

TOWN OF THORNTON

Zoning Board of Adjustment

Approved on: 12/27/2017
ZBA Initials: AW
Rec'd by Town Clerk on: 1/2/18
Town Clerk Initials: BR

ZONING BOARD OF ADJUSTMENT MEETING MINUTES

Wednesday, September 27, 2017

CALL TO ORDER:

W. Rose called the meeting to order at 7:00 p.m.

ROLL CALL:

The following members were present:

W. Rose, Chairman D. Day, Member J. Marshall, Member
S. Bartlett, Member Joseph M. Monti, Alternate

The following member was not present: C. Hodges, Member

Also Present: J. Fleury, Board Secretary

Public Present: Scott Newell, applicant, Jason Lopez, Keach Nordstrom, and Alan Rawson, abutter

W. Rose stated that the ZBA hearing opened late due to waiting for a fifth board member to arrive. W. Rose explained that a vote of four is required to pass a variance request, in this situation there is only four members and the Chair is not sure of the vote outcome.

W. Rose stated that the applicant has a choice to proceed with the hearing with four votes, which would not be grounds for an appeal if the applicant should move forward with the hearing or the applicant can decide to move forward and postpone the hearing for a full board quorum.

J. Lopez stated that he would rather continue the hearing and wait to see if a fifth board member will arrive.

PUBLIC HEARING: a variance from the provisions of Article VI, Paragraph A.2 of the Thornton Zoning Ordinance. The applicants' expressed intent is to build a two-bedroom single family dwelling at Thornton Gore Road (Tax Map 3 Lot 2-22) without sufficient setbacks.

At 7:10 p.m. W. Rose opened the Public Hearing to hold a hearing on the application submitted by property owner Scott Newell for a variance from the provisions of Article VI, Paragraph A.2 of the Thornton Zoning Ordinance. The applicants' expressed intent is to build a two-bedroom single family dwelling at Thornton Gore Road (Tax Map 3 Lot 2-22) without sufficient setbacks.

J. Lopez represented S. Newell for the variance application.

J. Lopez explained that his request is for relief from the front and rear setback. The building proper to be 13.7 feet off the front setback where 25 feet is required. The building roof overhang to be 12.7 feet off the front setback where 25 feet is required. The front porch to be 8.6 feet off the front setback where 25 feet is required. The deck to be 12.7 feet off the front setback where 25 feet is required and the deck to be 10 feet off the rear setback where 15 feet is required.

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J. Lopez explained that the lot is 100 feet wide and 50 feet deep, which would require a 9 foot wide home if the setbacks were required. S. Newell is requesting to build an 800 square foot home, two floors with a deck along the back and a covered porch area which would comply with the zoning setbacks. A drive under garage and a covered front porch will be installed.

J. Lopez stated that Article 8 section A2 requires that in order for a non-conforming lot to be recognized, it needs to be duly recorded in the Grafton County Registry of Deeds as of January 10, 1970.

J. Lopez stated that in order for new construction to take place on a non-conforming lot, it must have 50 feet of frontage, and capable of supporting a well and a septic system designed in accordance with the state standard without the benefit of a waiver. The septic design and well did not require a waiver from the State.

J. Lopez stated that the applicant has an approved septic design and well that has been approved by the State and has been recorded at the Registry of Deeds. A copy was provided for the town file.

J. Marshall asked if the property abuts the road. J. Lopez stated that the frontage abuts the road right of way.

W. Rose stated that there is a discrepancy in the acreage between his survey (.17 acres), and the town tax records (.25 acres). The surveyor calculation of the area was based on the surveyor records and calculations show the lot is 50x100 feet and is not a quarter acre.

J. Lopez discussed the map showing the areas that are not in compliance with the setbacks. The proposed well and septic area was discussed. J. Monti asked what the impact is if another abutter decides to build a home in close proximity to the proposed well. J. Lopez stated that the well release form that was recorded at the Registry states that the form relieves any abutters from liability for impact to the abutters well. J. Lopez stated that if the property is sold, the new owner will be bound by the well release that is attached to the property. The location of the well was placed near the wetlands on the land since additional building is unlikely in that area.

ZBA Member Dennis Day arrived at the meeting at 7:35 p.m.

1. The variance will not be contrary to the public interest:

The proposed home will be located in a sparsely populated area of Town along a road with limited development. That area of Town is located in the Rural Residence Zone, and the proposed two bedroom single family home is a permitted use within that zone. The existing lot of record has been in existence prior to the zoning ordinance and has been assessed as a building lot for years. Therefore construction of a home should be expected and permitted. Upon completion the development of the lot will increase the tax base to the Town of Thornton and therefore is a benefit to the landowner and the residents of the Town.

2. The spirit of the ordinance is observed:

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In terms of describing how the proposal meets the spirit of the ordinance the following outline uses Article 1 of the Zoning Ordinance as the basis.

- a. The proposal is to construct one single family home. The traffic generated from one home will not lead to congestion in the streets.
- b. The proposal of one single family home will not lead to or promote fires, panic or dangers to the general public or abutting properties.
- c. The proposed lot has addressed the health and general welfare of the public by the proper design of the septic system that has been approved by the State.
- d. The proposed use is not a commercial or an industrial use, therefore it will not impact air quality or create light pollution.
- e. Although the lot is small the addition of one home will not lead to the general overcrowding of the land in Town.
- f. One home will not lead to undue concentration of the population.
- g. One single family home will have limited impact on traffic and will be a minor generator of household waste. Also, with only being a two bedroom home, the proposal will have limited impact on the schools and parks, and have a limited need for daycare services.
- h. The proposed home will be a conventional home construction taking advantage of typical energy saving construction methods but will neither rely on nor exploit natural resources for the continued function and operation of the building systems.
- i. The proposed home will be a typical wood frame construction on a permanent foundation consistent with homes constructed throughout the Town. The proposal will protect property values.

3. Substantial Justice is done:

It is reasonable for a property owner to develop an existing lot provided basic utilities, water supply and wastewater services can be accommodated. This basic right is supported by Zoning Article VIII-Section E.2. This section of the ordinance states "Non-conforming lots to be recognized must have been duly recorded in the Grafton Country Registry of Deeds as of January 10, 1970. In order for a new construction to take place upon a non-conforming lot that lot must have 50 feet of frontage and be capable of supporting a well and septic, design in accordance with State standards, without benefit of a waiver. The owner has provided proof of the required accommodations with the issuance of a construction approval by NHDES. Therefore, approval of the variance is in compliance with the zoning requirement and would be fair and just.

4. The values of surrounding properties are not diminished:

The subject property and abutting lots are within the Rural Residence Zone. The proposed use is expected to be present in the zone and is not out of character of the area. The proposed home will be new construction and add value to the subject property. For these factors one can expect the values of the surrounding properties not to be diminished.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

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The existing lot contains a "building envelope" within the required structure setbacks of approximately 1,100 sq. ft. This total area is suitable for the construction of a home. Although, due to the existing lot depth of 50 feet, the compliant building envelope is only 10 feet deep. Due to this narrow depth it is not practical to construct a home that will be compliant with all setbacks.

It is clear that the lots narrow depth distinguishes it from the abutting lot and other lots in the area. Without relief from the strict conformance with the zoning setbacks the construction of a home is impractical. This makes a variance necessary for the reasonable use of the property.

A. Rawson, abutter, stated that this lot is floating in the middle of his lot. He stated that the road has not been formerly surveyed on the side that abuts Mr. Newell's land. The other side of the road has been surveyed. A. Rawson displayed a definitive stone wall on his map indicating the wall as a boundary marker.

A. Rawson reviewed the survey that was completed and does not believe that the survey indicates correct measurements. A. Rawson stated that the survey showing where Mr. Newell's land abuts Thornton Gore Road should be 9 feet further out. A. Rawson agrees that the lot in question is the correct size, but that the survey is not correct as to the location of the lot.

A. Rawson stated that he disagrees with the beginning point of the survey and had made the surveyors aware as to where they should begin their survey.

J. Marshall asked if the discrepancy in the surveyed lot impacts their decision as to whether or not to grant a variance.

W. Rose stated that it is not up to the Zoning Board to make a determination if there is a dispute as to the survey.

J. Lopez offered to have A. Rawson contact his surveyor to discuss his concerns.

D. Day asked what will change if Mr. Rawson is correct in his belief that the boundary lines should be moved 9 feet toward the road right of way. J Lopez stated that, if he is correct, then the house would be closer to the road and would meet more of the rear setback requirement.

J. Monti confirmed that Mr. Rawson is not disputing the size of the lot but rather the location if the lot and the surveyed boundaries. Mr. Rawson agreed.

J. Monti confirmed that the surveyed boundaries are not in the jurisdiction of the Zoning Board to consider. W. Rose agreed.

D. Day stated that according to the town tax maps, the lot abuts Thornton Gore Road and on the surveyed plan, the lot seems to be set back from the road. J Lopez stated that the area between the Road and the lot as indicated on the surveyed map, is the road right of way.

J. Monti asked if the description of the lot includes the same dimensions as it did in 1948. J. Lopez stated that the deed from 1948 indicates the same land dimensions.

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D. Day asked where the curb cut is for the driveway and where the vehicles will park.

J. Lopez stated that the driveway will be a drive under and will accommodate no more than two vehicles. S. Newell stated that he only plans to have one vehicle and may have a visitor.

S. Bartlett stated that if the ZBA continues to approve building on small lots, there is concern that many other property owners in town will apply for a variance to create and build on undersized lots and could set a precedence. W. Rose stated that the situation cannot exist anymore as this is a pre-existing non-conforming lot. It is not the only one of its type in the Gore, but additional undersized lots cannot be created due to the new zoning ordinance.

W. Rose stated that existing non-conforming lots predate the town's zoning ordinance and is not the only lot that is this size, and each case that comes forward to the ZBA would need to be considered individually.

D. Day stated that the removal of the decks would require less of a variance. Mr. Rawson stated that he has spoken to other abutters and they do not agree that the decks should be removed and that he agrees with supporting the variance. He would like to see as much house as possible built on this land. Mr. Rawson agrees that the house as designed will fit in with the existing neighborhood and the decks will make it more valuable to the area.

Chairman Rose closed the public hearing at 8:22 p.m.

Chairman W. Rose reviewed the five conditions for granting the variance.

1. Granting the variance would not be contrary to public interest. The Board unanimously agreed.
2. The spirit of the Zoning Ordinance will be observed. The Board unanimously agreed.
3. Granting the variance would do substantial justice. The Board unanimously agreed.
4. The variance if granted would not negatively impact the value of surrounding properties. The Board unanimously agreed.
5. The denial of the variance would create an unnecessary hardship. The Board unanimously agreed.

MOTION "To approve the request for Variance by property owner Scott Newell from the provisions of Article VI, Paragraph A.2 of the Thornton Zoning Ordinance. The applicants' expressed intent is to build a two-bedroom single family dwelling at Thornton Gore Road (Tax Map 3 Lot 2-22) without sufficient setbacks."

Motion: J. Monty

Second: J. Marshalls

Discussion: D. Day asked if the Board should include the dispute between the abutter and the surveyor. W. Rose explained that the dispute will be noted in the minutes.

Motion Passes: 5-0

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APPROVAL OF MINUTES:

MOTION: "To accept the minutes of August 30, 2017 as amended."

Motion: S. Bartlett

Second: D. Day

Discussion: None.

Motion Passes: 5-0

ADJOURNMENT:

8:47 p.m. MOTION: "To adjourn."

Motion: D. Day

Second: S. Bartlett

Discussion: None

Motion Passes: 5-0

Respectfully submitted,

Jessi Fleury
Board Secretary