

# TOWN OF THORNTON

## Zoning Board of Adjustment

Approved on: 19 Dec 2022  
ZBA Initials: mm  
Rec'd by Town Clerk on: 12/20/22  
Town Clerk Initials: Feb

### ZONING BOARD OF ADJUSTMENT MEETING MINUTES

September 22, 2022

#### WELCOME:

Vice-Chairman Jerry Sobolewski welcomed the members.

#### CALL TO ORDER BY CHAIR:

Vice-Chairman Jerry Sobolewski called the meeting to order at 6:04 p.m. with the Pledge of Allegiance.

#### ROLL CALL BY CHAIRMAN:

Mr. Sobolewski completed the roll call.

**The following members were present:** Vice-Chairman Jerry Sobolewski, Joan Marshall, Alan Rawson

**The following members were absent:** Chairman Joe Monti, Maureen Patti, Alternate, Ken Miller

**Also Present:** Kerrin Randall, Board Assistant

**Others Present on Zoom (names are as they appeared):** Matthew Kovar, scott, carl wishneusky

#### REVIEW/APPROVAL OF MINUTES:

Upon distribution and review of the meeting minutes of July 28, 2022 the members took the following action:

**MOTION: "To accept and approve the Minutes of the July 28, 2022 meeting as amended."**

**Motion:** J. Marshall

**Second:** A. Rawson

**Discussion:** None

**Vote:** 3 - YES, 0 - NO, 0 - ABSTAIN

**Motion passes.**

#### OLD BUSINESS:

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

Mr. Sobolewski suggested that the review be continued until a full Board is present to discuss.

**MOTION: "To continue the review of the Rules of Procedures to the October 27, 2022 meeting."**

**Motion:** A. Rawson

**Second:** J. Marshall

**Discussion:** None

**Vote:** 3 - YES, 0 - NO, 0 - ABSTAIN

**Motion passes.**

#### COMMUNICATIONS AND MISCELLANEOUS:

##### 2022 Land Use Law Virtual Conference

Mr. Sobolewski asked that anyone who wished to attend the conference email Ms. Randall, as enrollment and fees will be paid by the Town out of the Zoning Board budget. Mr. Sobolewski asked Ms. Randall to enroll him in the conference.

##### New Land Use Law Handbooks

Ms. Randall shared that the new land use law handbooks are available for order, and she will confer with Mr. Monti if new copies are needed for the ZBA.

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51 **MOTION: "To recess at 6:15 p.m."**

52 **Motion:** A. Rawson

53 **Second:** J. Marshall

54 **Discussion:** None

55 **Vote:** 3 - YES, 0 - NO, 0 - ABSTAIN

56 **Motion passes.**

57

58 Mr. Sobolewski called the meeting back to order at 6:30 p.m.

59

60 **HEARINGS:**

61 **6:30 p.m. APPLICATION/PUBLIC HEARING:** Charles and Kathryn Moore [Tax Map 234,  
62 Map 61] for an APPEAL OF ADMINISTRATIVE DECISION of the THORNTON BOARD OF  
63 SELECTMEN'S interpretation of "NH RSA 674:41, Erection of Buildings on Streets" resulting  
64 in the non-approval of a Zoning Compliance Application.

65

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

67

68 Mr. Sobolewski reviewed the application and informed the applicant that there are only three (3) members  
69 present, which is a quorum, and any decision rendered must be unanimous. Mr. Sobolewski stated that  
70 the applicant has the right to continue their application to the next meeting in October when there will be  
71 more Board members present.

72

73 Ms. Moore, applicant, stated she would like the hearing to occur at this time. Mr. Sobolewski reviewed  
74 the hearing process and reiterated that any decision rendered by the Board must be unanimous at this  
75 time. Ms. Moore asked if RSA 674:41 could be explained and what 'no road frontage' entails.

76

77 Mr. Sobolewski commented, from his understanding, is the RSA was done to help towns who had  
78 scattered lots all over that were causing issues for the towns. The State was asked for support to remedy  
79 the concern, and the RSA was made to help eliminate scattered lots. Mr. Sobolewski commented that the  
80 problem is in the interpretation of the RSA.

81

82 Mr. Sobolewski stated he has a problem with the non-approval of the ZCA submitted for a shed, as the  
83 property is in an approved subdivision from the Planning Board. He commented he is unclear as to why  
84 the application to erect a shed was refused.

85

86 Ms. Moore stated there is a town sign for 'Apple Hill Lane' at the end of the road, and when they  
87 purchased the property, they were aware of a ROW through the National Forest that they get a permit  
88 annually to cross to access their land.

89

90 Mr. Sobolewski asked if other properties need a permit to cross the National Forest, and Gary Schofield,  
91 abutter, stated he has a permit to cross, and his property is directly across from the Moore's. He  
92 commented that he has an address and a greenhouse that he received a ZCA for two (2) or so years ago.

93

94 Mr. Rawson asked Mr. Schofield if he accesses his property off NH Route 49, and Mr. Schofield stated  
95 no, and when he applied for loans to build on his property the NH Housing Authority deemed his access  
96 not a private road and he received a grant to build. Ms. Marshall asked who maintains the road for access  
97 and Mr. Schofield stated the property owners maintain it, not the Town.

98

99 Ms. Moore stated she and her husband want to put an 8-foot by 6-foot shed on the property and their  
100 builder suggested they check with the Town to see if a permit was needed. They applied for the permit,

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and it was not approved.

Mr. Sobolewski stated the original subdivision that created the lot in question was approved by the Planning Board and on that plan, it shows a 50-foot ROW. He commented his interpretation is that if you have an approved subdivision from the town with the access to the parcel clearly marked, you're good to go. He reviewed there are structures on abutting properties that were approved by the town, and this parcel should be treated the same way.

Ms. Marshall reviewed the letter from the BOS to the applicant with items required before the ZCA was approved and asked if the applicant had been to the Planning Board as stated. Mr. Sobolewski clarified that there was an error in the letter sent, and the Zoning Board should have been listed, not Planning. He continued that the applicant was told verbally of this error, hence why they are before the ZBA.

The Board reviewed the original subdivision approved by the Thornton Planning Board on November 15, 1979. They reviewed that there are existing structures on other properties in the subdivision, some established prior to ZCA's being required, as well as others, like Mr. Schofield, who have been issued permits without issue.

Mr. Sobolewski asked if there were any in attendance who wished to speak in favor of granting the appeal.

Mr. Schofield stated he is in favor of granting the appeal, as he has property on the same road with an approved structure, and he does not see the concern with the Moore's building a shed.

Matt Kovar, representative for abutter Meryll Levins, commented that he has no objection to the shed being erected, and asked if Apple Hill Lane is a town road or will it become one through any approval given for structures to be put up.

Mr. Sobolewski stated it will still be a private road; it's a ROW that the Town recognizes as such. He stated the applicants must sign an Agreement and Release Form, and for all intents and purposes, the ROW is a private road.

Kathleen Moore, resident, stated she has lived in Thornton for 25 years on a private road and is stunned to see the process become so muddled over a small shed. She commented that Thornton is full of small, private roads, and there are certain specs town roads need to be built to, and you cannot one day decide that you want a ROW to become a town road.

Mr. Sobolewski asked for public comment in opposition to the appeal being granted and as there was none, the public hearing was closed at 6:59 p.m.

**MOTION: "To enter into deliberation at 7:00 p.m."**

**Motion:** A. Rawson

**Second:** J. Marshall

**Discussion:** None

**Vote:** 3 - YES, 0 - NO, 0 - ABSTAIN

**Motion passes.**

Mr. Sobolewski commented that at the time of the subdivision, lots weren't being developed at the rate they are now. He stated Ms. Kathleen Moore is correct in that a road must meet certain specs to be considered a town road and be approved at Town Meeting and by the BOS.

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He commented that in this situation, he is not quite understanding why the ZCA was denied as there are four (4) houses on Apple Hill Lane that were not denied.

Mr. Rawson commented that it may come down to the interpretation, but he thinks the BOS had a different interpretation than Mr. Sobolewski. He stated the RSA referred to 'a street' and asked where there was a street on the subdivision plan, as it shows a ROW. Mr. Sobolewski stated he interprets the ROW on the approved plan as a road and there is no difference between a private road and ROW.

Mr. Rawson stated maybe it was overlooked in the past, but there is no road on the subdivision and the RSA specifically refers to 'a street' not ROW.

Mr. Sobolewski stated in 1979 when this plan was made, it was accepted by the Planning Board at that time, and they could have called the access whatever they wanted. The RSA was developed long after the approval of the subdivision, and his argument is that if the access is on an approved subdivision plan, then it was considered an access road.

Mr. Rawson stated he agrees that the subdivision was approved as presented on the plat, but he doesn't know if it constitutes as an approved road. Mr. Sobolewski commented that others have been allowed to build on that road and have shown proof of it. Ms. Rawson commented that Selectman Sabourn is pretty sharp about these types of things, and he could have made a mistake, but it would be surprising if he did. Mr. Rawson stated he doesn't see the shed having an impact on its master plan, abutters, or any other development in the future and he doesn't see why the appeal should not move forward.

Mr. Sobolewski commented that the notation from ZCO Magoon making mention that there would be no electricity in the shed was not within his authority to decide; there is nothing in the Zoning Ordinance that says you can't put electricity in a shed.

Mr. Sobolewski asked if there were any more comments from the Board and there were none.

**MOTION: "To grant the APPEAL OF ADMINISTRATIVE DECISION of the THORNTON BOARD OF SELECTMEN'S interpretation of "NH RSA 674:41, Erection of Buildings on Streets and authorize the issuance of a Zoning Compliance Permit."**

**Motion:** A. Rawson

**Second:** J. Marshall

**Discussion:** The Zoning Board finds that the following conditions set forth by the Board of Selectmen have been satisfied as follows:

- 1. The Zoning Board shall review, comment, and vote to authorize the issuance of permits for the erection of buildings on said private road or portion thereof; and**

*The Zoning Board has reviewed, commented, and voted to authorize the issuance of a Zoning Compliance permit for the erection of buildings on said private road or portion thereof at a public hearing held on September 22, 2022.*

- 2. The municipality neither assumes responsibility for maintenance of said private roads nor liability for any damages resulting from the use thereof; and**

*The Zoning Board finds that, pursuant to RSA 674:41, II, the issuance of the permit or erection of the building will not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and the erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality as the parcel is located on a subdivision that was approved by the Thornton Planning Board on*

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November 15, 1979 recorded at the Grafton County Registry of Deeds as Plan #600.

3. Prior to the issuance of a permit, the applicant shall produce evidence that notice of the limits of municipal responsibility and liability has been recorded in the county registry of deeds for the lot for which the building permit is sought.

*An Agreement and Release Form has been completed, notarized, and returned to the Town for recording at the Grafton County Registry of Deed with applicable recording fees.*

**Roll Call Vote:** Jerry Sobolewski – yes, Alan Rawson – yes, Joan Marshall – yes

**Vote:** 3 – Yes, 0 – No, 0 – Abstained

**Motion Passes.**

The Board thanked the applicants for attending.

### **ADJOURNMENT:**

**MOTION:** “To adjourn at 7:18 p.m.”

**Motion:** A. Rawson

**Second:** J. Marshall

**Discussion:** None

**Vote:** 3 - YES, 0 - NO, 0 - ABSTAIN

**Motion Passes.**

Respectfully submitted,

Kerrin Randall

Zoning Board Assistant