

Town of Temple
Zoning Board of Adjustment
July 25, 2017 Hearing
Minutes

Case 2017-B
Mazza Appeal of Board of Selectmen Decision

The hearing was called to order by Chair Mary Beth Ayvazian at 7:00 PM.

Members of the Board present were Sydney Thomas, Greg Robidoux, John Kieley, Mary Beth Ayvazian and Honey Hastings. Alternate member Bill Ezell was present but had previously recused himself from the case as he is a member of the Board of Selectmen.

Other attendees were Select Board members Ken Caisse, Gail Cromwell and Bill Ezell, Heidy Jordan, Paul Jordan, Holly Martin, Cam Lockwood and Connie Kieley.

The Chair introduced the case and sitting Board members introduced themselves. There were no further recusals. The Chair confirmed that there was a quorum of members present.

The Chair confirmed the receipt of the required fees and signature of Herta Mazza the property owner. Paul and Heidy Jordan and Holly Martin confirmed that they would be speaking for Herta Mazza.

John Kieley confirmed that he would be taking notes and recording the meeting.

The Chair read the June 22, 2017 and July 12, 2017 applications (attached) and referenced the April 26 letter from the Board of Selectmen (attached) denying the Mazza request to reverse the merger of lots owned by Herta Mazza. The Chair confirmed that the BOS letter was dated April 26 and the first application was filed on June 22, 2017 and that the deadline for appeals is 30-days after the decision.

The Chair confirmed that the fees paid by the applicant were sufficient to cover the \$150 base fee and the costs of advertising the hearing including newspaper ad and registered letters to abutters.

The Chair read the Selectmen's denial letter.

The Chair summarized the timing of the advertising of the hearing including the July 20, 2017 posting in the Monadnock Ledger Transcript, the July 18, 2017 mailing of registered letters to all abutters (all delivery receipts returned) and the July 17, 2017 posting of public notices by Honey Hastings.

The Chair read the ZBA rules for public comments and asked any speakers to act in a civil manner and only address the Board.

The Chair stated that the first issue that the Board needed to decide was the failure of the applicant to comply with the ZBA's 30-day filing requirement. The Chair confirmed that the 30-day deadline had been in place for at least ten years and was available on the Town website. She further confirmed that the ZBA had never waived a rule for any party in her more than ten-year tenure on the Board. The Chair stated that a waiver of the ZBA deadline was never requested by Herta Mazza.

John Kieley summarized the Temple Zoning Ordinance language charging the ZBA with setting rules and suggested that the Board allow both sides to speak to the timing issue. Honey Hastings confirmed that the discussion should address the timing of the first application which was not on the Temple form.

The Chair asked representatives for the applicant to speak on that issue first.

Heidy Jordan spoke for Herta Mazza and confirmed that they had not gone to the Temple web site or asked at the Town office or contacted any ZBA member for a copy of the Temple application or to determine what the filing requirements were. Jordan stated that they had gone to the State web site for an application form which did not specify any deadline.

The Chair stated again that a waiver of the ZBA deadline was never requested by Herta Mazza.

Paul Jordan stated that the Mazza request to the Board of Selectmen was made in November 2016 and that that Board did not reply for six months. ZBA members responded that the timing of the Selectmen's decision had nothing to do with the ZBA application. Honey Hastings stated that there may be some rule unrelated to the ZBA re the timing of the BOS decision. The Board confirmed that the ZBA had no jurisdiction relative to the timing of the Selectmen's decision.

Board Member Sydney Thomas asked that if the 30-day deadline was a problem why didn't the ZBA close down the process at the last meeting. Honey Hastings explained that a hearing with proper notice was required in order that all parties have a fair chance to tell their story. John Kieley confirmed that the established Temple process wasn't followed by the applicant. Mary Beth Ayvazian stated that if we changed the rules for one applicant we would have to do for every applicant.

Paul Jordan stated that the ZBA talked to their attorney in closed session during the last meeting. The Chair confirmed that discussions with the ZBA attorney were attorney/client privileged.

Honey Hastings repeated the timing and informational requirements for an appeal of an administrative decision.

Sydney Thomas asked why the deadline couldn't have been addressed at the last ZBA meeting. John Kieley reiterated that the ZBA cannot make decisions relative to an appeal in a regular meeting. The Chair confirmed that it was made clear at the last meeting that the failure to meet the Town's deadline requirement was going to be an issue. Heidi Jordan agreed.

Bill Ezell stated that a denial by the ZBA would give Herta Mazza an ability to take the case to court.

Honey Hastings summarized that the principle with issues like this is to start with the local process and then go to State court. She further stated that the Temple ZBA needs to have an application and required fees and hold a hearing in order to make a decision.

Gail Cromwell spoke on behalf of the Board of Selectmen and asked that the ZBA dismiss the case on the grounds that the application was untimely. She handed out a four-page document signed by all three members of the Select Board (attached). The ZBA members read the document and discussed highlights including relevant case histories.

Greg Robidoux stated that he had researched other towns' web sites and found that thirty-days was the most time these towns allow. Greg further confirmed that the ZBA Handbook specifies 7 to 14 days as a reasonable deadline.

Honey Hastings distributed templates provided by the State for Zoning Board approvals and denials.

John Kieley made the following motion which was seconded by Greg Robidoux:
"Motion to deny the Herta Mazza application on the grounds that it wasn't submitted timely".

Discussion followed:

....Sydney Thomas stated that she was uncomfortable that the ZBA didn't make a decision re timing at the last meeting and encouraged the applicant to submit a full application. The Chair confirmed that the ZBA is required to have a hearing in order to make a decision on an appeal.Honey Hastings confirmed that in order for the Mazza's to go to court they need a proper denial from the ZBA.

....John Kieley stated that it would have been easier for us all to be able to make decisions at meeting vs. hearings.

....Honey Hastings confirmed that the new Town administrative clerk will have copies of the forms etc. John Kieley stated that the prior administrative assistant had copies of these forms.

A vote was taken on the Motion:

Honey Hastings: Yes

Mary Beth Ayvazian: Yes

John Kieley: Yes

Greg Robidoux: Yes

Sydney Thomas: Yes

The wording of the denial letter was discussed and the following facts were drafted to be included:

1. The Board of Selectmen's decision to deny the request to restore the property to premerger status was made at the regular Selectmen's meeting on April 25, 2017, and was communicated in writing to Herta Mazza by letter dated April 26, 2017.
2. Pursuant to ZBA rules, a timely appeal should have been made by May 26, 2017.
3. The initial appeal to the ZBA was dated June 22, 2017.
4. The ZBA is authorized to establish a reasonable time deadline for appeals and, for more than a decade, has set a thirty-day deadline rule for such appeals.
5. The existence of the ZBA's thirty-day deadline rule has been available to the public on the Town's website as well as through the Town's office staff.
6. While the ZBA may amend its rules, there is no provision which allows the ZBA to waive its rules.

The following sentence was also drafted to be added after the facts list:

The ZBA, therefore, has no jurisdiction to approve this appeal.

Motion by Kieley with second by Hastings to use the above language in the denial letter and authorize the Chair to sign and send the letter. Unanimously approved.

Chair Ayvazian will email the decision letter to the applicant and the BOS and mail USPS the letter to the applicant. The BOS will decide whether to post the decision or simply make it available in the Town offices.

Heidy Jordan requested that copies of deeds that were submitted as part of the application be returned. The Chair stated that they were now a part of the official Town record and could not be returned.

Motion at 7:52 PM by Honey Hastings with second by Sydney Thomas to adjourn the hearing. Unanimously approved.