

Thornton Zoning Board of Adjustment Meeting Minutes of January 22, 2013

CALL TO ORDER:

G. Kriebel called the meeting to order at 6:30pm.

ROLL CALL:

N. Decoteau called the roll and found the following members/alternates present:

G. Kriebel, Chairman	J. Demeritt, Vice-Chairman	D. Gravel, Member
D. Day, Member	H. George, Member	J. Marshall, Alternate

Attorney for the Zoning Board, Chris Boldt, Esq. was present.

Attorney for the applicant, John Cronin, Esq. was present.

Attorney for the Planning Board, M. Serge, Esq. was present.

Members of the Public present:

B. O'Donnell	D. O'Donnell	B. O'Donnell III	R. Gilman
S. Davis	F. Johnson	S. Morton, Selectman	
C. Schofield	C. Rand	S. MacIntosh	D. McIver
M. Rivers	J. Polimeno	B. Chappell	N. McIver
B. Hiltz	A. Ross	R. Ross Jr.	M. Patterson
B. Patterson	W. Bahr	T. Phillips	M. Peabody, Selectman

APPROVAL OF MINUTES:

MOTION: "To approve the minutes of January 8, 2013 as presented."

Motion: J. Demeritt Seconded: D. Gravel Motion Passed 5-0

PUBLIC HEARING:

Continued from January 8, 2013 to January 22, 2013 at the Thornton Central School 6:30pm.

Appeal of Administrative Decision of the Planning Board to deny the site plan application submitted by CBDA Development, LLC on behalf of property owner Carlton C. Ham for a recreational campground at Tax Map 10 Lot 8-8 located on US Route 3. The Appeal of Administrative Decision is submitted by CBDA Development, LLC on behalf of property owner Carlton C. Ham and cites Article V Section A(14), Section D(1), Section E(1) and Section D(2) of the Thornton Zoning Ordinance.

G. Kriebel asked if there were any preliminary issues the Board needed to discuss before the public hearing.

J. Demeritt stated he has reviewed two letters suggesting he recuse himself from the current appeal before the Board.

J. Demeritt stated he did attend almost every meeting and public hearing but did not speak to the issues. He further stated he has no knowledge of the attorneys, ownership or Mr. Ham and that in his opinion there is no conflict of interest.

G. Kriebel asked other members of the Board and any member of the public if they wished to speak on the issue of recusal.

Hearing no response, G. Kriebel stated J. Demeritt will remain on the Board for the current appeal.

G. Kriebel stated the Board has jurisdiction only in matters of zoning.

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G. Kriebel stated the Notice of Decision being appealed states that the vote to deny the application was made "on the basis that it does not conform with either the essence or the spirit of the Zoning Ordinance or the Campground Regulations".

G. Kriebel stated that the Board does have jurisdiction over the Zoning Ordinance but must determine whether the Board has jurisdiction over the Campground Regulations.

G. Kriebel stated the Campground Regulations are referenced in the Zoning Ordinance but the text of the Campground Regulations is not part of the Zoning Ordinance.

MOTION: "That the Zoning Board of Adjustment will consider the appeal only to the extent that the Planning Board denied the application because it was in conflict with the Zoning Ordinance."

Motion: D. Gravel

Seconded: J. Demeritt

Motion Passes 5-0

G. Kriebel opened the Public Hearing at 6:35pm.

G. Kriebel stated the following procedure would be followed for the Public Hearing:

- The Applicant will speak.
- The Planning Board may respond.
- Those speaking in favor of the applicant may speak.
- Those speaking in opposition to the applicant may speak.
- All those wishing to speak will be afforded the opportunity to do so before anyone is allowed to speak a second time.
- All questions shall be directed through the Board Chairman.
- Those speaking shall state their name for the record.

G. Kriebel reminded everyone to keep comments to the issue at hand, that being whether the Planning Board erred in their interpretation of the Zoning Ordinance.

J. Cronin, Esq., representative for the applicant, gave a brief review of the lengthy process the application went through before the Planning Board and submitted a binder of documents relative to the application for the record.

J. Cronin agreed that the issue is whether the Planning Board erred in their interpretation of the Zoning Ordinance.

J. Cronin stated that the applicant did his homework in doing surveys and studies, analyzed minutes and focused particularly on the Sugar Shack Campground approval.

J. Cronin stated that the Zoning Ordinance allows campgrounds and that during the application process there was much debate about the type of campground the applicant was proposing.

J. Cronin summarized his opening remarks by stating that a campground is a creature of statute adopted by state legislature.

J. Cronin stated the state statute identifies what it is that comprises a campground which includes camping cabins which are fixed structures.

J. Cronin stated the applicant initially stated they were hoping to attract a clientele interested in purchasing a park model which is specifically designed to meet the state statute for use in a campground.

J. Cronin stated the Planning Board has an affirmative duty to assist applicants and added that it is his opinion that the Planning Board failed to do so.

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J. Cronin stated that throughout the Planning Board process the applicant stated that if the Planning Board did not like park models the applicant would be willing to use other types of structures such as 5th wheelers or camping cabins.

J. Cronin stated that if the answer to the question “does the Zoning Ordinance allow campgrounds?” is yes, then the decision of the Planning Board to deny the application should be overturned.

G. Kriebel asked the Board if they had any questions for J. Cronin.

G. Kriebel asked T. Phillips, Planning Board Chairman, if the Sugar Shack Campground application has been approved.

T. Phillips stated the Sugar Shack Campground has obtained conditional approval but has not yet met all the conditions.

G. Kriebel asked J. Cronin to explain how the lease agreement refers only to whatever park model the applicant is selling but makes no reference to the less than 400 sq. ft. requirement.

J. Cronin stated that there is dialogue represented in the minutes stating that the units would in fact be under the 400 sq. ft. requirement.

J. Cronin stated that in the submission of the application, the lease agreement was not something that should be focused on but was only a sample given at the request of the Planning Board.

J. Cronin stated the applicant was willing to make changes to the lease.

J. Cronin stated he does not think it is necessary for the Board to make a determination as to what type of structures or buildings are allowed in a campground.

J. Marshall stated the sample lease agreement refers to allowing additions to be made to the park model and asked what type of additions that would include.

J. Cronin stated that if someone had a 300 sq. ft. model and wanted to add a porch they may be allowed to do so if the total square footage does not exceed the 400 square foot mark.

J. Marshall stated the definition of structure in the Zoning Ordinance is “that which is built in a fixed location on the ground or attached to something having a fixed location on the ground” and asked if the porch additions would then be considered a structure.

J. Cronin responded that the question is for another day as it has nothing to do with whether campgrounds are allowed under the Zoning Ordinance.

J. Marshall stated her opinion that the question is more broadly “is this proposal a campground?” and asked if the application includes the use of park models.

J. Cronin stated that whatever the state allows, the applicant wants to be able to do.

G. Kriebel stated that another potential question to consider is whether what is being proposed is indeed a campground.

G. Kriebel asked J. Cronin to address the ownership issue, specifically as to whether the method of ownership where people would sign a one year commitment that automatically renews for a period of up to 60 years is consistent with the idea of a campground.

J. Cronin responded it absolutely is consistent with the idea of a campground as there is no prohibition in the state statutes as to how the ownership works.

J. Cronin added that what is being proposed is a campground that meets the state statute for campgrounds.

D. Gravel asked if the park models placed on campsites would sit on axle and wheels

J. Cronin responded that the park model would remain on axle and wheels.

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D. Day asked if the park model would remain on site twelve months a year.

J. Cronin responded that there would be no requirement for people to move it off site during the three months the campground is closed and bring it back in when it opens again.

D. Day asked if the park model has a hitch on it.

J. Cronin responded that there is a mechanism for a vehicle to hook up to and transport the park model.

D. Day asked if the park models are registered.

J. Cronin stated that with regard to how the park models are taxed, the applicant is receptive to either registration or taxation as real estate.

J. Marshall asked if the lease agreement gives people the right to keep whatever they want on their campsite year round.

J. Cronin responded that it could be month to month or for a year and stated the question is a Planning Board issue.

J. Cronin stated the question is whether the Zoning Ordinance allows campgrounds.

J. Marshall asked for clarification that the applicant is asserting that what is being proposed is a campground.

J. Cronin agreed and stated that to the extent that what is being proposed is not a campground, the applicant is willing to modify the proposal to meet the state statute.

Attorney for the Planning Board, M. Serge, Esq., represented the Planning Board.

M. Serge stated that no one disputes whether the Zoning Ordinance allows campgrounds and that the question really is whether what is being proposed is a campground under either the Thornton Campground Regulations or the state statute.

M. Serge stated the Notice of Decision and minutes make it very clear that the proposal did not meet the requirements of the Thornton Campground Regulations or state statute and therefore the Planning Board denied the application.

M. Serge stated that as a result of the proposal not being a campground it would then need to meet the density requirements for single family dwelling as anything else would because these dwellings are structures as J. Marshall was explaining.

M. Serge stated that allowing the proposal to move forward without complying with the density requirement would frustrate the purpose and intent of the Zoning Ordinance.

M. Serge stated the issue of to what extent the Planning Board did or did not assist the applicant is a constitutional question and will be addressed in court at another time.

G. Kriebel asked M. Serge to explain why the Planning Board ruled the proposal is not a campground.

M. Serge stated that if you look at the whole scope of the Thornton Campground Regulations or the state statute, a campground is designed to cater to people more transient in nature and is not something designed for year-long leasing of lots that could go on for perpetuity.

M. Serge stated the sample agreement presented with the application allows for the lease to go on for up to sixty years and the Planning Board found that to be inconsistent with the traditional type of campground the regulations envisioned.

M. Serge stated the determination that the proposal is not a campground was made in part because of the nature of the stay.

M. Serge referred to RSA 216-I:5 Registration which states that operators of a campground must upon the registration of each camper cause an entry to be made of a registration book which records the agreed upon departure date.

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M. Serge stated that there is an argument that the proposal does not meet that part of the state statute because a departure date is not included in a lease that can be year-long and is renewed automatically. M. Serge stated the determination that the proposal is not a campground was also made in part because of park models.

M. Serge stated that after reviewing the information provided regarding park models the Planning Board determined that the park model was not the kind of structure that falls under the definition of recreational vehicle.

G. Kriebel asked M. Serge why a park model does not meet the statute.

M. Serge stated that based on the information provided and independent research by some of the Planning Board members, park models are more of a permanent dwelling style of structure.

M. Serge stated park models need a special licensed contractor to move, and they can't be moved like a pop-up camper or driven like a motor home.

M. Serge states both the Thornton Campground Regulations and the state statute refer to vehicles intended for temporary occupancy not something that could be lived in for eight months of the year.

M. Serge stated that the Planning Board felt that the proposal was over and above what is provided for in the Thornton Campground Regulations and the state statute.

G. Kriebel questioned M. Serge regarding the use of the term 'traditional style campground' as the term does not appear in the Thornton Campground Regulations or the state statute.

M. Serge responded that after the Planning Board read the entire scope of the Thornton Campground Regulations and state statute they reached the agreement that what was proposed simply did not fit the mold whether you call it traditional, common or typical.

G. Kriebel asked if park models meet the regulations with regard to size.

M. Serge responded that if the Planning Board found that park models were recreational vehicles for purposes of meeting the Thornton Campground Regulations or state statute it could have then included a condition that they could not be over a certain size.

M. Serge stated that one reason the park model did not fit the mold was because it is not easily moved and goes just beyond the definition of a temporary recreational vehicle.

D. Day observed that in making a ruling as a Zoning Board member it is encouraged that you look to the intent of what the voters approved and that perhaps Thornton is behind the times and needs to allow the voters to speak to the issue of allowing or disallowing park models.

M. Serge stated that may be something for the Town to consider in the future but as it stands now the proposal is not a campground.

G. Kriebel asked if anyone wished to speak on behalf of the applicant.

B. Chappell stated she was not sure if she is in favor or against the application but wanted to state that she feels the same standard of care was not applied in reviewing each of the two campgrounds; the Sugar Shack Campground and proposed campground.

B. Chappell further stated that the Planning Board did not require the Sugar Shack Campground to obtain all the required State permits such as Alteration of Terrain, Wetlands and Shoreland Protection.

G. Kriebel stated the issues she is speaking about are relative to site plan review.

B. Chappell restated that the standard of care was not applied equally and that all applicants that come before the Planning Board should be subject to the same standard of review.

G. Kriebel asked if anyone wished to speak in agreement with the Planning Board's denial of the application.

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B. O'Donnell stated he owns the Shamrock Hotel directly across from the proposed Thornton Bluffs.

B. O'Donnell stated he believes it is difficult to determine whether or not the proposal is a campground because the proposal started out and had studies done as if it were only for park models and then the applicant stated they would change what they would allow.

B. O'Donnell asked that if the proposal was going to change so much shouldn't the applicant re-apply.

T. Phillips, Chairman of the Planning Board, stated the denial was on a specific application which proposed park model units and that clearly the Planning Board is not prohibiting campgrounds.

T. Phillips stated the crux of the matter is whether or not the type of units proposed in this application satisfy the Zoning Ordinance and by extension the state statute.

T. Phillips read the RSA 216-I definition of Recreational camping cabin which states in part that "It shall be designed not for use as a permanent dwelling but as a temporary dwelling for recreational camping and vacation use".

T. Phillips stated that the Planning Board believed that the type of units being proposed stretches the intention of the legislature beyond what the Planning Board felt was acceptable and certainly beyond what the town felt was acceptable when it enacted the Thornton Campground Regulations.

G. Kriebel asked if it is the opinion of T. Phillips that the denial is based more on the structures being proposed for camping rather than the ownership model.

T. Phillips stated that the two issues are intertwined because when you talk about having a long term commitment as suggested in the sample lease there is a tendency to be more about permanency.

T. Phillips stated he understands the units are not intended for residency however, that does not mean the units are not permanent structures and that all of these factors must be considered together.

J. Demeritt asked for clarification on the difference between a park model and a seasonal camper and stated that his parents owned a campground which allowed seasonal campers that stayed on campsites indefinitely year round but they were temporary in nature.

T. Phillips responded that it depends on the specifics of the camper; does it have wheels, what the arrangement is, can the owners easily move the camper, how invested is the camper in that location.

T. Phillips stated there are many factors to consider when making the determination as to what is a seasonal camper.

J. Demeritt stated that some which do not meet the regulation already exist in the town.

T. Phillips stated that in the past campgrounds may have been approved without the issue of park models coming up and that the proposal being presented is nowhere near what has already been approved.

T. Phillips stated the specifics of the application proposed were what the denial from the Planning Board was based on and that he hoped the Board members have reviewed the record.

B. Patterson stated that the zoning in Thornton has always required one acre per dwelling and if the proposed dwellings or camping cottages are brought in and set up on a slab in her mind that is a dwelling someone will live in permanently.

B. Patterson asked what the Town would do when a poor family is using one of the units to live in and are forced out for the two winter months the campground is closed.

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Ex-officio member of the Planning Board, S. Morton, in addressing the question of why the proposal is not a campground referred to the Thornton Campground Regulations where it states the campsite is for temporary occupancy.

S. Morton made a distinction between the state definitions for campsite and campground: that being campsite occupancy is different from dwelling occupancy. He stated someone occupying a dwelling is used to classify whether someone is a resident or not. He stated a campsite is occupied by the placement of a recreational dwelling and that is how occupancy of a campsite is determined.

S. Morton stated that in both the Thornton Campground Regulations and state statute a campsite is for the temporary occupancy of a recreational dwelling.

S. Morton stated that the permanent nature of the occupancy of the campsites and of the dwellings being proposed played a large part in his decision that this is not a campground.

S. Morton made the clarification that the state statute refers to density only to require a minimum square footage per campsite and does not attach the requirement to a campsite per acre of the campground.

C. Rand stated that he believes the only issue to decide is whether the Zoning Ordinance allows campgrounds and not whether the proposal presented is a campground.

G. Kriebel stated that even when everyone agrees that the Zoning Ordinance allows campgrounds, if the application proposed is not a campground that it would not be allowed and thus the Board must determine whether the proposal is a campground or not.

D. McIver stated that he feels the proposal is just a clever way to get around meeting the requirements of subdivision.

J. Cronin responded to the comments from the public by stating many of the concerns are off subject.

J. Cronin stated that what is published in laws and zoning ordinance is there so we don't have to read the minds of others.

J. Cronin stated that any developer in any community should not have to determine what Mr. Phillips' view is or Mr. Morton's and all of the issues they have with these particular recreational trailers/vehicles.

J. Cronin noted that there is no reference in the Zoning Ordinance that refers to not allowing porches, how a recreational vehicle is moved, the requirement of a lease or licensing agreement or the requirement to limit the duration of stay in the park.

J. Cronin stated for the record that the applicant asked Mr. Morton to recuse himself and Mr. Morton exercised his right to stay on.

J. Cronin further stated that Mr. Morton was advocating against the proposal before the hearings had even concluded.

J. Cronin stated there was never any suggestion that the proposed units would be anything other than temporary dwellings.

J. Cronin referred to the specific definition of what is allowed in a campground per RSA 216-I VIII (c) which states "Recreational trailer, which is a vehicular, portable structure built on a single chassis, 400 square feet or less when measures at the largest exterior horizontal projections, calculated by taking the measurements of the exterior of the recreational trailer including all siding, corner trim, molding, storage space and area enclosed by windows but not the roof overhang. It shall be designed primarily not for use as a permanent dwelling but as a temporary dwelling for recreational, camping, travel or seasonal use."

J. Cronin stated that is exactly what was proposed and that the applicant offered to move off from that to the extent that is was something the Planning Board wanted the applicant to consider doing.

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J. Cronin stated that the Zoning Ordinance does not prohibit many of the things people expressed concern about and the state statute expressly and specifically allows the use of these types of facilities.

J. Cronin asked that the Board overturn the decision of the Planning Board as it relates to the Zoning Ordinance and find that the Zoning Ordinance allows campgrounds that include recreational vehicles as defined by the state statute.

J. Cronin also submitted that camping cabins which are permanent are allowed by state statute.

G. Kriebel asked if there were any questions for the applicant or if anyone else wished to speak.

D. McIver stated he feels the applicant has completely disregarded the Zoning Ordinance and the Thornton Campground Regulations because the applicant has stated the state statute overrules the local regulations.

B. O'Donnell clarified that seasonal campers are easily movable with a light duty vehicle versus a park model which requires that the owner hire someone to move it.

B. O'Donnell also noted that the proposal includes the sale of the park models and that people would not be allowed to put anything on site other than what was purchased through the applicant.

G. Kriebel asked if any Board members had questions for any of the speakers and if anyone else wished to speak. Hearing no response, G. Kriebel closed the public hearing at 7:46 pm.

The Board discussed the option to deliberate or to continue the meeting to another night.

After some discussion the Board determined to continue the public meeting to Wednesday, January 30, 2013 at the Town Office beginning at 6:00pm.

At 7:55pm the following motion was made:

MOTION: "To adjourn."

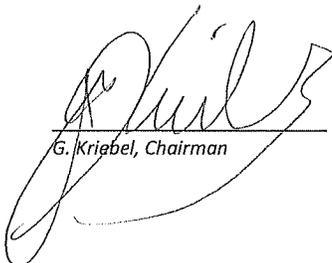
Motion: D. Gravel

Seconded: H. George

Motion passes 5-0

Respectfully submitted,

Nancy Decoteau, ZBA Assistant



G. Kriebel, Chairman

J. Demerritt, Vice Chairman

D. Gravel, Member

D. Day, Member

H. George, Member

J. Marshall, Alternate

Approved on JAN 30, 2013.