

Town of Milton
424 White Mtn Highway
Milton NH, 03851



Zoning Board of Adjustment
PO Box 310
(p)603-652-4501
(f)603-652-4120

April 28, 2022
Meeting Minutes
6:00 PM

Present Members: Stan Nadeau, Chairman, Steve Baker, Mike Beaulieu, Larry Brown

Absent Members: Philip Bean (Excused)

Staff Present: Bruce Woodruff, Town Planner, Nathan Fennessy, ZBA Attorney, Suzanne Purdy, Land Use Clerk

- I. **Call to Order:** Chairman Nadeau called the meeting to order at 6:00. All in attendance recited the Pledge of Allegiance.
- II. **Public Comment:** Steve Palmisano asked if he could speak regarding this case at the second Public Comment regarding a waiver for an open space development for NE Pond, LLC. S. Nadeau said he could not speak about that at this Public Comment segment since it relates to this case that may be heard tonight. If the case is indeed heard, then the chair will open the meeting up to public comment after the case is heard.
- III. **Alternates to the ZBA:** S. Nadeau asked if anyone in attendance had sent a letter to the Chair showing interest in becoming an alternate member or the ZBA. Andrew Rawson was the only one in attendance tonight. He was called up to state his interest. L. Brown made a motion to accept Mr. Rawson as an alternate; seconded by S. Baker. M. Beaulieu opposed. All others in favor. Motion passed. Selectman Humphrey Williams swore Andrew Rawson in as an alternate to the ZBA for two years, culminating on 3.1.2024.

S. Nadeau would like the alternates to sit at the table and invited A. Rawson to sit at the table and asked him to sit in tonight for P. Bean.
- IV. **Review of Minutes:** S. Nadeau made a motion to accept the minutes as written of the 3.24.22 ZBA Meeting; seconded by M. Beaulieu, all in favor except for S. Baker who abstained since he was not in attendance at that meeting.
- V. **Continuation of Public Hearing for Administrative Decision, Three Ponds Investments, LLC for Open Space Subdivision, Map 23 Lots 40 & 44, Northeast Pond Rd and Bolan Rd:** Hunter Adams approached the podium to represent the appellant. S. Nadeau asked if his

attorney was here: he was not present. H. Adams continued to state the reason they filed an appeal to the ZBA, was in the event that the superior court determines that the ZBA does have jurisdiction and should hear the case. Three Ponds Investments and their attorney's standpoint is that the ZBA does indeed have jurisdiction on this case.

S. Nadeau asked Attorney Fennessy to state the ZBA's opinion: Attorney Fennessy stated the standard for an appeal of the Planning Board decision is in RSA 676:5:3 which provides the various circumstances under which an appeal of a PB decision can be taken to the ZBA. There's an exception in there for if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration including the granting of conditional specialty use permits then the Planning Board. Then the PB decision pursuant to that delegation cannot be appealed to the ZBA but may be appealed to the superior court as provided by RSA 677:15. The decision of the PB was pursuant to Article 6, Open Space Development in accordance with RSA 674:21, Innovative Land Use Controls. As a result, it is my opinion that the ZBA does not have jurisdiction to hear an appeal of a decision made by the Planning Board, and any appeals pursuant to that section needs to be made directly to the superior court.

L. Brown stated that he agrees with the formal opinion of Attorney Fennessy. He also noted that since he sat on the Planning Board on this case, he would recuse himself from any hearing or voting on this matter. S. Nadeau agreed. L. Brown left the meeting.

S. Nadeau made a motion that the ZBA takes the same opinion as Attorney Fennessy stated, and the ZBA will not go any further with this case. Motion seconded by M. Beaulieu. All in favor. Motion passed.

S. Nadeau added, there will be no public comment on this case, since there is now no case to be heard.

Planner Woodruff stated the appellant has already filed a suit against the Town and the Planning Board, and that others can join in on that suit (such as Homeowners).

Mr. Palmisano still wanted to speak regarding a waiver in relationship with the ZBA. Atty Fennessy noted at this point there's not an appeal pending before you. Planner Woodruff added, ZBAs don't deal with waivers, Planning Boards do. S. Nadeau suggested Mr. Palmisano get his questions on the agenda for the next ZBA meeting, or speak directly to the Town Planner, but not this board.

S. Palmisano directed his inquiry to Planner Woodruff: The PB voted on and approved a waiver for the open space development to include multi-family dwellings, when the open space development section of the zoning ordinance allows single family and duplexes only. Planner Woodruff replied: Article 6 of the ZO gives the PB the sole authority to grant waivers and conditional use permits. The ZBA has nothing to do with it.

SP: The applications requiring ZBA actions in the Site Plan Review Regulations Section 13. Paragraph E disputes what you just said.

Planner Woodruff replied: This proposal is an Open Space Development, regulated by the Planning Board with Article 6 of the Zoning Ordinance. Waivers are granted solely by the PB without going to any other boards, including the zoning board of adjustment. Article 6, when used, preempts the site plan regulations where they don't jive, and the subdivision regulations where they don't jive. It takes precedent.

VI. **New Alternates:** S. Nadeau asked S. Purdy to invite the new proposed alternates that sent letters of interest to the next meeting, for voting in and swearing in. Planner Woodruff added to send the new alternates the ZBA By-Laws and the ZBA Handbook that's done by the officers.

L. Brown asked to also send to the alternates the cheat sheet of the five topics that are being covered, when someone is asking for a variance.

Adjournment:

***M. Beaulieu motions to adjourn, Seconded by A. Rawson. The vote is approved unanimously. The Motion Passes adjourning the meeting at 6:24. ***

Minutes approved at 6/23/2022 ZBA meeting.

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Please Print your name clearly and legibly so that it may be recorded correctly. Thank you!

Date of Meeting: Thursday, April 28, 2022

Please Print Name:	Reason for Attending:
1. Andrew Kivson	(Resident.)
2. Trace A. Tankosch	abutter
3. HUMPHREY WILLIAMS	SELECTMAN
4. Hunter Adams	owner
5. L.A. Broome	owner
6. Joe Stanley	abutter
7. Rich Ferraro	abutter
8. Stephen Palmisano	abutter
9. Alan Branson	abutter
10. Mike & JERRA SULLIVAN	abutter
11. RENATA Gamscho	Resident.
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