

TOWN OF TEMPLE, NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
MINUTES OF PUBLIC HEARING
April 2, 2015

Board members present: Honey Hastings, Tim Winship, Jenny Houston, Dave Martz, and John Pierce

Attorneys present: Silas Little, Esq. representing the Mazza family; William Drescher, Esq. representing the Temple Board of Selectmen (BOS); Biron Bedard, Esq. representing the Temple Zoning Board of Adjustment (ZBA).

Meeting called to order by Chairman Pierce at 7:00 p.m.

Pierce welcomed everyone and announced this was a continuation of a Public Hearing. The original hearing had been held on Thursday, January 29, 2015 and reconvened on Thursday, March 5, 2015.

Pierce stated the board would hear two Applications for Equitable Waiver of Dimensional Requirements and two Applications for a Variance filed by Herta S. Mazza.

One application for Equitable Waiver and an Application for a Variance is for the continued use of two manufactured housing units on lot 8-40 at 143-147 Thomas Maynard Drive. The other application for Equitable Waiver and the other Application for a Variance is for the continued use of a manufactured housing unit on lot 8-53 at 3 Walter Mazza Drive.

Pierce asked if any members needed to disqualify themselves. There was no response.

Atty. Little asked H. Hastings to disqualify herself.

Hastings was asked by Pierce if she could be impartial or held any pecuniary interest.

Atty. Little stated judicial conduct standards apply.

Pierce read a list of questions directed to Hastings, who answered 'no' to each.

Hastings then read a prepared statement indicating she was confident she could base her vote on the facts of the case and the law.

Pierce asked the other board members to vote on whether they feel Hastings could serve in this capacity for the hearing. The vote was 4 'yes', with Hastings abstaining.

Pierce stated that Winship would serve as an alternate voting member.

Pierce noted a new public notice had been published in the Monadnock Ledger, and 22 abutter notices mailed out in a timely manner with 21 receipts returned.

Submission #1 – Atty. Little handed out to board members several copies of a 90-page tabbed document entitled "Application of Herta S. Mazza". He explained the Mazza family is seeking relief to allow continued placement of two existing mobile homes. 8-53 has one mobile unit (with one having been removed) plus two houses on the lot. The family would like the ability to continue to have the two houses (which pre-date the adoption of zoning) and the mobile unit on the property. Atty. Little provided a history of this matter, and referred to the application Index so board members could access Tabs and view certain documents as he spoke. He said the 1986, 1988-2003 taxes had been abstracted from town reports and inventory forms.

Martz: 1986 – 31 and 54 acres talking about? 'Yes'.

Atty. Little: Background is being provided because Walter Mazza, Sr. is no longer available. The 11/17/87 Selectmen's minutes show Walt Mazza received two permits for mobile homes on 8-40, a Building Permit and a Certificate of Occupancy. In 2005 there was a Building Permit. In 1987 the 40-A lot had a Building Permit and a C.O. Both mobile homes on that lot were replaced in 2002.

Martz: asked about two units, as permit seems to show one; the left-most unit and right-most unit distance from boundary lines (?); he is looking at front of unit; permit only seems to say one unit.

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Atty. Little: family says both were replaced.

Martz: record shows fee paid for one.

Atty. Little: second Building Permit issued in 2004 for second unit, for an addition.

Houston: regarding Building Permit #0323 – her book does not seem to have one – has two copies of #0350 – then discovered a copy of #0323 as well.

Atty. Little: added a deck or porch, added a room with # 0323.

Atty. Little: review of Inventories, 8-40 taxes, 1988 tax card and assessment record show two mobile homes.

Houston: for this lot? - shown at upper left.

Martz: asked regarding acreage showing 3 acres.

Atty. Little: Current Use records – 3 acres were held out of C.U., according to family.

Martz: asked about notation of # units 1 acre and 9 acres?

Atty. Little: would need to ask the assessor; value assigned for number of units, assessment value.

Atty. Little: Abatement application mentions mobile homes on 8-53 and 8-40.

Houston: two on 8-40?

Atty. Little: yes, but abatement application for one on 8-40, one on 8-53.

Houston: first time seeing third mobile home on other lot.

Atty. Little: clerical error, says 8-52 on form, not owned by Mazza.

Martz: top right says for 8-40.

Houston: indicates “please review” for Mazza Brothers.

Heidy (Mazza) Jordan: Yes to Mazza Brothers, different parcel.

Atty. Little: next card – 1995 – says two manufactured housing units.

Houston: now acreage says 20 acres?

Atty. Little: shows BOS knows two mobile homes on lot.

Martz: 20 acres?

Atty. Little: should be 2.0 acres – looks like a 20; says 30 acres.

Martz: inconsistent unless 1 acre each.

Atty. Little: different matter. In 1995 shows two manufactured housing units on un-subdivided lot (since 1987).

Pierce: need one acre per house?

Atty. Little: Current Use Board (CUB) does not mandate 1 acre requirement.

Martz: why showing Bldg=0?

H. Jordan & Atty. Little: mobile units assessed separately.

Atty. Little: 1989 reduced assessment to \$7,500 on 8-40; other unit value at \$15,150.

Atty. Little: 1989 assessment review for Mazza Brothers, Inc. says three units instead of two, reduced value.

Atty. Little: In terms of Equitable Waiver on 8-40 – has existed for more than ten years; the BOS and assessor were aware; in 2002 allowed the units to be replaced; in 2004 and 2005 Building Permits for trailers. Requirement for Equitable Waiver meets relief that statute contemplates.

Also, grounds to grant a Variance – minimum lot size three acres; density consistent with ordinance; spirit of ordinance in public interest complied with; owners went to the town, sought forms for units, paid taxes. Should not change because of personalities – acknowledge what prior boards have done. Also address substantial justice, diminution of

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value – town has never seen this with regard to this property; new abutters as abutting property subdivided (Josiah Lane).

Houston: map shows three mobile homes.

Atty. Little: one is owned by Chet Mazza.

Pierce: map shows line straddling?

Atty. Little: taxed as a separate lot. Listed ownership - Mazza to Nutting to Mazza to son. Believes was casual survey and lot line until Meridian survey done.

Martz: Chet's trailer taxed separately?

Atty. Little: Yes.

Martz: issue between two property owners, setback not at thirty-five feet.

Atty. Little: subdivision plan does not show boundary between Walter and Chet Mazza parcels; maybe ten feet over line. Family has hired surveyor and willing to do boundary line adjustment to comply.

Atty. Little: Unnecessary hardship – in public interest that variance is granted; if not, would say what prior boards have done does not count – a dangerous philosophy – government must be accountable to facts.

Atty. Little: Lot 8-53 has one mobile unit, ref. Building Permit.

Hastings: Which mobile unit does not exist?

Atty. Little: the one shown at top of page – furthest east. BOS issued a Building Permit in 1989.

Atty. Little: BOS minutes – note that Childs asked about trailers on W. Mazza's property. Was a house there where P&H developed (Josiah Lane). Look at Building Permit dated 1/31/1989 – same date as BOS minutes. 8-53 there was a second application for that date – both were approved. Used 8-53-A to show two separate units? In 1989 BOS issued two Building Permit; approved for Occupancy 3/4/1989.

Houston: Difference between 53 and 53-A?

Atty. Little: BOS manner to differentiate between two manufactured housing units on that lot; reviewed signatures for C.O.'s, then a C.O. for 8-53 for replacement of single family mobile home in 2003.

Atty. Little: 8-53 two Building Permits for mobiles homes on un-subdivided parcel with two existing stick built structures. Today has one mobile home and two stick-built houses.

Martz: issued by BOS?

Atty. Little: Yes, originally in 1989, one replaced, one gone.

Pierce: Approved, established – unknown motives – perhaps unfair for us to reverse, as BOS signed off.

Atty. Little: talking now 2004-05. BOS could have addressed then but did not.

Martz: one Building Permit for one unit – reads trailer.

Atty. Little: two Building Permits after adding on, two different structures.

Martz: hard to tell that by documents presented.

Atty. Little: sometimes town records are not the best – other records important.

Martz: town reports do not show Map/Lot numbers.

Atty. Little: they list the owner's names and acreage. Section 4 – look at 2003 assessment in town report, two mobile home units on three acres. On 8-53, buildings lumped into value.

Pierce: 8-53 is cluster of stick-built and trailers valued at \$299K, 8-40 has two trailers. Tax card breaks out what is on 8-53.

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Atty. Little: look at #T-2 tax card, trailer (1988), then #T-1 tax card trailer (1988).

Houston: description of #T-1?

Atty. Little: read notes from assessor on #T-2, shows town had two units on tax card.

Pierce: asked about JRM initials.

Martz and Atty. Little: initials of assessor/inspector.

Atty. Little: handwritten note for two separate trailers on #H-2 shows improvements.

Houston: one trailer on 8-53 - when removed?

H. Jordan: removed last summer.

Atty. Little: more recent cards show assessing history.

Atty. Little: Seeking to be granted by ZBA either by an Equitable Waiver or Variance to leave structures there.

Submission #2 – Atty. Little provided several copies of a Summary and Decision Statement packet. He indicated a reasonable solution would be to allow the family to retain and repair the existing mobile housing units, but cannot replace them.

Martz: Do all units meet setback requirements?

Atty. Little: Yes – plus meets lot density.

Atty. Little: explained the BOS minutes for April and September of 2003 to not relate to the Mazza's. They refer to Doc Green and his place on Converse Road, which Bruce Kantner bought the property and built some rental units. Brian Kullgren asked the BOS to address possible violations of the zoning ordinance.

Atty. Little: read from the 2003 minutes indicating that board chose not to address the issue – and said he would like this board to do the same in this instance.

Winship: Regarding 8-40 – grant an Equitable Waiver and Variance?

Atty. Little: one or the other, on both of them (lot numbers).

Pierce – multiple choice on multiple lots.

Atty. Little: thanked the board for their indulgence.

Pierce asked if anyone wished to speak for the application?

There was no response

Pierce asked if anyone wished to speak against?

Submission #3 – Atty. Drescher handed out copies of a document titled “The BOS’s Submission in Opposition to Relief Requested”.

Atty. Drescher: It will take this board some time to digest all this information. The BOS would appreciate recessing after the public portion of the meeting.

Atty. Drescher: The town does not dispute the records presented – get approval, then assessor assesses what is there – could issue a conditional variance – to Mazza's only?

Atty. Little: “Not what I said”.

Pierce: Atty. Drescher should continue.

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Atty. Drescher: Allow as long as the Mazza's own it?

Atty. Little: take issue -

Atty. Drescher: Not legal. Will ID and talk about some exhibits, highlight important points. Explained:

Exhibit 1 – two separate pages for entire property

Exhibit 2 – color five lots owned by Mazza's

T #'s are for trailers. One trailer (T-1) is now gone on 8-53

T-3 and T-4 are on 8-40

Atty. Drescher: Do not dispute activity, as units are there and taxed. Cannot locate any permit for second unit T-3 on 8-40.

Houston: first unit was T-4?

Atty. Drescher: on assembled records and permits and C.O.'s – can ID by different addresses. T-3 is 143 Thomas Maynard Drive. T-4 is 147 Thomas Maynard Drive.

Atty. Drescher: Exhibit 4 – two pages – 2002 permit #0203

Atty. Drescher: Reference Tab 4: request to replace old mobile home, was issued a C.O. for 147 Thomas Maynard Drive. 8-40 had no other use on it. Zoning allowed single trailer on single lot.

Atty. Drescher: Reference Tab 5: other permit for 147 Thomas Maynard Drive; looks like 143 was written over (T-4).

Pierce: Exhibit 4 dimensions show as 14x66'; 14x21' addition; distance to boundary line matches, additions added on.

Martz: two put on T-4?

Atty. Drescher: probably but not sure – question of whether inspections were done, and doubtful.

Atty. Drescher: previous records are lax, not clear what lot, reasonable to assume on different lots there were discrepancies before the survey and was unclear who owned what. Mazza's did subdivide to establish lots of record for family members.

Martz: #0323 does not include C.O. while #0208 does; coordination between assessors and office?

Atty. Drescher: in a perfect world... There are gaps in (town) records, we are working with what is there.

Pierce: Saying BOS knew it was there?

Atty. Drescher: never approved the existence of T-3.

Houston: Exhibit 4 – replace mobile home with another? Exhibit 5 – modifying, not second unit at same address.

Atty. Drescher: not disputing fact that second unit was out there; assessor reviewed. Perhaps done on a handshake. T-3 – no paperwork, but unit is there. We are asking Mazza's – should be removed –or- subdivide into a lot for T-3 and a lot for T-4. This came to light because of a survey. T-5 needs a lot line change. The BOS are trying to do what past boards should have done and didn't – bring into compliance. Two permits were issued for mobile homes on 8-53; when issued 8-53 had a house, garage and junkyard, and multi-family structure (house), all grandfathered as they were pre-zoning ordinance. T-1 and T-2 came in after zoning.

Atty. Drescher: Exhibit 8 – in 1989 should not have been issued a permit to build, as a non-conforming use.

Exhibit 9 – in 1989 for 8-53-A- the town did not put in "8-53-A", was written by person submitting form.

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Atty. Drescher: Mazza's had enough properties, the BOS did not check out and issued a permit that should not have been allowed. Atty. Little did not say "illegal", said should overlook.

Pierce: can take into consideration the history.

Atty. Drescher: The BOS should take action against the Mazza's; a matter of estoppel, and the board is not empowered to do this.

Pierce: This board does not have authority to grant a Waiver or Variance due to estoppel?

Atty. Drescher: do not meet standards.

Pierce: asked Atty. Drescher to elaborate on estoppel.

Atty. Drescher: spelled out in papers. ZBA can only do what is allowed to by statute - Equitable Waiver provided conditions are met with physical layout or dimensional requirements – requires a minimum lot size, density of housing. References to case law in packet – one case is Harrington vs. Town of Warner - back then there was an 'area' variance and a 'use' variance with different standards. Supreme Court said not a dimensional requirement, dealt with preservation of character of district=density. Applicant was held to 'use' standard. Other case law referenced was a 'use' restriction. ZBA does not have a legal right to extend this.

Pierce: There is plenty of land and low density.

Atty. Drescher: Two uses on one lot.

Pierce: density is not high but not compliant – violation ?

Atty. Drescher: asking for waiver, but is a violation.

Pierce: or a variance?

Atty. Drescher: getting to that...

Martz: re: BOS minutes on Kantner property and statement about taxing for many years – should remain that way – apply to this case?

Atty. Drescher: Have to meet standards. What the BOS did before they should not have done. Does not justify a variance – estoppel.

Martz: The BOS did not enforce.

Atty. Drescher: cannot choose not to enforce. Notion of estoppel - meet standards not before this board – ZBA cannot get into. Town does not concede that point. Variance starts with consideration of hardship, special conditions about property, and does not feel this is true. Property not special or unique – "was allowed then" argument is crazy to bring up now.

Atty. Drescher: Equitable Waiver – shows the cost to remedy is out of proportion – town contends this is not a hardship – is not a 3-acre lot, but not in this case.

Martz: a substandard lot would be a better case.

Atty. Drescher: back to estoppels – court doctrine when towns attempt to enforce rules – story about issue with a Sunoco gas station/convenience store – four parts to estoppels – reasonable – reliance on misrepresentation.

Atty. Drescher: history of granting permits.

Pierce: feature of Equitable Waiver.

Atty. Drescher: Yes, but we are not disputing.

Houston: asked for other parts of estoppel.

Atty. Drescher: lose money, and one other

Atty. Drescher: court case – estoppel does not apply here – paperwork supports estoppel facts.

Pierce: so Atty. Little argued estoppel.

Atty. Drescher: Yes, but missing facts of estoppel standards or conditions; regarding hardship standard – is there a fair and substantial relationship – we contend there is.

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Pierce: density not a problem now, but if allowed (with Variance or Equitable Waiver) could subdivide rest of land into 3-acre lots and then have high density.

Atty. Drescher: The Planning Board would say carve off other lots - proposed use is reasonable, looks okay on 3+ acres but if legitimized then situation violates ordinance.

Atty. Drescher: explained paperwork with three points and case law is cited – talked about minimum lot size as protection for town – regarding meets spirit of ordinance with septic, etc. – address zoning regulations.

Martz: if ZBA approves Variance, if subdivide trailers – would meet spirit of ordinance.

Atty. Drescher: have not shown that argument here.

Atty. Drescher: BOS could appeal that, but not proved here. There is a simple solution here, with some cost. Regarding property values – a subdivision went in next door and lots sold. Those trailer units there for years and cannot determine if lots wouldn't sell. All standards...their burden to meet/prove. Lots of information cannot fit into standards – the ZBA must make findings.

Martz: 8-40 one valid trailer on lot?

Atty. Drescher: 8-40 has one okay trailer.

Martz: meant to say 8-53.

Atty. Drescher: Town sent out Notice of Compliance on 8-53, one trailer with Building Permit.

Hastings: regarding paperwork – supporting argument.

Atty. Drescher: BOS would be grateful to recess to another date to allow reading of paperwork before deliberation.

Pierce: Would applicant like to rebut?

Audience members responded:

Lisa Beaudoin: opposing as an abutter, does not support this – has been warned by real estate friends that the lane is unattractive – on Josiah Lane the last lot just sold and is still vacant – has been reticent to speak – fearful of speaking up about occupants – trees being poached on her land – motorized vehicles on her land/wetlands – alleged criminal activity that she has contact police chief McTague about – opposes for several reasons.

Pierce: re: property values/standards.

Pierce: anybody else?

Deb Harling: bottom line, this is a use under Equitable Waiver, and Equitable Waiver is for dimensions. Hardship argument is estoppel without using that term. Land can be easily subdivided.

Brian Chisolm: Lives on Josiah Lane – has no personal issues with people, but there is a visual aspect – homes are not well kept or maintained, are unattractive – concerned about resale value of his home.

Pierce and Atty. Little – no abatement requests received.

Gail Cromwell: Looking at town records, were sloppy and contributed to belief of separate lots. Family believed separate lots existed – created separate lot for one daughter and everything in perfect order- why not done for other things? No records for second trailer – perhaps application for porch – shows different dimensions.

Pierce: Referenced Martin (Holly and Mark) subdivision.

Rebuttal by Atty. Little: 1. Ms. Beaudoin's property is under easement and nothing can be done with it.
2. Martin's did permitting for their lot.
3. ref. permits for heating units to operate, ref. other permits to build, ie.
10x52' on 8-40 (1987) and 12x52 on 8-40-A (1987)

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4. BOS minutes November 17, 1987 says two building permits for two trailers

Atty. Little: responding to Atty. Drescher – BOS shows two permits for two trailers.

Atty. Little: Will this board recognize this property is unique with regard to longtime dealings with the Mazza family? Refer to small population. Talked to Pete Caswell and Sherry Fiske (former Selectmen) – they knew lots were not subdivided. This was known to BOS at that time. These people are entitled to relief via having an Equitable Waiver or Variance granted – either is appropriate. Show respect.

Martz: an obvious solution would be subdivision.

Atty. Little: would have to move one trailer to accomplish that.

Pierce: how is T-5 compliant?

Atty. Little: sits on Chet's lot.

Pierce: 3 acres?

Atty. Little: Chet is grandfathered.

Pierce: feels could draw that subdivision line and get acreage but not frontage.

Atty. Little: nothing is impossible.

Pierce: frontage would be the problem

Heidy Jordan: My mother is at the end of her life. Records are screwed up at the town office.

Atty. Little: should stop this process.

Pierce: common sense fairness agreement?

Atty. Little: facts would justify – unfortunate circumstances – Equitable Waiver for two units, and with conditions suggested (units not replaced, not separately sold).

Pierce: give variance for frontage on T-4

Holly Martin: shared septic there

Martz: would need easement for septic and well

H. Jordan: case that Atty. Little cited in 2003 – let pre-existing from 1985 stand was from Atty. Drescher – why now?

Hastings: BOS minutes from 2003 re: Kantner property

H. Jordan: those records are gone from office, BOS minutes missing, gap in records.

Chet Mazza: the two stick buildings are on separately deed land – somehow became one parcel.

H. Martin: at previous hearing not abutters showed up – why here now?

Dan Cloutier: believes a hardship for this family if move or remove (trailers).

Atty. Drescher: where I was asked by BOS – not sanction illegal use – believes this record/case would not support an Equitable Waiver or Variance – believes if family asks for variance in order to subdivide would make sense

Pierce: response to _____

Atty. Drescher: trial court said board in one town vs. another town

Pierce: equity between boards

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Pierce: Opposition? None forthcoming.

Paul Jordan: If going to recess and consider, there are several previous selectmen and maybe ZBA could talk to them.

D. Harling: would have to meet in public session

Pierce: Right-to-know must be met

H. Jordan: Father wished to save property, and on a shoestring budget – glad he didn't have to do survey – Meridian survey is messed up and was filed without family permission – if forced to subdivide would be expensive – need income because taxes keep going up – mention of donating land to non-profits.

Houston: had to share copies - Atty. Bedard will make/send copies of everything to board members.

Hastings: be sure we have information and asked questions.

Atty. Bedard: suggested the board recess to date and time certain – discussion about reflection time.

Hastings: notices sent out, people could be here.

Atty. Little: recess the public meeting?

Martz: Motion to continue public hearing and recess until Thursday, April 30, 2015 at 7:00 p.m. at Annex, seconded by Houston.

Pierce: need to consult with Atty. Bedard?

Atty. Little, Atty. Drescher, and Atty. Bedard can all be here on that date.

Hastings: Call the question

Vote was all in favor, no one opposed.

Meeting was adjourned at 9:52 p.m.

Minutes submitted by Betsy Perry