

Town of Milton
424 White Mtn Highway
Milton NH, 03851



Zoning Board of Adjustment
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July 27, 2023
Meeting Minutes
6:00 PM

Present Members: Stan Nadeau-Chairman, Philip Bean-Vice Chair, Larry Brown, John Alberghini-Alternate, Billy Walden

Absent Members: Mike Beaulieu, Lee Howlett-Alternate

Public Attendance: Gail Pennell-abutter, Roger and Penny St Cyr- tax payers, Jason and Jessica Shearn- applicant and wife of applicant, Renata Gamache- resident, Virginia Long- resident & MCC, Shane Sousa- resident, Alum Rose- resident, James Flanagan- resident, Katherine Ayers- resident

Staff Present: Jennifer Conti, Land Use Clerk

- I. **Call to Order:** Chairman Nadeau called the meeting to order at 6:04.
- II. **Pledge of Allegiance**
- III. **Public Comment:** There were no public comments.
- IV. **Review/Approval of Minutes:** July 22, 2023, meeting minutes

P Bean made a motion to accept the minutes as read. L Brown 2nd. S Nadeau abstained; B Walden abstained. 3 yes, 0 no
- V. **Public Hearing #1-** Application to seek a variance to permit two, two family homes on one lot located on Willey Rd (Map 5 Lot 7) in the Low-Density Residential Zone on 11.98 acres.

The applicant sent a letter to the planner asking that they will not seek a further continuance or seek to reopen the public hearing and that they will work with abutters with this project. There was not a representative at the meeting, so the board decided to table this until the next meeting because of some questions they had.

L Brown made a motion for courtesy and clarity he moves to table the application to the next ZBA meeting. August 24, 2023, sending the minutes to the applicant. B Walden second. All were in favor.

- VI. Public Hearing #2:** Application by Real Estate Advisors, LLC, and Norway Plains located at 603 White Mountain Highway (Map 38, Lot 18) located in the Commercial Residential zoning district to seek a variance from Milton Zoning Ordinance Article III, Section 3.5, Table of Dimensional Requirements to allow a minor two lot subdivision where one lot will have 64.5-ft. frontage where 150-ft. frontage is required (second lot will have the required 150-ft. frontage).

The Chair read the request into the record and asked the Land Use Clerk if the application was complete and if all the fees had been paid. The LUC confirmed that all fees were paid, and the application was complete. The notices were correct and were sent and posted within the statutorily required timeframe.

The chair made a motion that this is not a regional impact. L Brown second. All were in favor.

Discussion on point number one of the application. The applicant read the question from the application and then read the answer that he had written. The board discussed and then did a straw vote.

1. Granting the variance (would/would not) be contrary to the public interest:

S Nadeau made a motion that this is contrary to the public interest. L Brown seconded for discussion. Asked the chair to please specify how this is contrary to the public interest so we have a fact for the motion. The Chair's reply was in his view the ordinance was put in place for a reason and the reason was to not have any more non-conforming lots. By us giving this, we are developing something that the ordinance was in put place to prevent. L Brown asked the applicant if he would stipulate that any building on the site would be residential, applicant would not answer that question and then during the board's discussion J Alberghini asked if a condition could be added to a decision that limits any new building to residential and the chair explained that was not possible. When J Alberghini considered this, he said that this is why he could not support the application. There was more discussion by the board.

No= Agree Yes= Deny

L Brown-Yes

P Bean- No

J Alberghini- No

B Walden- No

S Nadeau- Yes

This motion failed 4 No's and 1 Yes

J Alberghini made a motion that it is in the public interest. P Bean seconded.

Yes= Agree No= Disagree

L Brown- Yes

J Alberghini- Yes

P Bean- Yes

B Walden- Yes

S Nadeau- No

Motion passes with 4 Yes's and 1 No

Discussion on point number two of the application. The applicant read the question from the application and read the answer that he had written. The board discussed and then did a straw vote.

2. The spirit of the ordinance (would/would not) be observed:

P Bean will move that the applicants petition is in the spirit of the ordinance. B Walden Seconded.

No= Not Agree Yes= Agree

L Brown- Yes

P Bean- Yes

J Alberghini- Yes

B Walden- Yes

S Nadeau- Yes

Motion Passes with 5 Yes's and 0 No's

Discussion on point number three of the application. The applicant read the question from the application and read the answer that he had written. The board discussed and then did a straw vote.

3. Granting the variance (would/would not) do substantial justice:

P Bean moves that the applicant would enjoy substantial justice as is defined in our handbook with this application. B Walden seconded.

No= not in favor Yes= in favor

L Brown- No

P Bean- Yes

J Alberghini- Yes

B Walden- Yes

S Nadeau- No

Motion Passes with 3 Yes's and 2 No's

Discussion on point number four of the application. The applicant read the question from the application and then read the answer that he had written. The board discussed and then did a straw vote.

4. The values of the surrounding properties (would/would not) be diminished:

P Bean moves that the proposed use will not diminish the values of the surrounding properties. B Walden seconded.

No= will be diminished Yes= not be diminished

L Brown- No

P Bean- Yes

J Alberghini- Yes

B Walden- Yes

S Nadeau- No

Motion passes with 3 Yes's and 2 No's

Discussion on point number five of the application. The applicant read the question from the application and then read the answer that he had written. The board discussed and then did a straw vote.

5. Unnecessary hardship:

P Bean moves that literal enforcement of the provision of the ordinance would result in unnecessary hardship. B Walden seconded.

No= not in favor Yes= in favor

L Brown- No

P Bean- Yes

J Alberghini- Yes

B Walden- Yes

S Nadeau- No

Motion passes with 3 Yes's and 2 No's

S Nadeau opened the floor to any public comment.

Laura Rose had a letter from an abutter, Janice Cox, that could not make it to the meeting and wanted to read it to the board.

P Bean moved to allow the letter to be read by Laura for Janice. J Alberghini seconded. All were in favor.

Some of the concerns from the public- drainage issues, runoff from the trees being cut down, traffic, what will happen to the brook where the driveway is going to go, hardship for the wildlife, wants more information other than all the lots are non-conforming (all of those lots have been grandfathered in), decrease the properties values, erosion, damage properties, wants a design to look at, more information and more input, steep slopes.

Some are happy to hear about more housing.

S Nadeau closed the public hearing at 7:18

S Nadeau made a motion to deny the applicant. L Brown seconded.

No= Not to Deny Yes= To Deny

L Brown- Yes to deny

P Bean- No to deny

B Walden- No to deny

J Alberghini- Yes to deny

S Nadeau- Yes to deny

Motion to deny passes with 3 Yes's and 2 No's

The application is DENIED because it does not pass the public benefit, spirit of the ordinance and hardship criteria because of the following reasons:

1. There are no special conditions of the land to support the variance relief because the land may be developed by proposing numerous avenues for development that do not require creating a second lot. Refer to the Table of Permitted Uses in the Zoning Ordinance.
2. Evidence was submitted that shows that the slopes of the bulk of the lot are very steep, some greater than 25%, that limit the potential for development that addresses the public interest such as mitigating stormwater runoff that may affect the down-gradient neighborhood and advancing stormwater quality for runoff into the adjacent Three Ponds.
3. Finally, there is no hardship that relates to special conditions of the land, since there are development opportunities for the parcel in its present state as one lot. The Board felt that asking for relief to allow the creation of a second lot was primarily for the applicant's economic benefit.

VII. Public Hearing #3: Application to seek an equitable waiver from dimensional requirements under Milton Zoning Ordinance Article VIII, 1.B for owner Jason Shearn at 681 White Mountain Highway, (Map 38, Lot 3) in the Commercial Residential zoning district to allow the construction of a garage substantially completed with an 11-ft. front setback where 25-ft. is required by Milton Zoning Ordinance Article III, Section 3.5, Table of Dimensional Requirements.

L Brown made a motion that there is no regional impact.

The Chair read the request into the record and asked the Land Use Clerk if the application was complete and if all the fees had been paid. The LUC confirmed that all fees were paid, and the application was complete. The notices were correct and were sent and posted within the statutorily required timeframe.

Jason Shearn summarized his application.

1. Does the request involve a dimensional requirement, not a use restriction?

S Nadeau made a motion that we accept the fact that it needs a dimensional requirement. L Brown seconded. All were in favor 5 to 0

2. The violation was caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in the interpretation or administration of this ordinance by the Code Enforcement Officer.

S Nadeau made a motion that the nonconformity was discovered after the structure was substantially completed. L Brown seconded. All were in favor 5 to 0

3. The violation was not an outcome of ignorance of the law or bad faith but resulted from legitimate mistake.

S Nadeau made a motion that this was not the outcome of ignorance of the law or in bad faith. L Brown seconded. All were in favor 5 to 0.

4. The violation does not constitute a nuisance, diminishing the value of properties in the area, or adversely affect any present or permissible future uses of the premises.

L Brown made a motion that the violation does not constitute a nuisance, diminishing the value of properties in the area. S Nadeau seconded. All were in favor 5 to 0.

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

P Bean made a motion to accept the applicant's statement. B Walden seconded. All were in favor 5 to 0.

P Bean made a motion for the equitable relief to be granted and that he proceeds in accordance with the code enforcement officers plan L Brown seconded. All were in favor 5 to 0.

S Nadeau advised the applicant that someone could appeal this decision within 30 days.

VIII. Other Business: No other business

I. Next meeting is schedule for August 24, 2023

IX. Adjournment: ***S Nadeau made a motion to adjourn. B Walden seconded. All were in favor 5 to 0***