



TOWN OF THOMPSON

ZONING BOARD OF APPEALS

Minutes: Zoning Board of Appeals

Monday, May 11, 2020

Zoom Meeting 7:00 PM

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Topic: Zoning Board of Appeals

Time: May 11, 2020 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

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- 1. Chair Kevin Beno called the meeting to order at 7:00 PM**
- 2. Roll call: Chairman Kevin Beno, Kirby Cunha, Jason St. Onge, Geoff Bolte**
Alternate Seating: Ken Weiss
Alternate: Leslie Lavallee
Staff Present: Cynthia Dunne, Zoning Enforcement Officer and Gloria Harvey,
Recording Secretary
- 3. Public Hearing**
Public Hearings ZBA Application #20-02, Joshua and Jessica Rhodes, Owner,
0 Pompeo Rd, Map 61, Block 59, Lot 5A, Zone R40 requesting a 25' variance
front setback.

Applicant Joshua and Jessica Rhodes, 293 Brickhouse Road, Danielson, CT 06239, are requesting a Front Setback Variance from 50' to 25'. Engineer Norman Thibeault, Killingly Engineering Associates, 114 Westcott Road, Danielson, CT 06239 represented Joshua and Jessica Rhodes. The engineer stated the owners want to build a house at 0 Pompeo Road. The site plan indicates significant wetlands on this property. Town of Thompson Zoning Regulations require 50' setback from the wetlands. ZEO stated that the site cannot be developed to meet code requirements if the 50' setback is required. The engineer referred to the site plan and stated that the 50' setback from the wetlands is through the garage and the 25' setback is from the corner of the garage to the stone wall which is the property line. If the house was moved down radiant so it is within 50' of the front setback they would not be able to have a gravity system that would be able to maintain proper separation distances from the septic without pushing it closer to the wetlands which is required by the health codes. Kirby Cunha asked the ZEO to comment and she said the house was fine as positioned on the site plan and everything else is in place. She also stated because of the delay of the April meeting, letters were sent to all surrounding property owners within 200'. One letter was received from one of the neighbors and filed in the Zoning Office stating they were supporting this application. Ken Weiss asked about Paula Cahill's property which is closest to 0 Pompeo Road and the ZEO said no comment was received from her.

Public Input: None

Kevin Beno moved and Kirby Cunha seconded to close the Public Hearing. A roll call vote was taken. The motion carried unanimously.

Kirby Cunha – Yes	Geoff Bolte – Yes	Jason St. Onge – Yes
Kevin Beno – Yes	Ken Weiss - Yes	

Discussion from ZBA members: Kirby Cunha had no issue and Ken Weiss also had no issue and said he thought it should be granted.

Kevin Beno moved and Kirby Cunha seconded the motion to approve ZBA Variance Application #20-02 as requested.

A roll call vote was taken:

Kirby Cunha – Yes	Geoff Bolte – Yes	Jason St. Onge – Yes
Kevin Beno – Yes	Ken Weiss - Yes	

The motion carried.

Public Hearings ZBA Application #20-03, 705 Washington Avenue LLC, Owner, 1391 Riverside Drive, Map 57, Block 61, Lot 2, Zone R40, appealing enforcement letter issued by the Town of Thompson Zoning Enforcement Officer.

Applicant represented by Attorney Scott Jezek, PO Box 376, Moodus, CT 06469. He stated his client is appealing a letter, dated February 10, 2020, from the ZEO stating that the tenants at 1391 Riverside Drive are using Town owned property at 1395 Riverside Drive as access to a garage at 1391 Riverside Drive. In the letter the ZEO stated my client is accessing a garage on Town of Thompson property and requested my client to discontinue using the town property for access into 1391 Riverside Drive, therefore my client had no alternative but to file an appeal to protect their rights. He further stated that his client has a "Prescriptive Easement" over the property owned by the town to the driveway accessing the garage behind my client's home. Kevin Beno asked Attorney Jezek to explain the term "Prescriptive Easement." Attorney Jezek explained the difference between "Adverse Possession" and "Prescriptive Easement." "Adverse Possession" means that under certain terms a person may gain ownership after using a person's property long enough after going to land court and "Prescriptive Easement" means have a right to use it. My client is claiming that by prescription, that is having used this property for more than 15 consecutive years openly, my client has acquired the right to use this. In order to prove this, Attorney Jezek reviewed Thompson's municipal records and Ariel assessor's maps and in the 1956 map it shows my client's and the town's property under prior owners and it shows the driveway and garage that is the issue of this appeal. Property lines are the same, therefore we know that in 1956 these conditions existed and there is no evidence that it stopped. Also looking at the town's Building Department records, in 1973 no permits were taken to build this barn leading one to conclude that the barn existed prior to 1973 consistent with what we see in 1956 Ariel photographs. The fact that the town owns the property and acquired it later is irrelevant to this because when the town took title that easement was already in place. Therefore the town, because we could not adversely take possession once the easement was there and the town took title, it was subject to that easement. A brief memorandum dated May 7th outlined my authority on this. If the February 10, 2020 letter was meant as an order, then my client's position is that we have a "Prescriptive Easement" and they have a right to pass on that driveway to access the garage that is on my client's property.

Kevin Beno commented that 705 Washington Avenue LLC is saying they have a legal right but don't have anything in writing to prove they have a legal right. Attorney Jezek agreed with Kevin Beno's comment stating that a "Prescriptive Easement" is non-binding. Ken Weiss asked if someone brought up the issue

with the driveway and the way it has been used all these years? Attorney Jezek replied his interpretation from the letter his client received from the ZEO dated February 10, 2020 took issue so my client is appealing this letter to protect their rights. The ZEO provided Attorney Jezek with legal documents from Town Counsel, Attorney Roberts. Kevin Beno asked if Attorney Roberts had given a definite decision in this document and Attorney Jezek replied he has not spoken to him about it. Kevin Beno commented that he would like our own Town Attorney to look over the documents relating to this appeal before the ZBA makes a decision. Kirby Cunha stated that he agreed with Kevin Beno because he didn't feel he could make a decision on property that belongs to the town without input from Town Counsel. Jason St Onge agreed with Kirby Cunha to ask Town Attorney to make a decision on behalf of the ZBA.

Kevin Beno moved and Kirby Cunha seconded the motion to move this Public Hearing for Application #20-03 to next month.

A roll call vote was taken:

Kirby Cunha – Yes

Geoff Bolte – Yes

Jason St. Onge – Yes

Kevin Beno – Yes

Ken Weiss - Yes

The motion carried.

Public Hearings ZBA Application #20-04, Joseph and Wanda Kelly, Owner, 0 Lowell Davis Road, Map 120, Block 30, Lot 3A, Zone IND, requesting a variance to build a house on property in non-conforming zone.

Joseph Kelly, owner of 0 Lowell Davis Road, North Grosvenordale, CT. He is requesting a Variance to build a house on a lot that is in an industrial zone. They purchased 0 Lowell Davis Road when they bought their home at 86 Lowell Davis Road. They requested a Zone Change through the PZC on November 25, 2019. The PZC recommended they wait until the new Zoning Regulations were passed which would allow a residential structure in an Industrial Zone, however the Kelly's chose to apply for a Variance now because they want to begin the process of building their house.

Ken Weiss asked if there was an industrial building on the property and Joseph Kelly replied that there was a farm. Kevin Beno commented that the houses in that area were all residential. Joseph Kelly stated that he was on the Numa Tool end which is zoned Industrial. Kirby Cunha asked the ZEO for a status on the new Zoning Regulations. The ZEO replied the intent of the Zoning Regulations is to have it passed by June 30th, however she did not know if it would be possible to have an informed Public Hearing by then with the social distancing in place. She also stated that there is a lot of work that has to be done before then. The ZEO said that people are looking through the regulations and making suggestions from the draft that is online. There is no guarantee that you can

have a house in a zone that is being changed to a broader Business Development Zone. ZEO asked the ZBA members to keep in mind that the Kelly's did come to the PZC in November 2019. Letters were sent to abutters, and no one responded. The same is true with this issue. No one has ever objected to this request. Also there are mostly wetlands in that area. Kirby Cunha asked if the Kelly's were in the fall zone of the cell tower and the reply was they are more than 250' away from the tower.

Ken Weiss asked if the ZBA has the power to change the regulation for a onetime event like this assuming it's going to change either to an agricultural or business zone. The reply was the Variance gives the Kelley's the right to put a residential property on that lot. The ZEO commented that the ZBA can give the Kelly's a Variance, however it doesn't change the zone at all.

Public Input: None

Kevin Beno moved and Geoff Bolte seconded the motion to close the Public Hearing.

A roll call vote was taken:

Kirby Cunha – Yes

Geoff Bolte – Yes

Jason St. Onge – Yes

Kevin Beno – Yes

Ken Weiss - Yes

The motion carried.

Discussion: Ken Weiss stated he didn't see an issue with it seeing it was farm land so there shouldn't be any contaminated soil and it's mostly residential everywhere else in the area and zoned Industrial to the highway.

Kevin Beno moved and Kirby Cunha seconded the motion to approve ZBA Variance Application #20-04as requested.

A roll call vote was taken:

Kirby Cunha – Yes

Geoff Bolte – Yes

Jason St. Onge – Yes

Kevin Beno – Yes

Ken Weiss - Yes

The motion carried.

4. Approval of Regular ZBA Meeting Minutes, March 9, 2020

Kevin Beno moved and Leslie Lavallee seconded to approve the ZBA Meeting Minutes of March 9, 2020 with one correction to change the name Jeff to Geoff.

A roll call vote was taken:

Kirby Cunha – Yes

Geoff Bolte – Yes

Jason St. Onge – Yes

Kevin Beno – Yes

Ken Weiss – Yes

5. Correspondence:

- a. PZC April 16, 2020 Minutes
- b. ZEO Memo
- c. Town of Webster
- d. Connecticut Federation of Planning & Zoning Agencies Annual Conference to be Cancelled
- e. Connecticut Federation of Planning & Zoning Agencies Quarterly Newsletter
- f. Town of Thompson Budget Report

6. Applications: Appeals and Variances - None

7. Applications Received after Agenda Posted: None

8. Old Business:

Town of Thompson regulation review update – PZC Zoning Review Commission meeting

The ZEO reported that the Planning Office goal is to have the Zoning Regulations completed and approved by June 30th. The Planner requested that all comments be submitted to her office by May 15, 2020. She has put the Draft of the new regulations online for Public Review. The Planner will then present the comments to the PZC and schedule a meeting to review the comments before scheduling a Public Workshop and Public Hearing for public input. The ZEO is continuing to go through the draft and making additional comments. The ZEO also commented that the social distancing issue will have a bearing on when this is to get passed.

64 Linehouse Road – Bates Auto

Bates Auto is no longer a legal business. Mr. Daily from the Enforcement Division of the DMV suspended the license of Bates Auto. at 64 Linehouse Rd, and shut them down. They did not renew their insurance so Mr. Daily had to pull their use of temporary plates, and they would never have been able to get their license renewed because they owe taxes. Mr. Daily sent twelve certified letters to the house and never received an answer so he had to post a notice that Bates Auto is no longer in business and their license has been pulled.

Doug Wontton, a family friend, who is in the auto salvage business in Woodstock, CT was doing his best to clean the properties at 65 and 77 Linehouse Road, the location that the ZEO office has received numerous complaints concerning junk vehicles.

Due to the death of Mrs. Bates a few weeks ago, it will be a matter of time with probate who inherits the property at 64 Linehouse Rd, the location of Bates Auto. The ZEO asked if anyone notices any activity at 64 Linehouse Rd, Bates Auto, to let her office know as well as informing the DMV.

The ZEO reported that the person who was interested in buying 64 Linehouse Rd, Bates Auto, has pulled out and will not be buying the property. She also mentioned that there were many violations over the years that should have been stopped and were not. The ZEO told Doug Wontton that no auto repair or salvage business can be conducted at 64 Linehouse Road, Bates Auto, until all the legal issues were finalized.

The ZEO said her next step was to contact Doug Wontton for information on who inherited the property letting them know that the business is closed down and cannot operate to back up DMV.

9. New Business:

Kirby Cunha mentioned the property at the corner of Wilsonville Road, and Lowell Davis Road and asked if anyone was checking in on the person living there. The ZEO stated the due to social distancing and working from home she hasn't had a chance to look into it.

A question was asked regarding how we are going to conduct our meetings when the governor opens up public meetings. The ZEO replied that there is talk about going into a large room at the school, but no decision has been made. She also said that the PZC is going to meet on May 26, 2020 via Zoom.

10. Adjournment

Kevin Beno moved and Kirby Cunha seconded the motion to adjourn. The motion carried unanimously.

Chairman Kevin Beno adjourned the meeting at 7:51 pm.

Respectfully Submitted:

Gloria Harvey
Recording Secretary