

TOWN OF TEMPLE
ZONING BOARD OF ADJUSTMENT
June 11, 2018 Meeting and Public Hearing
Approved Minutes

ZBA Attendees: Sydney Thomas, Greg Robidoux, John Kieley, Bill Ezell, Deb Deleso, Honey Hastings

Also in attendance: Christine Robidoux (Minutes), Gail Cromwell (BoS), Atty William Drescher (Town Counsel), Atty Christopher Drescher, John Jackson-Marsh

Call to order to ZBA Vice Chair Kieley at 7:03 PM

Kieley recognized C. Robidoux for stepping in at the last minute to do the minutes.

Kieley noted that Public Hearing notice for Marsh property would start at 7:15 PM.

Hastings addressed outstanding minutes needed ZBA board approval of October 2017 & May 2018.

Motion by Kieley to comment on May minutes. Thomas & Ezell motion to approve May 2018 minutes, unanimous approval.

Hastings read October 2017 minutes aloud. Hastings & Thomas motion to approve October 2017 minutes, unanimous approval.

Hastings proposed discussion of update to ZBA application siting difficulties in obtaining current mailing addresses for residents who need official notice as abutters to properties seeking ZBA reviews. Hastings reviewed other towns' applications, including Bedford. Procedure states that discussion to modify application must occur over two ZBA meetings. Decision to have initial discussion after public hearing tonight, during the regular business portion of the meeting. Hastings shared copy of current ZBA application with handwritten proposed changes to be reviewed.* *See attached.*

7:15 – Public Hearing regarding Marsh application for Special Exception called to order by Kieley.

Kieley shared Avayzian's regrets at being unable to attend and introduced ZBA members present.

Kieley cited rules of procedure requiring him to recuse himself from the ZBA as an abutter to the Marsh property.

Ezell cited rules of procedure requiring him to recuse himself from the ZBA as an abutter to the Marsh property.

Kieley nominated Hastings to act as Chair for the remainder of the proceedings. It was noted that Hastings had offered to mediate this dispute in the past, but that it was not accepted and she did not in fact have any further discussions. No objections were raised to Hastings chairing the hearing.

Hastings addressed applicants citing the fact that a 4-person ZBA board remained and they need at least three affirmatives in their favor to be granted the special exception. Applicants were offered postponement to a later date with a more complete board. Applicants declined and opted to proceed.

Hastings informed group that all but two abutters received notice of the ZBA hearing the Marsh application for special exception, citing difficulties finding current mailing addresses.

Hastings cited page 3, item #7 Request of Town of Temple ZBA Application (Rev. June 2017) to explain what provisions specifically the applicants are seeking relief from (*see attachment*):

“Seeking acknowledgment that our continued operation of our antique truck and construction equipment hobby is consistent with the New Hampshire laws and Town of Temple ordinances.”

Hastings cited Town of Temple Zoning Ordinance, D. Special Exception, Sections 13A & 13B (2010) Special Exception Conditions (p 9-11) and the conditions that must be met in order to be granted a Special Exception.

Speaking for the applicants, John Jackson-Marsh (32 West Rd, Temple NH), noted that applicants are long time collectors and brought in equipment when they moved to Temple. Marsh indicated that they always intended to move the trailers to an area behind the house, not visible from the road. The area needed site work first, and is almost completed. Marsh indicated they take trucks and equipment to shows around the country, but it is not a business. Equipment is often moved in and out, and may be temporarily stored within site of the road if traveling westbound when passing the driveway, but generally will not be visible long term. Marsh also indicated that they have received positive feedback from Temple residents to seeing their antique equipment.

Hastings cited Town of Temple Zoning Ordinance, Article IV, General Provisions & the Special Exception Standards (Sections 13A & 13B, page 10-11), reading the standards aloud, numbers 1-8 of section 13A specifically.

Alan Marsh indicated that some trailers can be seen from the road when passing the driveway.

Hastings opened to public comments in favor of the Marsh application for Special Exception.

Abutter Murray Colette (18 West Rd) indicated that he hears no noise, has no view of the equipment from his property, and has not seen a reduction in his property value as a result of the Marsh collection. He is concerned that if the Marsh property is required to apply for “junkyard” status, that his property value will be reduced, and would prefer that not happen.

Alan Pickman (Colburn Rd) hat he believes that the Marsh equipment collection is no different from what other residents in Temple do as far as having and displaying antique equipment on their property. He believes that the Marsh property is consistent with the Temple Ordinance as far as current use.

Hastings opened to public comments opposed to the Marsh application for Special Exception.

Bill Drescher, Town Counsel, spoke on behalf of the BoS. Supporting Documents and Exhibits were provided to the ZBA (On file in Temple town office).

Drescher cited that the Marsh property is in the Residential and Agricultural District. The BoS takes the position that the Marsh equipment collection is not consistent with this definition of use.

Drescher also raised the point that this has been a multi-year process. The BoS first contacted the Marsh property owners in 2015 after receiving complaints about the collection. (see *BoS Meeting Minutes, Apr 14, 2015, page 1, Home Business*). At that time there were 8 construction trailers on the property that the Marshes indicated were not part of their business, but rather related to their antique equipment collection hobby. At that time, they indicated that the trailers would be moved “as soon as the weather allows.” At that time, the BoS had no problem with the “home business III” portion of their equipment being stored on the property or the barn that was being used for repairs.

Drescher directed the ZBA to the photos included in their Supporting Documents and Exhibits packet. Cromwell (BoS) took the photos during a site visit. The BoS believes that the vehicles and equipment are in various stages of decay and that they believe the property falls into the “junkyard” category of the zoning ordinance.

Drescher indicated that the BoS received additional complaints at the February 14, 2017 public meeting. At that time, nothing had been moved out of site (see *BOS Meeting Minutes, Feb 17, 2017, 32 West Road*). At that time the Marshes indicated that they “were hoping to have the work completed by the fall of 2017”.

Drescher noted that as of the meeting, nothing had been moved out of site, as requested by the BoS.

The BoS believes this is a “non-conforming” use of the property per the Town of Temple Zoning Ordinance, and served a notice of violation in May of 2018 (see *Supporting Documents and Exhibits, Tab 6*). The BoS informed that the Marshes that they would suspend the “cease and desist” if a ZBA Application was submitted within 30 days.

Drescher conceded that Section 13A Special Exception Standards (Town of Temple Zoning Ordinance) numbers 3 & 4 are subjective. He referred to the Town of Temple Zoning Ordinance, page 9., D. Special Exception, Section 13 Industry, Commercial & Non-Commercial Enterprises. This is why the ZBA is being asked to review the Marsh application, to determine if conditions are met in Section 13A & 13B. Drescher, on behalf of the BoS, contends that Standards #3 & #4 are not met, and that the current property use is not typical for our area’s Residential and Agricultural zoning.

Drescher also noted that the property is surrounded by an aquifer (see Supporting Documents and Exhibits, Tab 2, map C. aquifer is shaded in yellow).

Although the BoS maintains that this property does not meet the requirements for a Special Exception, they would be willing to accept the application if certain conditions are met, consistent with the NH statutes on “junkyard” exceptions. (see attached *“Selectboard’s Recommended Conditions if Special*

Exception is Granted). The BoS would like these conditions to be met, however will not require a “junkyard” status application.

Drescher explained that either way, a Planning Board Site Review is required under the Special Exception ZBA application review.

Drescher stressed that the BoS has been discussing this issue for 2 ½ years and would like it resolved in a timely manner. He expressed their frustration over the lack of action as far as moving the trailers and other equipment from view. Drescher reminded the ZBA that the BoS has the right to appeal the decision of the ZBA if they approve the Special Exception.

Hastings asked Drescher if there have historically been exceptions made for “junkyard” status. Drescher replied that our Town Ordinance is more flexible than most, and simply states that the Town refer to “state law” regarding junkyards. Exceptions are made for antique vehicles, however they have different licenses and rules to follow. The BoS selected some of these rules, but does not suggest that the ZBA rule according to the statute entirely.

Hastings asked what specifically is “non-conforming scope”. Is a collection of that amount considered a violation of the zoning. What size of a collection would have an impact on the land use whether it’s a hobby or commercial use.

Cromwell commented on her impressions from the site visit, and that the collection was “overwhelming” and that machinery and equipment were in various stages of “rust” and “disintegration”. She raised the question of how this affects the aquifer surrounding the property, and that perhaps something should be added to the Bos Recommended Conditions citing potential harm to the water supply surrounding the property (see Supporting Documents and Exhibits, Tab 1, map C). Marsh property is on a hill, so there is run-off into the aquifer around the property.

Cromwell suggested an inventory & information on how oil, gas, etc. are disposed of by the property owners would be helpful, and would be included in a Planning Board Site Review. Cromwell further suggested that the ZBA defer their deliberation until a Planning Board Site Review is completed, as it would answer a lot of questions related to these concerns.

G. Robidoux asked if other towns make exceptions for this purpose. Drescher responded that Temple does not have strict guidelines because he believes Temple voters wanted flexibility. Some towns don’t offer a Special Exception option at all, or have strong conditions to variances.

Drescher suggested that the Planning Board Site Review include specifics on where exactly the equipment will be stored on the property. A map would be best.

See Supporting Documents and Exhibits, Tab 4, Title XX Transportation, Chapter 236 regarding Motor Vehicle Recycling Yards and Junk Yards. This statute states under Section 236:111-a Scope III (c) that no more than 5 vehicles be stored outside a permanent structure. This includes the sum are parts that “equal in bulk” be counted as one motor vehicle. A. Marsh indicated that this would be a difficult

condition for them to meet based on their current collection. Deleso clarified that this condition came of the State statute, but that it is not required unless the property owners seek junk yard status.

Hastings opened to public comments opposed to granting the Marsh Special Exception.

John Kieley, Holt Lane, an abutter to the property, asked that evidence be provided that conditions have been met that would grant a special exception. Kieley would like to see follow-up confirmation. He reiterated that the affect on property values is "questionable". As a neighbor, he has heard negative responses to the collection from other Temple residents. He also believes that other properties have been negatively affected in similar cases of antique vehicle collections. Kieley stated that Temple is a residential and agricultural zone, not industrial. Kieley is also very concerned about the water and the potential damage to the environment and raised concerns about the run-off going into the aquifers in Temple and beyond. Kieley was on a committee that studied the water table in Temple extensively. Kieley knows of one property in Temple that was granted a similar exception that has water testing done every year by the state.

Kieley also suggested moving the collection to a different area of the property that is not visible at all to neighbors or people driving past. Moving to the other side of the hill would create a natural buffer. Kieley also noted that the large crane is often in the air on display, and this is the view from their home. Kieley cautioned on applying conditions that include temporary display, as there are other residents in town who do display antique equipment on their properties.

Kieley would like to see the ZBA decision conditions include a deadline when trailers and other equipment must be moved by and a site plan review by the Planning Board that includes specifics on where the equipment will be stored and how they dispose of toxic substances.

Hastings requested clarification on whether or not the property was subdivided. It was not approved and the proposed subdivided lots were merged.

Connie Kieley, Holt Lane, indicated that when the crane is raised it is their view. She also sees red fluorescent lights coming off the trailers when the lights hit them, from their property. Kieley believes that their property value is affected and that the land use is out of character for the community.

Hastings invited Marsh to respond. Marsh indicated that they believed the 2015 discussion with the BoS was informal, and that they had received approval from the BoS to proceed with what was a business at the time (not related to the antique collecting). He stated that at time there was furniture from another property in the trailers, not related to the antique collection. Marsh confirmed that they had complied with the BoS request to tour the property and thought they had answered their questions and concerns at that time. Marsh also does not believe that their collection will affect the aquifer.

Marsh stated that most of the vehicles are operable, and that they are not rusting "into the ground". The Marshes also do not believe that an antique vehicle & equipment collection is out of character for our area.

The Marshes do not have an inventory of their equipment because it is not a business. It also is not the primary activity on their property.

Hastings asked if the trailers were all registered with the DMV. Marsh responded that some were, but not all.

Marsh asked why their property was left out of the aquifer area. Drescher indicated that it was likely excluded due to the topography and condition of the property (hills, drainage, ledge, etc.). However water travels downhill and collects in the lower areas around the hills. Kieley stated that the aquifer study was done by scientists and professional hired outside of town, not by the conservation committee.

G. Robidoux asked if Marsh had a number of vehicles he thought they could reasonably store outside, and what were their thoughts on a permanent building. Marsh responded that they did not want to leave a permanent footprint, so did not want to construct a permanent building for storage. He stated again that it would be very difficult for them to limit the number to five, especially when you include the sum or the parts. Some of the parts are construction equipment attachments, like bucket and shovel attachments for large equipment.

Marsh stated that the plan is still to move the trailers and equipment to another area. The area has been cleared and grass was planted that is now growing. He believes they can move 5 trailers in the next month.

Hastings suggested the ZBA plan a site visit before deliberating.

Thomas stated that she needs to be “convinced” that the collection is not having an effect on the neighboring properties and acknowledges that this special exception standard is subjective. Trailers in a yard may be appealing to some but not to others. She will take on “faith” that trailers will be moved, however does not believe that it will not have a negative effect on neighboring properties and their value.

Hastings cautioned that they have not started their deliberative process yet. Hastings does not believe there is any statistical information on the issue of effects on property values.

Deleso asked if the Zoning Ordinances had changed at all since the purchase of the property. Hastings, Drescher, and Cromwell do not believe so.

Hastings polled the ZBA and scheduled a site visit for the ZBA and will attempt to set a date for the next deliberative meeting.

Drescher – Four years ago, when the owners purchased the property, if they asked they would have been told that they could not use the land for this use.

Marsh – In the beginning of their conversations with the BoS they were primarily discussing Alan Marsh’s trucking business, not the antique vehicle collection.

Marsh – The equipment currently covers about 1 ½ acres. Once it's moved, it will cover less.

Hastings – Some ZBA's require professional drawings. Temple ZBA does not require professional drawings, however it would be helpful if the applicants submitted drawings with lot lines before the site visit.

C. Kieley – Would like the issue of timing to be addressed. Hastings confirmed that it would be addressed.

J. Kieley – The trucks and trailers are not currently out of sight.

Hastings clarified the requirements for continuing the deliberation. Drescher suggested setting a date for both the site visit and the deliberation at this meeting.

Date of Site Visit: Tuesday June 19th at 6 PM

Next ZBA Deliberative Session: Monday, July 9th at 7:15 PM.

Both are public meetings.

Thomas & G. Robidoux motion to set dates. Unanimous approval.

Hastings concludes the Public Hearing.

Regular ZBA Business

Committee discussed proposed changes to current ZBA application in light of the difficulties in getting current and accurate mailing addresses for abutters. Different methods of accessing the information were suggested (i.e. Tax Collector).

Kieley will take Hastings suggested modifications and update the application in order to present a draft to the ZBA at the next meeting.

Hastings noted that Wilton has "How to prepare an abutters list" instructions on their website and suggests ZBA take a look at it.

Tax maps are online, but they do not include mailing addresses. Avatar software has an "Abutter list" option and it was suggested that ZBA research accessing that feature.

Motion to adjourn at 9:32 PM. Unanimous approval.

Draft minutes respectfully submitted by C. Robidoux with edits made by Vince Mamone per changes approved at the Sept 10 Meeting. Approved minutes submitted by Vince Mamone.