



TOWN of
THOMPSON
ZONING BOARD OF APPEALS

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Cheryl F. Stanley, Jan.
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Minutes
June 9, 2014

Chairman Dan Roy called the meeting to order at 7:00 PM in the Merrill Seney Room at the Town Hall.

Roll Call: A. David Babbitt Kevin Beno Dan Roy
Ray Faucher, Sr., and Leslie Lavallee were seated as alternates.
There was a quorum.

Staff Present: William St. Onge, Attorney
Tina Fox, Recording Secretary

Public Hearings:

1. **Variance 14-01:** Allison C. Dodds, 54 Chase Road, Thompson, Map 105, Block 34, Lot 14. To allow construction of a horse barn that is less than 150 feet from property lines.
Reason: Parcel of land predated zoning laws. Sufficient land for construction and support of horse, but configuration of lot does not meet current 150 feet requirements.
 - a. George Dodds, 54 Chase Rd., Thompson, spoke on behalf of the applicant.
 1. Board members reviewed the survey map with George Dodds. Dan Roy noted that all of the green cards appeared to be present. Dan Roy also asked why the barn could not be constructed at a different location. George Dodds stated that anywhere else would still be close to being under the 150' requirement.
 2. Kevin Beno asked that the dimensions of the building be stated for the record. George Dodds specified that the measurements would be 24'x36'.
 3. Dan Roy asked if there would be a loft above the horse barn. George Dodds answered that there would be a hay loft.
 4. No one in the audience spoke up to oppose the application.
 5. **Kevin Beno moved and A. David Babbitt seconded a motion to close the public hearing. The motion carried unanimously.**
 6. Kevin Beno expressed his opinion that the proposed location of the horse barn is the best location for the neighbors.
 7. **Kevin Beno moved and A. David Babbitt seconded the motion to accept the variance based on the dimensions given of 60' and 80' from the prospective property lines and that the building measures 24'x36' with a loft. The motion carried unanimously.**
2. **Variance 14-02:** Rodney Brooks, 42 Center St., Thompson, Map 116/Block 14/Lot 4. Side yard setback reduction for septic system replacement and well.
Reason: Septic system failing; need additional land and well.
 - a. Rodney Brooks, 42 Center St., Thompson, stood to discuss the application.
 1. Board members reviewed the survey map with Rodney Brooks. Rodney Brooks explained that he wants a gravity fed septic system near his house. He has to close his current well and use a well on a neighboring property that he wishes to buy. He plans to buy the property if the variance is granted; he does not own the land yet.

2. Current owner of the land, David Belvoe of Center St., Thompson, stated that it was his intent to sell the land to Rodney Brooks. He consented for the record for his land to be included in this variance.
 3. William St. Onge stated that if the owner of the land and the person wishing to purchase it are both present, the board is able to grant a variance contingent on the sale of the property. The variance would be granted, but it would be contingent upon the deal closing. The variance does not go with the land if they do not consummate the deal.
 4. Fred Lucas, 54 Union Rd., Webster Mass, is the owner of other neighboring property. He spoke up because he was worried about what this variance would mean for his property. Fred Lucas and Rodney Brooks engaged in a conversation to sell Fred Lucas' land to Rodney Brooks.
 5. **A. David Babbitt moved and Ray Faucher, Sr. seconded the motion to close the public hearing. The motion carried unanimously.**
 6. William St. Onge recommended a motion to the board: Motion to approve the construction of the new septic system without waiving the requirements in terms of the set back from the existing well, subject to three conditions. Condition one: the existing well be capped off and abandoned. Condition two: the land which is being presented as being acquired in fact be acquired by the applicant and the deed filed with the town zoning office. Condition three: that it be clear that setbacks in terms of the location of the leech field in terms of other property are not being waived. You're not giving him a general waiver to put a septic wherever he wants. You're giving him a waiver to put it within so many feet of the existing well.
 7. **Kevin Beno moved and A. David Babbitt seconded the motion to accept the variance based on the criteria that Bill [William St. Onge] outlined. The motion carried unanimously.**
3. **Variance 14-03:** Richard Mead, 685 Thompson Rd., Thompson, Map 122/Block 19/Lot 2 for property at 685-687 Thompson Rd.
Reason: Side yard setback deficiency; location of existing grandfathered buildings.
 - a. Tina Fox stated that she had been told by John Mahon that Richard Mead had been given the wrong date for the public hearing, and as such was unable to complete his requirements in time and would not be at this meeting.
 - b. **A. David Babbitt moved and Leslie Lavallee seconded the motion to delay one month. The motion carried unanimously.**
 4. **Variance 14-04:** Richard Partridge, 121 Quaddick Town Farm Rd., Thompson, Map 154/Block 6/ Lot 5 for property at 121 Quaddick Town Farm Rd.
Reason: Need to build a roof over trailer 18" beyond trailer. Supported by 6"x6" to support roof over trailer; lack of funds and disabled.
 - a. Tina Fox informed the board that Richard Partridge was not in attendance for the same reason that Richard Mead was not in attendance.
 - b. **A. David Babbitt moved and Kevin Beno seconded the motion to delay for one month. The motion carried unanimously.**
 - c. Kevin Beno suggested to ask the ZEO for a letter conveying authority from Craig O'Leary (property owner) to Richard Partridge (applicant); a stipulation that the owner of the property gives consent for Richard Partridge to act on Craig O'Leary's behalf.

Appeal 14-01 (formerly Appeal 13-02): Lisa Knight, 317 County Home Road, Thompson, Morning Star Farm Pet Resort LLC; Map 109/Block 32/Lot 1-M/R-40. Operating legally under the 2002 variance. Unfounded neighbor's complaint.

Grievance: Limits to number of dogs not in variance approval. Imposing would be a financial detriment to business.

- a. William St. Onge spoke to recap the history of this appeal. He explained that the public hearing had been closed last month, so no citizen's comments would be accepted. There was a 2002 variance issued to the predecessor of the current owner of Morning Star Farm Pet Resort. Variance did not seem to have any limit as to the number of dogs allowed on the premises, but the presentation by the applicant mentioned that there would be only 15 dogs. In 2007, Lisa Knight (current owner) adopted the trade name of the previous owner. In October 2013, an enforcement order was issued to Morning Star by acting ZEO Mary Ann Chinatti on the grounds that the scope of the initial variance had been exceeded. On October 31, 2013, the applicant filed a timely appeal of the enforcement order. On January 6, 2014, Mary Ann Chinatti recommended that the hearing in January be postponed at the applicant's request. On February 10, 2014, the board had an extensive discussion on the merits of the application. At the meeting, Mary Ann Chinatti pointed out that legal notice requirements were not met. The board voted unanimously to 1) deny the appeal because of non-compliance of the regulations; 2) waive the fees of the applicant if she wished to re-apply; and 3) seek legal council. A notice was sent to applicant by certified letter on February 14, 2014 explaining that the appellant could not appeal the same order that was denied, and proper remedy was to appeal to the Superior Court. The legal notice appeared in the paper on February 21, 2014, so it appears that the applicant may have gotten John Mahon's clarification about the appeal after the 15 day appeal deadline. A case (Victor Antera v. Zoning Board of Appeals for the Town of Madison) was brought up at the May meeting that basically says you can look beyond the pure language of the actual variance and search the entire record to determine what the constraints of the variance are. Twenty years ago, the rule was that a condition had to be stated in the variance. This case changes that law; it says you do search the record to determine what was intended on the variance. However, the first foot note of the case states that the case does not address the issue of whether the record should be consulted in order to determine whatever restrictions or conditions are attached to a variance. They specifically did not decide the issue that is before the Board now. Another issue raised was whether or not Mary Ann Chinatti was lawfully authorized to issue an enforcement order. William St. Onge did not address this issue, as Attorney Byrne had addressed it already via a letter to the Board. The law is that when someone receives a decision of the ZEO or another person charged with enforcement of the regulations, they have 15 days to file an appeal, and the property owner did file the appeal in a lawful number of days, preserving her rights. The Board voted to deny that appeal unanimously. To preserve her rights, the appellant was supposed to appeal to the Superior Court within 15 days of notice that the appeal was denied, and Attorney St. Onge cannot locate law suggesting that the Zoning Board of Appeals has the power to extend the 15 day appeal requirement. Attorney St. Onge believes the biggest question is whether or not the Zoning Board of Appeals has the jurisdiction to act upon the current appeal.
- b. A. David Babbitt asked for clarification as to what happened at the February 2014 meeting, as he was not present. Attorney St. Onge noted that anyone who takes part in the vote must familiarize themselves with what the history of the appeal. (A. David Babbitt had access to the minutes from the February 2014 meeting and felt he was up-to-date on this matter.)
- c. Ray Faucher, Sr., also mentioned he was not present in March 2014. However, at the March 2014 meeting, the application had only been accepted, and therefore Ray Faucher, Sr., felt sufficiently up-to-date on this matter.
- d. Attorney St. Onge and Dan Roy clarified that a 'yes' vote would be voting to sustain the appeal, and a 'no' vote would leave the February decision standing. 'Yes' vote allows Lisa Knight to continue operating as she is; 'No' vote puts her under notice of violation.

- e. Ray Faucher, Sr., questioned if there was a possibility to make a stipulation as to a number of dogs. Dan Roy did not think that was possible at the current time. Attorney St. Onge added that if the applicant asked again in the future to modify the variance, then it would be possible.
- f. **A. David Babbitt moved and Ray Faucher, Sr. seconded the motion that the appeal should be sustained. The motion carried unanimously.**
- g. Dan Roy added that this was a difficult situation for everyone. He believed that the conditions were never attached to the variance, so when the state stepped in to view the previous owner's property, it was clear that there were no limitations. When Lisa Knight purchased the property in 2007, she purchased the property under the amount of dogs that the previous owner already had there. It was his opinion that Lisa Knight would not have purchased the property knowing that she could only keep 11-15 dogs. He further apologized to other concerned neighbors.

Approval of Minutes

- 1. **A. David Babbitt moved and Kevin Beno seconded the motion to accept the minutes of the May 12, 2014 meeting as presented, with one correction: that the typo "gold course" on page 7 be changed to "golf course." The motion carried unanimously.**

Correspondence

- 1. Sent via e-mail
- 1. Sent via regular mail
 - a. Agenda: Zoning Board of Appeals, June 9, 2014
 - b. Minutes: Zoning Board of Appeals, May 12, 2014.
 - c. Minutes: Planning and Zoning Commission, May 26, 2014.
 - d. Financial Report: May 2014.
 - e. ZEO Activity Report: May 2014
 - 1. Dan Roy expressed his disappointment that John Mahon was not present for the meeting.
- 3. Other correspondence
 - a. Correspondence for Ida Ransom.
 - b. Former Recording Secretary Ida Ransom presented the board with a thank you card for the gift that the Board sent her.

Applications and Appeals: None

Applications and Appeals Received after Agenda Posted: None

Old Business:

- 1. Ray Faucher, Sr. stated that he spoke with Mary Ann Chinatti about why the ZEO report no longer includes dates. He was told that the Zoning Board authorized John Mahon to no longer include dates on the ZEO report.
 - a. John Rice, who is on the Zoning Board, stated that they requested John Mahon cut down on the wordiness of the reports, but they did not specifically say to not include dates on the report.
 - b. Kevin Beno asked John Rice if the ZEO attends the Zoning Board meetings. John Rice answered that the ZEO attends the meetings when requested; otherwise, he puts his reports in writing. Kevin Beno felt that it is helpful for the ZEO to attend the Zoning Board of Appeals meeting always, without being requested.
 - c. **Ray Faucher, Sr., moved and Leslie Lavallee seconded the motion that the Zoning Enforcement Officer dates his material when he gives his report. The motion carried unanimously.**

- d. Leslie Lavallee wanted to know who decides when the ZEO attends the meeting. Kevin Beno suggested the Board make a formal request for the ZEO to attend the July meeting. Dan Roy discussed the fact that if the ZEO was always present at the meetings, it would save the Board some difficulties. Dan Roy stated for the record that he was not criticizing ZEO John Mahon's work.
 - e. **Kevin Beno moved and A. David Babbitt seconded the motion that the Board formally request John [Mahon] at the next meeting.**
2. Ray Faucher, Sr., wanted to know what would happen with the applicants that were given the wrong date. Dan Roy felt that the green cards should be accepted at the next meeting, because the applicants should not be blamed for the confusion. Ray Faucher, Sr., felt that the town should reimburse the applicants because the confusion was not their fault.

New Business:

1. Kevin Beno wanted clarification as to who files variances. He wanted to know if Tina Fox, Recording Secretary, files the variances.
 - a. Tina Fox clarified that she has not been given that responsibility.
 - b. Kevin Beno further wanted to know who looks up information for the applications, such as current variances. Dan Roy felt that it must be the ZEO and/or the Planner, Mary Ann Chinatti. He did not feel the Board is responsible for that.

Citizens' Comments: None.**Commissioners' comments:**

1. Dan Roy stated that Appeal 14-01 (Morning Star Farm Pet Resort) had been one of the toughest situations he's encountered since he was on the Board, and he wanted to thank the Board for their work and for reaching a decision.
2. A. David Babbitt suggested that there be a letter from the Board to the Chairman of the Board of Selectmen that the Board is disappointed in the performance of the ZEO in that he was not in attendance at the meeting, and that he failed to give notices to the applicant's in a timely manner, and that because the decision tonight was particularly difficult, to miss the meeting suggests the ZEO is not properly doing his job. A letter of reprimand should come from Mary Ann Chinatti, representing the Board. All of these issues suggest that the ZEO is not doing his job. Dan Roy stated that he will personally meet with Mary Ann Chinatti this week to discuss the various issues with the ZEO.
3. Dan Roy thanked Tina Fox, Recording Secretary, for the work she has been doing.
4. An updated e-mail list for the Board was discussed. Tina Fox stated that she can e-mail an updated list of all the Board member's e-mail addresses.

Future Meetings

1. The next meeting will be held Monday, July 14, 2014 at 7 PM in the Merrill Seney Room, Town Hall.

Adjournment

1. **Kevin Beno moved and Leslie Lavallee seconded the motion to adjourn; the motion carried unanimously.**
2. Chairman Roy adjourned the meeting at 8:13 PM.

Tina Fox
Recording Secretary