Planning Board's decision. During the August 8, 2017 Planning Board meeting, Marbo Kaison's counsel reminded all present that the Planning Board had already determined that the proposed facility was an adult care facility, and that decision had not been appealed. *See* Motion to Dismiss, Exhibit D, at page 6. Instead, the Meads waited 170 days before filing their appeal to the ZBA.

4. The Meads assert that *Atwood v. Town of Plainfield*, 160 N.H. 503 (2010) expands upon RSA 676: 5, III and allows them to appeal the Marbo Kaison decision at the time conditional approval was granted. However, *Atwood* simply does not stand for that proposition. In *Atwood*, the Planning Board decision regarding the zoning issue was made on August 9, 2006, making the appeal ripe on that day. *Atwood* at 511. The Planning Board also granted conditional approval on August 9, 2006, but that had nothing to do with when the appeal to the ZBA became ripe. As *Atwood* clearly and unequivocally explains:

"We believe the overall that the overall policy and purpose sought to be advanced by this statutory scheme is best served by interpreting RSA 676:5, III to mean that a planning board decision about a zoning ordinance is ripe and appealable to the ZBA when such a decision is made. This will allow a zoning board to correct any alleged errors made by the planning board as early as possible in the application review process."

*Atwood* at 510.

*See* Exhibit C, May 9, 2017 Planning Board Minutes at page 2.

**III. The Meads were an aggrieved party on May 9, 2017 and could have appealed to the ZBA on that day.**

5. The Meads were aggrieved parties because they had standing to appeal on May 9, 2017. “To have standing to appeal to the ZBA, the residents must have been “aggrieved” by the planning board's decisions ...’ “Persons aggrieved’ include any person ‘directly affected’ by the challenged administrative action or proceeding. ... The appealing party must show some direct, definite interest in the outcome of the action or proceeding.... To determine whether a non-abutter has a sufficient direct, definite interest to confer standing, the trier of fact may consider factors such as the proximity of the challenging party's property to the site for which approval is sought, the type of change proposed, the immediacy of the injury claimed, and the challenging party's participation in the administrative hearings.” *Golf Course Investors of NH, LLC v. Town of Jaffrey*, 161 N.H. 675, 680 (2011). The Meads are abutters to Marbo Kaison and therefore were aggrieved parties. Again, the Meads could have appealed to the ZBA on May 9, 2017.

**IV. The Planning Board formally voted on May 9, 2017 to deem the proposed use an adult care facility.**

6. The Planning Board unequivocally voted on May 9, 2017 to deem the proposed use an adult care facility. The Meads were present at the meeting, and the minutes reflect as follows:

“MOVED by Ms. Harvey to determine that the proposed use in Case 17-04 shall be categorized as an adult care facility. SECONDED by Ms. Alden.  
All in favor, none opposed: MOTION APPROVED.”

*See Motion to Dismiss, Exhibit B at page 2.*

The Planning Board could not have taken a more clearer action, and the Meads’ argument that they were confused makes no sense. Furthermore, the Meads were represented by counsel at the June 13, 2017 meeting, and at every meeting thereafter. The May 9, 2017 were publicly

available for review and were cited by the Mead's attorney during follow up meetings.

7. The Meads' assertion that the Town Planner created confusion is unfounded. During an exchange at the May 9, 2017 Planning Board meeting, the Town Planner answered a variety of questions regarding the process going forward, including that an appeal could be had either to the Superior Court or to the ZBA depending upon the nature of the appeal. He also stated that a more substantive discussion regarding the application would be had at the June 13, 2017 meeting. At no time did he provide misinformation to the public, or create any confusion. Nothing he said changed the fact that the Planning Board had voted. Furthermore, the Meads have been represented by counsel at all further meetings, and should have known that the appeal to the ZBA became ripe on May 9, 2017.

**V. The Planning Board accepted Case 17-04 on May 9, 2017.**

8. Contrary to representations in the Meads' Motion for Reconsideration, the Planning Board also accepted Case 17-04 on May 9, 2017. In particular, the Planning Board

“**MOVED** by Ms. Harvey to accept Case 17-04. **SECONDED** by Ms. Alden.

All in favor, none opposed: **MOTION APPROVED.**”

*See Motion to Dismiss, Exhibit B at page 2.*

**VI. The nature of Marbo Kasion's application did not substantively change during the planning process.**

9. At all times during the process, Marbo Kasion was seeking to operate an adult care facility on its property. Following the May 9, 2017 vote, Marbo Kasion addressed all types of planning issues including but not limited to storm water management, parking, septic, and lot density. Marbo Kasion's only change in use was to limit the number of residents. As such, Marbo Kasion did not change its application in any manner which would require the Planning Board to reconsider its determination.

10. Finally, the Planning Board's determination that the proposed use would be deemed an adult care facility was an interpretation of law. As such, the Meads' argument that the Planning Board needed to provide its explanation is flawed.

11. Marbo Kaison restates and incorporates its Motion to Dismiss herein.


Marbo Kaison Realty requests that the Tilton Zoning Board of Adjustment:

- A. Deny Appellants' Motion for Rehearing; and
- B. Grant such other relief as may be just and equitable.

Respectfully submitted,

MARBO KAISON REALTY, LLC  
By its attorneys,  
SHAHEEN & GORDON, P.A.

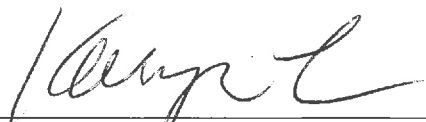
Date: December 22, 2017

  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have forwarded a copy of the within Motion to Dismiss this day, to Biron L. Bedard, attorney for Appellants, and John Ratigan, attorney for the Town of Tilton.

Dated: December 22, 2017

  
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Karyn P. Forbes, Esq.