

TOWN OF THORNTON

Zoning Board of Adjustment

Approved on: 2.23.23
ZBA Initials: JMM
Rec'd by Town Clerk on: 4/25/23
Town Clerk Initials: ACN

ZONING BOARD OF ADJUSTMENT MEETING MINUTES February 23, 2023

WELCOME:

Chairman Joe Monti welcomed the members.

CALL TO ORDER BY CHAIR:

Mr. Monti called the meeting to order at 6:07 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, Alan Rawson, Joan Marshall, Maureen Patti, Kerrin Randall, Board Assistant

The following members were absent: None

Others Present: Shawn Magoon, Chad Stocker, Roger Robidoux, John Maher

Others Present on Zoom (names are as they appeared): None

REVIEW/APPROVAL OF MINUTES:

Upon distribution and review of the meeting minutes of December 19, 2022 the members took the following action:

MOTION: "To accept and approve the Minutes of the December 19, 2022 meeting as amended."

Motion: M. Patti

Second: J. Sobolewski

Discussion: Ms. Patti stated that Mr. Sobolewski should be listed as seconding the motion at line 159.

Vote: 4- YES, 0 - NO, 1 - ABSTAIN (J. Marshall)

Motion passes.

Upon distribution and review of the meeting minutes of February 9, 2023 the members took the following action:

MOTION: "To accept and approve the Minutes of the February 9, 2023 meeting as amended."

Motion: A. Rawson

Second: J. Marshall

Discussion: None

Vote: 4- YES, 0 - NO, 1 - ABSTAIN (M. Patti)

Motion passes.

PRELIMINARY BUSINESS:

1. March 23, 2023 Meeting Reminders

a. Election of Chair and Vice Chair

b. Review of Rules of Procedure

Mr. Monti reminded the Board that the March meeting, as stated in the Rules of Procedure (ROP), will take place as scheduled and elections for the Chair and Vice-Chair will occur, as well as the first review of the ROP.

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COMMUNICATIONS AND MISCELLANEOUS:

1. NH Planning and Zoning Spring Conference – Save the Date

Mr. Monti reviewed that “Save the Date” notice for the NH Planning and Zoning Spring meeting has been sent to Board members and registration information will be sent out when available. He asked that any member wishing to participate in the virtual conference email Ms. Randall and she will register them.

2. Swearing in of Alternates

Mr. Monti reviewed that Mr. Roger Robidoux and Mr. John Maher have both agreed to serve as alternates to the ZBA and letters of appointment have been signed by the BOS. Mr. Monti welcomed Mr. Robidoux and Mr. Maher and swore them in as alternates; each will serve a three (3) year term.

Mr. Robidoux and Mr. Maher thanked the Board and took their seats as alternates.

HEARINGS:

1. 6:15 p.m. APPLICATION/PUBLIC HEARING: Chad Stocker as agent for LCJ Holdings, LLC [Tax Map 240, Lot 109] for an “EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS REQUEST; ARTICLE VI: Dimensional Requirements.” *The structure extends into the setbacks.*

Mr. Monti reviewed the public notice and opened the public hearing at 6:15 p.m. He recognized Mr. Stocker, applicant, and ZCO Magoon as being present.

Mr. Stocker reviewed he is seeking an Equitable Waiver because the pins that were set in the correct place to mark the foundation of the structure moved during inclement weather and the foundation was constructed about a foot from where it was supposed to be. He stated the foundation itself is still within the setback area, but the approved overhangs will extend into the setbacks; he is asking for the waiver in order to keep the overhangs as approved.

Mr. Monti asked Mr. Stocker if all four (4) pins moved after they were set in the approved area and Mr. Stocker stated no, two (2) moved. He reviewed the layout of the building on the parcel, and stated the building is at an angle to the road; when the pins moved, the other pins were reset to match, causing the whole building to be constructed nearly a foot from the originally approved location.

Mr. Monti asked if the foundation had already been poured and Mr. Stocker stated the foundation has been poured, the walls are up, and the overhangs have been constructed. He stated if the waiver is not granted the overhangs can be removed, but it would not look good.

Mr. Monti asked ZCO Magoon if a cease-and-desist notice was issued to the applicant when it was discovered that the foundation was in the incorrect place and ZCO Magoon stated no, as the only concern was the overhang extending into the setback.

Mr. Monti clarified that violations are not given to pieces of a building, but the building as a whole. He stated there was a case within the last year where construction had to be stopped because it was discovered that there was a setback violation. Mr. Monti advised that if something like this occurs again, bring it up first.

Mr. Monti clarified that only the overhang extends into the setback and Mr. Stocker stated yes.

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Ms. Patti asked for clarification on the height of the overhang and Mr. Stocker stated the overhang is 12-13 feet. Ms. Patti stated the overhang, as depicted on the diagram submitted, is shown to 26 feet in a 25-foot area and Mr. Stocker stated that is correct; the overhang extends over the 25-foot setback by approximately one (1) foot.

Mr. Stocker stated surveyors are used to ensure the setbacks are met and pins placed properly because the area in which they are working is tight.

Mr. Monti asked for any additional questions from the Board and public; there were none. Mr. Monti reviewed the criteria for granting the waiver with the applicant's submitted answers:

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

- The encroachment on the set-back was discovered after a survey crew went to verify the location of the foundation.

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.

- No one was aware that the originally set pins had moved due to weather until the engineers remeasured to verify the foundation location.

3. *Explain how the nonconformity does not:*

1.) *constitute a nuisance*

- The overhang will be less than a foot closer to a private road and is only on a small corner of the building.

2.) *diminish the value or*

- N/A

3.) *interfere with future uses of other property in the area.*

- N/A

4. *Explain how the cost of correction far outweighs any public benefit to be gained.*

- The correction would cost \$50,000.00-\$60,000.00 to dig out the current foundation and move the structure back a foot.

Mr. Sobolewski asked ZCO Magoon how he measures distance for new structures to ensure they meet all zoning requirements and ZCO Magoon stated he goes to the site and does a rough measurement from the ZCA submitted. If the dimensions appear tight, he requires an 'as built' plan. Mr. Sobolewski asked ZCO Magoon if he measured based on what the engineers told him and ZCO Magoon stated yes.

ZCO Magoon stated he received the 'as built' rendering and saw that the overhang was going to go into the setback. He stated he gave the applicant permission to continue the build without the overhang; whether his decision was right, wrong, or indifferent, it told them to continue the build.

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Ms. Patti asked what would need to occur for the Board to determine that the overhang needs to be removed, as it has already been built. Mr. Monti stated if all criteria for the waiver request are met, then the waiver is granted, and the overhang does not need to be removed. He stated that if one of the criteria is not met, then a motion will need to be made for a remedy to the encroachment.

Mr. Monti asked the Board if they felt the criteria had been met and the Board agreed that the criteria had been met.

MOTION: "To grant the Equitable Waiver of Dimensional Requirements for ARTICLE VI: Dimensional Requirements, Section A, 2: Location of Structure [Tax Map 240, Lot 109]] for the overhang of the 'Country Store' as the ZBA finds that the request has met all criteria."

Motion: A. Rawson

Second: J. Sobolewski

Discussion: None

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

Motion passes.

OTHER BUSINESS:

Mr. Rawson asked if the definition of Class VI roads was going to be discussed and Mr. Monti stated the topic can be added to the March meeting agenda for discussion.

Mr. Stocker asked about building heights, and asked if the ZBA would consider changing the height limitation, as there are buildings at Owl's Nest that have a very flat slope to the roof. He stated he understands that the height limit was put in place for fire safety, and he is not proposing that people will be in the buildings above the height limit, but if the roof lines could be higher, it would look better.

Mr. Monti stated a height variance could be requested from the ZBA, as other applicants have done, but cautioned that if a request for a height variance is submitted after a structure has been constructed it is unlikely that it will be allowed to remain as constructed. He stated that before any construction begins, if it is known that a variance or waiver will be needed, the applicant has to receive approval beforehand.

Mr. Stocker thanked the Board and asked how the Zoning Ordinance can be amended and Mr. Monti stated the Planning Board handles all amendments to the Zoning Ordinance and Mr. Stocker should speak with the Planning Board for possible amendments.

ADJOURNMENT:

MOTION: "To adjourn at 6:47 p.m."

Motion: M. Patti

Second: J. Marshall

Discussion: None

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

Motion Passes.

Respectfully submitted,

Kerrin Randall
Zoning Board Assistant