

# TOWN OF THORNTON

## Zoning Board of Adjustment

Approved on: 9/22/22  
ZBA Initials: J.S.  
Rec'd by Town Clerk on: 9/24/22  
Town Clerk Initials: ACR

### ZONING BOARD OF ADJUSTMENT MEETING MINUTES

July 28, 2022

#### WELCOME:

Chairman Joe Monti welcomed the members.

#### CALL TO ORDER BY CHAIR:

Mr. Monti called the meeting to order at 6:00 p.m. with the Pledge of Allegiance.

#### ROLL CALL BY CHAIRMAN:

Mr. Monti completed the roll call.

**The following members were present:** Chairman Joe Monti, Vice-Chairman Jerry Sobolewski, Joan Marshall, Ken Miller, Alan Rawson, Maureen Patti, Alternate

**The following members were present via teleconference:** None

**The following members were absent:** None

**Also Present:** Kerrin Randall, Board Assistant, Shawn Magoon, Emily Prescott, Gabe Horton, Cindy Prescott, Roy Sabourn, Adam Swank, Tim Saulnier, Kevin French, David Horton

#### REVIEW/APPROVAL OF MINUTES:

Upon distribution and review of the meeting minutes of June 30, 2022 the members took the following action:

**MOTION: "To accept and approve the Minutes of the June 30, 2022 meeting as presented."**

**Motion:** K. Miller

**Second:** J. Sobolewski

**Discussion:** None

**Vote:** 5-YES, 0-NO, 0-ABSTAIN

**Motion passes.**

**MOTION: "A meeting will be held on August 11, 2022 at 6:30 p.m. should the public hearing this evening be continued."**

**Motion:** J. Monti

**Second:** J. Sobolewski

**Discussion:** None

**Vote:** 5-YES, 0-NO, 0-ABSTAIN

**Motion passes.**

#### OLD BUSINESS:

##### Review of Rules of Procedures for 2022

Mr. Monti commented that the ZBA reviews their Rules of Procedures yearly, and comments and legal opinion have been given for updating. Ms. Patti reviewed that HB 1661 has been passed and it contains land use board procedural updates. She suggested the adoption of the 2022 Rules of Procedure be continued until more information from HB 1661 is obtained.

**MOTION: "To continue the review of the Rules of Procedures to the August 25, 2022 meeting."**

**Motion:** K. Miller

**Second:** J. Sobolewski

**Discussion:** None

# TOWN OF THORNTON

## Zoning Board of Adjustment

---

**Vote: 5-YES, 0-NO, 0-ABSTAIN**

**Motion passes.**

### COMMUNICATIONS AND MISCELLANEOUS:

Mr. Monti reviewed that the Master Plan Committee, a sub-committee of the Planning Board, is preparing a town-wide survey to assist the citizens, town officials and Planning Board in deciding the future growth of Thornton; a copy of proposed questions have been sent to town boards and committees for input.

Mr. Monti asked that questions ZBA members would like considered to be added to the survey be sent to Ms. Randall, who will bring them before the Master Plan Committee.

Mr. Monti called a recess at 6:15 p.m.

### HEARINGS:

**APPLICATION/PUBLIC HEARING:** Emily Prescott and Gabe Horton [Tax Map 207, Lot 8 (Formerly Map 2, Lot 6-4)] "EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS REQUEST; ARTICLE VI: Dimensional Requirements, Section A, 2: Location of Structure" AND "VARIANCE REQUEST; ARTICLE VI: Dimensional Requirements, Section A, 2: Location of Structure." Structure extends beyond setback.

Mr. Monti opened the public hearing at 6:30 p.m.

Mr. Monti confirmed that the following were present as requested:

- Applicants, Emily Prescott and Gabe Horner
- Zoning Compliance Officer, Shawn Magoon
- Concrete Contractor, Tim Saulnier
- Foundation Digging Contractor, David Horton

Surveyor, Kevin French was also present and acting as representative for the applicants.

Mr. Monti reviewed the procedure of the public hearing with the applicants and asked that they present an overview of their request(s) to the ZBA. He reviewed the ZBA members will ask questions and those in support of the request will be asked to speak, as well as those opposed to the request. The applicants will be given opportunity for rebuttal following questions and/or comments from the ZBA and/or public.

Mr. French reviewed that he was asked by the applicants to conduct a survey of the property after the foundation had been poured, as ZCO Magoon questioned the setback distance. He commented that after the survey was completed it was discovered that the foundation was encroaching on the front-line setback. Mr. French reviewed that the problem the applicants came across after the property was surveyed is that the legal road boundaries are not the same as the physical travel way; the applicants measured from the center of the travel way, not the recorded ROW.

Mr. French commented that there are two (2) requests before the Board, an Equitable Waiver of Dimensional Requirements, and a Variance for Dimensional Requirements. He explained that both were requested, as the property would have qualified for the variance if the foundation had not already been poured; as it was poured however, the waiver was also submitted.

Mr. French reviewed that there is a corner of the foundation that extends approximately 13-feet into the setback; there is one abutter beyond this property who has submitted a letter of support for the applicants.

Mr. Monti asked if the lot had been surveyed prior to the applicants obtaining a Zoning Compliance

# TOWN OF THORNTON

## Zoning Board of Adjustment

---

101 Application (ZCA) and Mr. G. Horton stated, no. Mr. G. Horton reviewed that the survey was done after  
102 the hole for the foundation was dug and concrete poured because there was concern that foundation was  
103 not where it was supposed to be.

104  
105 Mr. G. Horton reviewed that he and Ms. Prescott met with ZCO Magoon after the setback came into  
106 question, and it was recommended by ZCO Magoon that a survey be completed.

107  
108 Mr. Rawson asked how the initial layout of the foundation was determined. Mr. G. Horton explained that  
109 the layout and placement of the foundation was determined from the existing road. He commented that  
110 he and Ms. Prescott interpreted the setback requirement was from the finished travel edge of the road. He  
111 expressed that he wished he had talked to the Town and ZCO Magoon prior to measuring to get the  
112 correct interpretation of the ordinance.

113  
114 Mr. G. Horton stated the foundation was laid out in the fall of 2021, and at that time he had reference  
115 points for the septic. He stated that he used existing tree stumps as reference points throughout the entire  
116 process and never changed them.

117  
118 Mr. Monti clarified that the ZCA was submitted in December 2021, and the BOS approved it on January  
119 26, 2022 and Mr. G. Horton stated that was correct.

120  
121 Mr. Monti asked ZCO Magoon when he was hired and ZCO Magoon stated he began as ZCO in October  
122 or 2021.

123  
124 Mr. Rawson asked for review of how reference points were made by the applicant, and Mr. G. Horton  
125 reviewed that he used tree stumps as his control points for laying out his septic and foundation; he  
126 confirmed that the same stumps were used as control points throughout the project.

127  
128 Mr. G. Horton wanted to make clear that the physical layout of the foundation and septic were consistent  
129 with the plans submitted on the ZCA, and that nothing was changed after the ZCA was approved.

130  
131 Mr. Monti reviewed the timeline of events thus far:

- 132 • **November 2021:** Layout was established on the property based on the applicants' interpretation
- 133 of where the setbacks were in relation to the travel road
- 134 • **December 2021:** Applicants applied for ZCA
- 135 • **January 2022:** ZCA was approved by BOS
- 136 • **May 2022:** Foundation was dug and poured

137  
138 Mr. G. Horton stated the timeline was correct to that point. Mr. Monti asked if Roma Road was a Class  
139 VI Road, and ZCO Magoon confirmed that it is a private road. Mr. Monti asked if the stakes that were  
140 laid out were still in place following the winter of 2022 and Mr. G. Horton stated that they were in place,  
141 and he used the established reference points to ensure they were in the same spot as when they were set in  
142 November.

143  
144 Mr. Monti asked who dug the foundation and Mr. G. Horton stated he and his father, D. Horton dug the  
145 foundation. Mr. Monti asked if they dug the foundation exactly where the pins laid out were, and they  
146 stated yes. Mr. Monti asked if the pins were still in place after the foundation hole was dug and Mr. G.  
147 Horton stated, no; the stumps that were used as reference points were used.

148  
149 Mr. Monti asked Mr. Saulnier if there were pins on the property when he came to pour the cement and he  
150 stated there were four (4) pins on the property, and he poured the cement where the applicant told him to.

# TOWN OF THORNTON

## Zoning Board of Adjustment

---

Mr. Monti asked ZCO Magoon to review his timeline of events. ZCO Magoon reviewed that he received the approved ZCA from the BOS and went out to conduct a site visit on February 17, 2022; his field notes indicate there was deep snow.

Mr. Monti asked ZCO Magoon if he saw stakes on the property when he went out on February 17, 2022 and ZCO Magoon stated he saw stakes sticking out of the snow and was unable to walk the property in the snow. He stated the stakes appeared to be in the correct position according to the ZCA submitted.

ZCO Magoon reviewed that he drove past the site again on April 15, 2022 on his way to another inspection and observed that the lot was being cleaned up and prepped for work. He stated he drove by again on June 23, 2022 and saw that a hole had been dug and a foundation had been poured. ZCO Magoon stopped to see the progress and observed that the foundation appeared too close to the road.

ZCO Magoon stated he could not locate the pins or reference points, and after measuring the distance from the front corner of the foundation to the road, it appeared there was an encroachment. He then called former acting ZCO R. Sabourn to come for a second opinion, as he has a background in survey and layout. Mr. Sabourn was present and confirmed that he observed that the foundation appeared to be encroaching the front setback, and recommended the applicants have a survey done.

ZCO Magoon advised the applicants to stop work until the survey was completed; the septic system installation could begin, as that was a separate process. A cease-and-desist letter was sent to the applicants to ensure that work was stopped, and the applicants complied. ZCO Magoon commented that the applicants have not set anything since the cease-and-desist was issued.

Discussion on the ability to measure accurately and view stakes in high snow continued.

Mr. Sobolewski asked ZCO Magoon if he approved the location of the foundation based on the ZCA submitted prior to it being poured. After review of the ZCA submitted, ZCO Magoon confirmed that the foundation was placed where indicated on the application, however, the interpretation of where the road is on the plan is incorrect. Mr. Monti asked ZCO Magoon if, in his opinion, the foundation is consistent with the ZCA filed and ZCO Magoon commented there is discrepancy of where road is and what is used as the travel road.

Mr. Miller asked for clarification on the ZCA process and ZCO Magoon stated when an application is submitted, he conducts an initial site visit to determine if the proposed project is what is being done. The ZCA, once observed to be consistent, goes to the BOS for approval. Once the BOS approves the ZCA, construction may begin. ZCO Magoon commented he then performs periodic visits to ensure the project is moving forward as presented.

Mr. Monti commented that the ZCO position was voted on by the electorate to help residents ensure that they are in compliance with the zoning ordinance when building in Thornton.

Mr. Sabourn commented that, as former acting ZCO, follow-ups on approved ZCAs were not typically done. This comes down to understanding what the ordinance says and setbacks from the legal recorded road. He stated it appears that the applicants tried to correctly layout the foundation, but the issue is the limits of the road ROW versus the travel way that was interpreted as the road ROW being used to establish required setbacks.

Mr. Monti summarized the different types of applications that were submitted by the applicants and how they would apply to the topic at hand:

# TOWN OF THORNTON

## Zoning Board of Adjustment

- Variance: If, before the foundation was dug, the applicants knew the edge of the structure would encroach on the set back, they would have applied for a variance and based on the lot characteristics, the board would have rendered a decision based on requirements.
- Waiver of Dimensional Requirements Request: Is based on an honest error made by the applicant when installing their foundation.

Mr. Monti reviewed that the criteria for the waiver are different than for a variance, and since the foundation is already in, the equitable waiver is the valid application and will be reviewed for decision and the variance request application is not valid in this case.

The Board reviewed the current setback requirements from the zoning ordinance:

### **ARTICLE VI: DIMENSIONAL REQUIREMENTS**

#### **A. Conventional Development**

##### **2. Location of Structures:**

*Any building or additions shall be setback at least 25 feet from any state, local or private highway/road right-of-way. A setback of 15 feet is required from any other boundary line, except that a 15-foot set-back is required from the edge of any public or private non highway or non-road right-of-way. (Amended 3/11/2008)*

Mr. Rawson asked the applicants what their understanding of the ordinance was when they laid out their structure. Ms. Prescott stated the understanding was that the structure had to be 25 feet from the finished edge of the travel road, as that was the only clear measurement they could get, as Roma Road is private and not standard road width. They did not realize that the road being used for travel was not where the road is recorded to be. Mr. G. Horton commented that if they knew there was a concern with setback distance when they applied for the ZCA, they would have requested a variance and gone through the proper channels before putting the foundation in and apologized for the error.

Mr. Monti asked for additional questions and there were none. Mr. Monti asked that the applicants review their waiver request with answers to the questions being asked on the application.

Mr. French reviewed the questions and provided the following on behalf of the applicants:

1. *Does the request involve a dimensional requirement, not a use restriction?*
  - Yes
2. *Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the Town of Thornton* **OR**

*Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser*

- ZCO Magoon discovered the encroachment on the set-back while on another site inspection for a neighboring property.

#### **AND**

*how the violation was not an outcome of ignorance of the law or bad faith but resulted from a good faith error in measurement or calculation.*

- The applicants were not aware that the road, which was used during the layout of the foundation, was not the legally recorded road.

3. *Explain how the nonconformity does not:*

##### *1.) constitute a nuisance*

- The area is sparsely developed with one (1) lot beyond the applicants' lot. The owner of the abutting lot has submitted a letter of support in the granting of the waiver.

# TOWN OF THORNTON

## Zoning Board of Adjustment

- 251 2.) *diminish the value or*  
252 • The house being built is a small, two (2) bedroom cabin that will not diminish value.  
253 3.) *interfere with future uses of other property in the area.*  
254 • The lot is at least 400 feet from the nearest property.  
255  
256 4. *Explain how the cost of correction far outweighs any public benefit to be gained.*  
257 • The correction would be to dig out the current foundation that would not benefit anyone. It  
258 would create a hardship for the applicants, as well as the abutters.  
259

260 Mr. Monti thanked Mr. French and asked for confirmation that all abutters had been notified of the public  
261 hearing and Ms. Randall stated, yes. Mr. Monti asked A. Swank, abutter present, if he was in favor of the  
262 waiver being granted and Mr. Swank commented that he has no opinion on the matter. He stated his  
263 property extends past this lot to a cul-de-sac that was in place when he purchased the property, and there  
264 will be others using Roma Road.  
265

266 Mr. Monti read a letter of support submitted by R. Savage:

267 *To the members of the Zoning Board,*  
268 *Due to other commitments, I am unable to attend this meeting. Please take this letter as a notice*  
269 *of my support for the location of the dwelling described in the Prescott Horton Variance. I have*  
270 *no reservations about the location of the dwelling. Please let me know if you have any questions.*  
271 *Thanks*  
272 *Ryan Savage*  
273 *Roma Road, Map 2 Lot 6-3*  
274 *Thornton, NH 03285'*  
275

276 Mr. Monti asked for any addition questions and there were none. The public hearing was closed at 7:35  
277 p.m.

278 **MOTION: "To enter into deliberations."**

279 **Motion:** K. Miller

280 **Second:** J. Marshall

281 **Discussion:** None

282 **Vote:** 5- YES, 0- NO, 0- ABSTAIN

283 **Motion Passes.**  
284

285 The ZBA reviewed each question and discussed the answers provided by the applicant. All agreed that  
286 while there is a violation, it was not done in bad faith and there was no malicious intent. They also agreed  
287 that having to remove the foundation would be a hardship to the applicants and would have no benefit to  
288 the neighborhood.  
289

290 Mr. Monti thanked ZCO Magoon for his work in assisting the applicants and providing his information to  
291 the ZBA for them to make their decision.

292 **MOTION: "To grant the Equitable Waiver of Dimensional Requirements for ARTICLE VI:**  
293 **Dimensional Requirements, Section A, 2: Location of Structure [Tax Map 207, Lot 8 (Formerly**  
294 **Map 2, Lot 6-4)]."**

295 **Motion:** K. Miller

296 **Second:** J. Marshall

297 **Discussion:** Mr. Monti asked the following be added to the notice of decision, as HB 1661 asks  
298 that reason for the decision be listed:

- 299 • All Criteria for the waiver were met

## TOWN OF THORNTON

### Zoning Board of Adjustment

---

- 300       • Fire Chief Defosses has no concern with emergency vehicle access and turnaround on Roma  
301       Road if the waiver is granted  
302       • Abutter support has been presented, and a neutral abutter has been acknowledged  
303       **Roll Call Vote:** Joe Monti – yes, Jerry Sobolewski – yes, Alan Rawson – yes, Joan Marshall –  
304       yes, Ken Miller – yes  
305       **Vote: 5 – Yes, 0 – No, 0 – Abstained**  
306       **Motion Passes.**  
307  
308       Mr. Monti stated the proposed meeting on August 11, 2022 is no longer needed, as a decision was  
309       rendered at this meeting.  
310  
311       **ADJOURNMENT:**  
312       **MOTION: “To adjourn at 7:52 p.m.”**  
313       **Motion:** K. Miller  
314       **Second:** J. Marshall  
315       **Vote: 5- YES, 0- NO, 0- ABSTAIN**  
316       **Discussion:** None  
317       **Motion Passes.**  
318  
319       Respectfully submitted,  
320  
321       Kerrin Randall  
322       Zoning Board Assistant