



TOWN of
THOMPSON
ZONING BOARD OF APPEALS

Minutes: Zoning Board of Appeals

November 14, 2016

Merrill Seney Community Room, Town Hall, 7PM

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

1. Roll Call: A. David Babbitt
Kevin Beno
Kirby Cunha
Ray Faucher, Sr.
Leslie Lavallee
John O'Connell
Thomas Poplawski
Dan Roy
There was a quorum.

Alternates Ray Faucher, Sr., Leslie Lavallee, and Thomas Poplawski were not seated.

2. Staff Present: Alvan Hill, ZEO
Tina Fox, Recording Secretary

3. Public Hearings

- A. **Variance 16:08:** Havish, LLC, Applicant and Owner of Record. For property at 440 Riverside Dr. Map 85/Block 95/Lot 23A/Zone C. Variance requested to: 1) Increase impervious surface to 80%; 2) Add a sign for a free-standing menu board and direction signs not to exceed 25 sq. ft.; and 3) Add pavement for drive-up window.

Reason: Parcel was already developed and exceeded 60% when the regulation was enacted. The drive-up window requires a menu board for placing order.

1. Daniel Blanchette of J&D Civil Engineers spoke on behalf of the applicant. He submitted a list of signatures of local residents who are for the variance. The property in question is the Valero gas station on Riverside Dr. In 2004, the original building was demolished and a new building was erected further back. Between 2006 and 2011 there were issues with the previous owner and complaints against him regarding zoning violations. A large drainage swale was placed near the rear of the building in 2012. The lot is .36 acres and the impervious service is about 64%. The property is zoned commercial. The applicant is proposing to add more pavement and a drive-thru around the rear of the building. Three variances are being requested. The first is to increase the impervious surface to approximately 80%. The second variance is to erect a second sign in the rear of the building to place orders, which would be completely screened from view.

The third variance is for the pavement for the drive-thru, which would be within 10 feet from the property line. The pavement would be within a half of a ft. from the southern property line and within two ft. from the northern property line. The reason is because the lot is so small. It is important to have a drive-thru for a coffee shop; it is needed to make the business viable. Water runs off into the drainage swale at the back of the property. A series of concrete infiltrators were designed and should improve the current drainage. He explained the drainage in more detail, stating that the structures fill with water and allow the water to flow out gently. They are designed for a 50 year storm, but overflow would be onto the neighboring property. There is one handicap parking space and twelve regular spaces, which conforms to the zoning regulations. Two spaces are being lost with the addition of the drive-thru. There is currently a wooden fence around part of the property. After speaking with the neighbors, it was agreed to erect a 7 ft. vinyl privacy fence. There was also a request to place a "Do Not Enter" sign next to the neighbor's driveway, and they will try to re-grade the neighbor's driveway to raise it up.

2. Ernest Cotnoir, 163 Providence St., was present to represent four abutters (Charles and Helen Devivo, and Donat and Muriel Charron). He presented a statement of opposition to the variance. He stated that zoning regulations require a 25 ft. setback for commercial properties that abut residential properties. The setbacks being proposed are 2 ft. and 8 ft. Variances are granted by State statute, and can only be granted for reasons that essentially create a hardship for the owner. The issue of what a hardship is often comes up. He referenced a court case that found personal and financial hardships are not sufficient grounds to grant a variance, unless the property is worthless without granting a variance. The variance has to be in harmony with the regulations and comprehensive plan. There is not a hardship with this application. The site is appraised at over \$600,000. The site currently has a convenience store and gas station, and previously had a coffee shop. The property is surrounded by residential property. The entire drive-thru would be within the setback, and there would be no open space to the north. The menu board and loud speaker would be within 25 ft. of the boundary line. The regulations require a buffer when a commercial property abuts residential property, but there will be no room for landscaping. A fence could be erected, but even that would be difficult within one ft. of a property line. There is no hardship because the property has been a functioning development for many years, and this is not in keeping with the fact that the property is surrounded by residential properties. It will have a detrimental impact on neighboring properties.
3. Charlie Devivo, 442 Riverside Dr., stated that the applicants said they would do certain things, but they did not put anything in writing. With the previous owners, they promised to do things but they put nothing in writing and did not follow through. He does not want to go through the same thing again. He stated that he would talk to the applicants about the fence and fixing the driveway if this variance is approved.

4. D. Blanchette stated that the 25 ft. setback that E. Cotnoir referred to was a setback for buildings, not pavement. The driveway setback is 10 ft. The property has two or three other variances on record that were passed with the same hardship reason, that it is such a small lot. The coffee shop failed and closed down to move down the street because it did not have a drive-thru. As for commercial use not being within the character of the neighborhood, there are doctor offices across the street, and commercial use up and down route 12. They can look into the decibel level of the loud speaker, but loud speakers can barely be heard from a car at the drive-thru. The 7 ft. fence will be much taller than a buffer hedge. The revised plans with the 7 ft. fence, re-grading of the driveway, and a sign by the driveway are in writing.
5. Donat Charron, 22 Watson Rd., owner of 446 Riverside Dr., stated that this has been a long problem, and every owner promises things and does not follow through. There is a gas tank 20 ft. away from the property line, within 75 ft. of his well. The applicants never spoke to him and brought this to him. He clarified that he was notified via certified mail, but that the applicants never spoke to him. This will be a bad situation for traffic. There is no spot identified for a delivery truck.
6. Mr. Patel, 440 Riverside Dr., stated that he spoke to Mr. Devivo a few weeks ago, and he had some issues that he would like addressed. One was that the dumpster is emptied too early in the morning, and he agreed to have the dumpster emptied later in the day. The second issue was that people block Mr. Devivo's driveway, which was addressed by agreeing to erect a sign. The third issue was that the driveway was ruined by the previous owner. Since 2011, the driveway issue was fixed, and now all of the water drains on to 440 Riverside Dr., not Mr. Devivo's property, but they agreed to re-grade the driveway. The fourth issue was erecting a fence around the entire property, which was agreed to. The 5th issue was drainage, which was addressed. He believed the issues were solved and that Mr. Devivo was happy. Mr. Devivo did not discuss any additional issues with him.
7. E. Cotnoir stated that all of the issues Mr. Devivo discussed with Mr. Patel were Planning and Zoning Commission issues, and not about this variance. Tonight's issue is only the variance. He stated that they would have no objection to continuing the public hearing until next month, as D. Blanchette suggested, so that the applicant can get an attorney. Regarding the 25 ft. setback being for buildings and not a driveway, this would not be a driveway; it would be a drive-thru. A drive-thru is something more invasive than a standard driveway.
8. D. Blanchette requested that the Board keep the public hearing open for another month so that the applicant can retain an attorney.
9. **A. David Babbitt moved and Kevin Beno seconded the motion to continue the public hearing for application 16-08 to the December meeting. The motion carried unanimously.**

- B. **Variance 16-09:** Kerstin Forrester, Applicant and Owner of Record. For property at 593 Fabyan Rd. Map 17/Block 84/Lot 32/Zone R40. Variance requested to reduce road frontage from 150 ft. to 82 ft. allowing division of land between 2 existing independent single-family units, both pre-date zoning regulations.

Reason: Both residential units were developed prior to Zoning, have independent driveways, wells, septic systems, and garages. To properly split off the two units into logical separate parcels, each with 1+ acres of land (and thus create more conforming properties), the smaller unit will need to have a reduced frontage. All building, driveway, and system locations predated the Zoning Regulations.

1. John Guskowski, CME Associates, spoke on behalf of the applicant. He stated that this request is to correct an error that the property owners had nothing to do with. The property is zoned R40. There are two complete properties on a single lot, 593 and 589 Fabyan Rd. The properties have independent driveways, septic systems, wells, property numbers, etc. When the owners purchased the property, they purchased the properties separately. Approximately five to six years ago, the Assessor started treating them as one property, and administratively merged them together. The Assessor created the non-conformity. In the split, the southern lot would retain just over an acre. The variance is requested because the southern lot would have 82 ft. of road frontage, rather than the minimum 150 ft. required.
2. Jeff Donais, 589 Fabyan Rd., stated that he is for the variance.
3. **Kevin Beno moved and Kirby Cunha seconded the motion to close the public hearing. The motion carried unanimously.**
4. **Kevin Beno moved and Kirby Cunha seconded the motion to approve application 16-09.**
 - a. K. Beno stated that the lots predated zoning and already existed.
 - b. A. David Babbitt stated that they are two well maintained properties.

The motion carried unanimously.

- C. **Variance 16-10:** Joyce Hoyer, Applicant and Owner of Record. For property at 7 Center St. Map 116/Block X/Lot P/Zone R40. Variance requested to increase impervious surface by 74 sq. ft. to allow construction of a 24' x 32' detached garage.

Reason: Very narrow lot of .17 acres. House is 21'x21'. No storage in cellar (house on slab)

1. Joyce Hoyer, 25 Bonnette Ave., stated that there is a shed on the property, and if it was taken down, they would not need to ask for a variance. But because there is no storage on the property, they would like to keep the shed and build a detached garage.
2. K. Cunha asked if there are any setback issues, to which A. Hill responded that there are not.
3. Barbara Roach, 13 Center St., stated that she is the direct neighbor of the property and has no objections to the variance.
4. **Kevin Beno moved and A. David Babbitt seconded the motion to close the public hearing. The motion carried unanimously.**

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5. **Kevin Beno moved and A. David Babbitt seconded the motion to approve application 16-10. The motion carried unanimously.**

D. **Variance 16-11:** Lisa and Thomas McDougall, Applicants and Owners of Record. For property at 142 Quinebaug Rd. Map 59/Block 88/Lot 6&6A/Zone RA80. Variance requested to decrease acreage of lot 6A by 9,611 sq. ft. and increase acreage of lot 6 by 9,611 sq. ft. to allow for a septic system on lot 6. Both lots are nonconforming and will remain so.

Reason: To have area for septic system and reserve area for septic repair, if necessary.

1. Thomas McDougall, 142 Quinebaug Rd., stated that he is on lot 6, and his father-in-law is on lot 6a. They are going to be repairing the house on lot 6, and want to repair the septic also. His father-in-law gave them a section of lot 6a to repair the septic. The lots would still be nonconforming.
2. A. Hill explained that a variance is required because both lots involved are nonconforming.
3. **A. David Babbitt moved and Kirby Cunha seconded the motion to close the public hearing. The motion carried unanimously.**
4. **A. David Babbitt moved and Kirby Cunha seconded the motion to approve application 16-11. The motion carried unanimously.**

4. Approval of Minutes

- A. **A. David Babbitt moved and Kevin Beno seconded the motion to accept the minutes of the October 12, 2016 meeting as written. The motion carried unanimously.**

5. Correspondence

- A. Sent via mail (*sent via email only)

1. Agenda: Zoning Board of Appeals, November 14, 2016
2. Minutes: Zoning Board of Appeals, October 12, 2016; Planning and Zoning Commission, October 11, 2016 and October 24, 2016
3. ZEO Report: October 2016
4. Budget Report: October 2016
5. Memo from Town Clerk regarding 2017 Meeting Schedule

6. Applications and Appeals: None

7. Applications and Appeals Received after Agenda Posted: None

8. Old Business

- A. **Variance 16-07 (continued from previous meeting):** Duane Higgins, Applicant and Owner of Record. For property at 1 Alix Dr. Map 143/Block 16/Lot 56/Zone R-40. Variance requested to decrease side and back yard setbacks from 25 ft to 5 ft.

Reason: Very small lot, and 25 ft setbacks make potential construction impossible.

1. D. Roy explained that the Board was in agreement that the applicant needed to provide an A2 survey to go forward, and the applicant is not present.
2. The Board briefly discussed the issue and agreed to not take a further vote on this application.

9. New Business

A. 2017 Meeting Schedule

1. The Board was in agreement to approve the 2017 meeting schedule as presented.

B. Annual Report

1. The Board was in agreement to approve the report as presented.

10. Citizens' Comments: None

11. Commissioners' Comments: None

12. Future Meetings

- A. Monday, December 12, 2016: Merrill Seney Community Room, Town Hall
7:00 PM.

13. Adjournment

- A. **A. David Babbitt moved and Kirby Cunha seconded the motion to adjourn. The motion carried unanimously.**
- B. Chairman Dan Roy adjourned the meeting at 8:15 PM.

Tina Fox
Recording Secretary