

Town of Milton
424 White Mtn Highway
Milton NH, 03851



Planning Board
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Planning Board Minutes

August 6, 2019

6:30

Members in Attendance: Chairman Brian Boyers, Matthew Morrill, Bob Graham, Joseph Michaud, Peter Hayward, Larry Brown, Ryan Thibeault Ex. Officio. Also in attendance, Ashley Morrill Land Use Clerk, Bruce Woodruff Town Planner

Absent Members: Lynette McDougall

Public Attendance Bob Carrier, Ray Glynn, Wendy Glynn, John Locke, Karen Locke, Andrew Rawsom, Bob Silva, Kim Silva, Richard Burke, Rhonda Burke, Kaye Maggart, Norm Turgeon, Deborah Blair, Wayne Sylvester, Skip Bridges, Jen King, Virginia Long, Steve Panish, Roland Meehan, Mary Current, Cynthia Wyatt, Bob Weiss, Deb McCormack.

Chairman B. Boyers called the meeting to order at 6:34 pm.

Chairman B. Boyers brought Alternate L. Brown to the board as a full voting member in place of Lynette McDougall

No public comments were made.

Public hearing for the proposed Lot Line Adjustment Re: adjusting the boundary lines between Map 23, Lot 76-2, Map 23, Lot 76-1, and Map 23 Lot 76.3 all at 240 Bolan Rd, Milton resulting in an increase to Map 23 Lot 76-1 and Map 23 Lot 76-3 by .15 acre and eliminating Map 23 Lot 76-2. Debra and Anthony Caputo, III Applicant; 240 Bolan Rd, Milton, NH 03851

C. Karcher from Norway Plains presented the plan to the Board on behalf of Debra and Anthony Caputo. C. Karcher stated the plan is to take the 3 lots and create two. M. Morrill asked if there were any intentions of building on the new lot. C. Karcher stated not that he is aware of. B. Graham asked what will be the new size of the lot. C. Karcher replied .46 acres.

Hearing was opened to the public.

M. McClintic asked if there were any encroachment. C. Karcher explained they were no encroachment and went over the increase to the two lots by eliminating one of the lots.

Chairman B. Boyers read a letter submitted to the LandUse Clerk from Leslie J Howlett III that read as follows:

To The Chair and Members of the Milton Planning Board,

Thank you for the public notice and opportunity as an abutter to the subject land referenced as Map 23 - Lot 76 to present my questions and observations concerning the proposed dimensional changes and the underlying supposition that there are three sub lots which comprise the land in total. As I could not be in attendance at the hearing due to a pre-scheduled conflict out of state, I have submitted the following for your review. Let me state for the record that I strongly support all property owner rights to put their property to its highest and best use subject to the approved regulations and ordinances of the Town of Milton and the State of New Hampshire. Based upon my review of the public records in the land Use office on Friday 8.16.19, I would request the board's consideration and clarification of the following.

Point of Fact – Low Density Residential Zone:

The property is located in the LDR, Low Density Residential zone requiring a minimum lot size of 2 acres (see Zoning Ordinance Section 3.2 , see also specific notes 1, 2 and the Table of Dimensional Requirements). As the total lot size of Map 23 Lot 76 is 0.87 acres, the subject lot is by definition a "Non-Conforming Lot"- see Zoning Ordinance, Article VII Non-Conforming Use and Lots, more specifically item #C.4 , which states:

“Adjacent non-conforming lots under the same ownership may be merged to create a new, larger non-conforming lot, provided that the merger does not create any new nonconformity, other than lot size.”

Observations – Town records:

There is no indication in any public records available nor was there any affirmation of the existence of three non-conforming sub-lots by the assessor at the time of sale to the Caputo's in 2009. The only historic reference observed in the town records were plot maps which appear to be dated from 1960 +/- showing Lots 20, 21 and 22 as comprising the original Wulfsberg plan of lots in the land use office. These appear to be drawn in advance of the original seasonal camp being constructed on the land in 1961 at which time the lots were apparently combined as allowed and noted above in Zoning Ordinance Article VII #C.4 above, to form the single non-conforming lot now referenced as Map 23, Lot 76.

Based upon a review of town records as far back as 2009 (and beyond) when the Caputo's acquired the property, Lot 76 has been reported and assessed as a single Non-conforming lot consisting of a 0.50 acre base rate building lot (2017) and 0.37 acres of excess land with 320 linear feet of waterfront. There is no indication from the available land use records that the subject lot 76 currently consists of three sub-lots, which purportedly would each be a pre-existing non-conforming buildable lot, worth a substantial amount more in terms of taxable real estate to the town over the past decade plus of ownership, if true.

On the contrary, the assessor's description and assessment practices which are typically based on deeds of record to validate plot descriptions would seem to affirm that there is now one non-conforming lot totaling 0.87 acres having 320 LF of waterfront, perhaps originally made up of three contiguous non-conforming lots, which were long since combined.

Point Of Fact – Shoreland Protection Overlay District:

As further evidence of lot 76 being considered as one parcel, I noted that the property, being waterfront, is also covered by the Shoreland Protection Overlay District (see Zoning Ordinance – Article XVII) which “establishes standards for the subdivision, use and development of shore land adjacent to public waters as defined herein for the purpose of minimizing degradation of shore land and assuring retention of the benefits provided by such shore land.”

Observations- DES Permit Request:

In the town records relating to the Shoreland Protection Overlay District requirements is an application made by Virginia Wulfsberg (prior owner to the Caputo's), to the New Hampshire Department of Environmental Services requesting a permit for the installation/replacement of a seasonal dock within which she quite clearly and appropriately describes the property as Map 23, Lot 76 consisting of 0.87 acres and 320 LF of waterfront. She notes in the description that this will be the only dock on the waterfront lot. She included a very clear exhibit depicting Map 23, Lot 76 as a single non-conforming lot with a hand drawn location of the proposed dock.

Other:

In addition to the above observations, I have other concerns regarding the riparian rights, impact and buffer zone requirements around the small stream that cuts through the southern half of the lot and empties to Northeast Pond. However, those observations are best suited for any additional hearings and future reviews.

Conclusion:

While I can certainly understand the applicant's desire to assert the subject lot can be subdivided for economic gain, I think there is a demonstrable history of assessment practices and actions on the part of prior owners that have represented lot 76 as a single non-conforming lot having 0.87 acres and 320 LF of waterfront which should not be made MORE non-conforming by allowing further subdivision in approving the petition.

I appreciate the Board's consideration and any response to my observations. If any additional documents or minutes are put into record as part of the hearing, I would appreciate being copied and afforded the opportunity to inspect and respond accordingly.

Respectfully Submitted,
Leslie J Howlett III

Chairman B. Boyers then read the Town Planners comments addressing L. Howlett's letter which read:

First, the 2 acre/200 ft. lot requirement in the LDR zoning district is only for when one creates new lots by subdivision, it does not apply to lots of record that have existed prior to the inception of zoning or any subsequent amendments thereto.

Second, since the plat the board is reviewing was prepared by a licensed NH Land Surveyor with his/her stamp affixed, and there are both deed and plan references thereon, the Board must acknowledge that the three old lots are still in existence. Whether the Town has records or not and whether the Town taxes the lots in common ownership with one tax bill do not matter; the

Registry of Deeds is the only place to go for official land records, and the taxation situation cannot be used to determine legal lots of record.

Finally, it is the right of the owner to adjust the lot lines on commonly owned parcels IF the effect is to reduce zoning nonconformities in the aggregate; if this was not the case here, staff would have required that the applicant first obtain a variance from the ZBA. It is not the case, simply because the owner is replacing three lots (two of which would be able to develop with future ZBA relief) with two larger lots (one of which will be able to develop with future ZBA relief).

Bruce W Woodruff, Consultant Town Planner

B. Woodruff Town Planner went on to read Article VII Section C. 4 of the Milton Zoning Ordinance which states - Adjacent non-conforming lots under the same ownership may be merged to create a new, larger non-conforming lot, provided that the merger does not create any new nonconformity, other than lot size.

B. Woodruff recommended the following condition to the Board if they move to approve the application- The new deeds be submitted for recording to the Land Use Office to ensure follow-through.

B. Graham moves to approve the Lot Line Adjustment Re: adjusting the boundary lines between Map 23, Lot 76-2, Map 23, Lot 76-1, and Map 23 Lot 76.3 all at 240 Bolan Rd, Milton resulting in an increase to Map 23 Lot 76-1 and Map 23 Lot 76-3 by .15 acre and eliminating Map 23 Lot 76-2. Debra and Anthony Caputo, III Applicant; 240 Bolan Rd, Milton, NH 03851 with the following condition, the new deeds be submitted for recording to the Land Use Office to ensure follow-through. J. Michaud seconded. Vote seven (7) in favor, none (0) opposed.

Eastern Materials Request for Release of Surety for Gravel Pit 5, Map 17 Lot 22, Jones Access rd. Milton, NH 03851

Chairman B. Boyers read the following letter from Michael Shaw, Easter Material

To the Milton Planning Board:

On June 4, 2013 a 6 year bond was issued for the amount of \$22,500 to ensure the reclamation for an excavation site referred to as Site 5 (Tax Map 17 Lot 22). This letter is to inform that the state obligations under 155-E:5 and location excavation regulations, Milton NH Article V Section A-D, have been performed.

On March 4, 2015, excavation began under permit AOT-0877 and continued until 2017. Original proposed grades were not accomplished because of evidence of large clay base upon removal of sand and gravel. Final grades were reengineered and a copy has been submitted to the planning board. A site walk of the excavation area was performed in June 2018, due to opening of new area (excavation area 6). There has been no change in area 5 and has been remained closed since the fall of 2017.

To reestablish natural environment of area, three critical has been the forefront of reclamation

1. Storm water
2. Slopes
3. Vegetation

All top soils were returned to the original areas after sand and gravel were extracted. A solid clay base has made slopes extremely stable and safe and unaffected by rain and snow melt. Storm water has been contained through percolation and does not exit reclamation area. Construction seed was immediately introduced after excavation and reclamation to promote quick green growth.

Spring seeding of Ky-31 was also performed when necessary in bare spots. All seeding was done by hand compacted. Soils have proven not to be droughty and thick humus has provided excellent vegetation and future tree growth.

Today area 5 continues to grow. Trees have begun to grow and evidence of wildlife has also been seen. We are confident that we have removed the natural resource (sand and gravel) and restored the land in such a way as to promote growth back to its original natural state.

All criteria have been met and we are requesting the refunds of the \$22,500.00 bond. Pictures have been provided for reviewing.

Regards,
Michael Shea
Eastern Materials, LLC

B. Woodruff Town planner stated he performed a site assessment and inspection of pit 5 and everything on the reclamation plan has been met. M. Morrill motions to release the bond. B. Graham seconded. Vote six (6) in favor, none (0) opposed, one (1) abstention.

Continued public hearing for the proposed Revised Site Plan Review Re: addition of accessory uses for Mi Te Jo Campground – Three Ponds Resort, LLC, Owner; SFC Engineering Partnership, Inc., Applicant; 111 Mi Te Jo Road; Map 28, Lot 4

Chairman B. B opened the continued public hearing by reading the following email written by the Walter Mitchell Town Attorney

Good Morning, Ernie -- I will address your questions separately. This email responds to the question raised by Ms. Wyatt on behalf of the CC.

First of all, there is nothing in the facts of the case pending in the court system, being an appeal of the ZBA's denial of a special exception to expand the campground with a significant number of new campsites including additional amenities that would legally prevent or interfere with the PB considering an application for additional amenities only.

What the PB was obliged to do, and to my knowledge did do, was to ask two preliminary questions. The first was whether under the terms of the Milton ZO a special exception was required to expand the amenities only? Under the terms of the ordinance a special exception is not required for expansion of a non-conforming use when the expansion proposed is "minor" where the "nature and intent of the use is not changed and the expansion does not adversely affect the surrounding areas". As I understand it, the PB decided that the proposed amenities expansion fell within that exception, and did not require a special exception. That decision was appealed to, and has now upheld by, the ZBA. The second preliminary question before the PB was whether the application before the PB was basically the same as what had been proposed before (which would have prohibited reconsideration under the Supreme Court decision in *Fisher v. Dover*), or was it significantly different. As I understand it, the PB found it was significantly different, and the ZBA has also upheld that decision. Therefore, after this rather complex explanation, the simple answer to Ms. Wyatt's question is that the PB had the right and obligation to proceed as it did. However, there are two things I should mention. Your email below refers to a "hearing tomorrow night" (now tonight). When an administrative appeal is filed from a decision of a PB to the ZBA, RSA 676:6 imposes a stay on all other local proceedings. While the statute does not explicitly explain how long that stay lasts, our interpretation has always been that it continues until either the expiration of the 30 day time period for filing a motion for reconsideration or, if such a motion is timely filed, until the ZBA's final decision on that motion.

Therefore, since to our understanding we are still within the 30 day period for filing such a motion, we do not believe that the PB can yet proceed with further consideration of the application.

Second, and as a clarification only, what I explained earlier in my email to Mr. Woodruff was that the ZBA did not formally address the question of whether a special exception would be necessary for amenities only; not in its decision on the special exception application and not in its decision on the earlier administrative appeal.

Please let me know if there are further questions.

Walter

Walter L. Mitchell
Mitchell Municipal Group, P.A.

Discussion between the Board and B. Woodruff Town Planner about determining if the proposed amenities would create a regional impact.

L. Brown motioned to make sure there's a clear and open recording that all of their obligations as a Planning Board has been done with every T crossed and every I dotted. Motion fails.

The Board further discusses regional impact based on amenities only, not including the additional campsites. B. Woodruff Town planner read the following –

Upon receipt of an application for development, the Board shall review the application promptly and determine whether the development, if approved, reasonably could be construed as having the potential for regional impact, pursuant to RSA 36:54, et seq. Doubt concerning regional impact shall be resolved in a determination that the development has the potential for regional impact.

A development of regional impact means any proposal, which, in the determination of the Board, could reasonably be expected to affect a neighboring municipality because of factors such as, but not limited to, the following:

A. The relative number of dwelling units as compared to existing stock. Any proposal that involves 50 or more residential lots or units shall be deemed to have the potential for regional impact;

B. The relative size of the development. Any proposal that involves 50,000 square feet or more of new non-residential gross floor area shall be deemed to have the potential for regional impact;

C. The proximity of the development to the borders of a neighboring community.

D. High intensity traffic impact on regional transportation networks;

E. The anticipated emission of excessive light, noise, smoke, odors, or particulates;

F. The proximity of the development to aquifers or surface water, which transcend municipal boundaries.

G. The impact on shared facilities, such as schools and solid waste disposal facilities.

The Board may, in its discretion, determine that any project has the potential for regional impact, whether the project meets or exceeds the criteria listed above or not, and shall identify the affected municipality(ies).

B. Woodruff went on to say that the Zoning Board of Adjustment already made the determination that the added amenities would not create regional impact but the Planning Board could make a decision as well.

P. Hayward motions that the amenities are only applicable to the campers and not the public, therefore does not exceed the current use and would not create a regional impact. B. Graham seconded. Vote six (6) in favor, one (1) opposed. Motion carries

R. Thibeault motioned to continue the case and table the public hearing to September 3, 2019 at 6:30 to allow for the 30 day expiration of the Zoning Board of Adjustment's decision of the appeal. B. Graham seconded. Voted U/A

Other Business:

B. Woodruff Town Planner informed the Board he went to the Board of Selection and received an extension for the CIP report from 9/5/2019 to 10/16/2019.

B. Woodruff Town Planner went over M4S requirements and stated he will be presenting new draft site plan regulations and draft floodplain ordinance.

J. Michaud moves to accept the draft subdivision regulations. M. Morrill Seconded. Voted U/A. P. Hayward moves to set a Public Hearing for the proposed subdivision regulations on September 17, 2019. B. Graham seconded. Voted U/A

Town planner Comments:

B. Woodruff stated the Town Administrator may be requesting that all boards and commissions meet with a topic agenda.

Approval of minutes: J. Michaud moves to approve the July 16, minutes as written. R. Thibeault seconded. Vote six (6) in favor, one (1) abstention- L. Brown

B. Boyers motions to approve the August 6, 2019 minutes as written. L. Brown seconded. Vote four (4) in favor, three (3) abstentions- P. Hayward, J. Michaud, R. Thibeault

Adjourn: J. Michaud moved to adjourn. B. Graham seconded. Meeting 7:30pm

