

**Town of Milton**  
424 White Mtn Highway  
Milton NH, 03851



**Zoning Board of Adj.**  
PO Box 310  
(p)603-652-4501 (f)603-652-4120

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**Meeting Minutes**  
**August 23, 2018**  
**6:00 PM**

Members in Attendance: Michael Tabory, Stan Nadeau, Steve Baker, Brian McQuade, Chris Jacobs Alt., Larry Brown Also in Attendance Dana Crossley Land Use Clerk, Town Attorney Walter Mitchell

Excused Members: Andrew Rawson

Public Attendance: Norman Turgeon, Bob Carrier, Richard Burke, Rhonda Burke, Janice Carlson, Daryl Carlson, Attorney Chris Boldt, Marilyn Hayes, Steve Hayes, Carol Bridges, Frank Bridges, Deborah Blair, Kaye Maggart, George Petrillo, Fran Petrillo, Mike Desrochers, Wayne Sylvester, Sharon Ponte, Joel Ponte, Jen King

Chairman Tabory called the meeting to order at 6:01pm.

Public Comment: No public comment.

Motion for Rehearing: Three Ponds Resort, MiTeJo Campground (Map 28 Lot 4) Case2017-7 Special Exception Request to Expand MiTeJo Campground: S. Baker stepped down from the board as he is an abutter. Chairman Tabory asked for B. McQuade to step down from this discussion and voting as he was not part of the final voting on the case. B. McQuade stepped down. Chairman Tabory brought C. Jacobs to the board as a full voting member. Chairman Tabory stated that he would not be reading the entire request but it is part of the record, noted the board also received an abutter's group objection to the motion for rehearing that is part of the record as well. Chairman Tabory said the board could go through and review the points that the requestors identified the board making error.

**C. Jacobs motioned that they (the board) do not grant a rehearing for case2017-7, on the basis that he feels the board did not make an error as stated in the motion for rehearing, L. Brown seconds the motion.**

Discussion: C. Jacobs having read the request/motion for rehearing filed by Peter Malia and the Abutter's Group Objection to the motion for rehearing, the basis of the rehearing motion is the applicant and attorney feels the board made a mistake, does not feel the board made a mistake, thought it was well presented on both sides, well discussed thoroughly and thought the board gave its reasons why certain criteria were denied.

S. Nadeau agrees.

Attorney Mitchell stated whichever way the board decides would like to see a written decision come from the board, brought with him an outline of a written decision to either an approval or denial of the motion, depending on how the board votes would like to discuss what the board

whichever one feels is appropriate, go through what he has put together and have the board approve or approve with amendments.

C. Jacobs asked if they could see the letter ahead of time, Attny Mitchell said no, to avoid appearing to advocate one way or the other.

L. Brown stated for the working of the zoning board any case if they discover themselves an error of procedure or misunderstanding of law and that is left unaddressed in the review of the case in front of them it creates a second error, their obligation once identify an error to change their view of the facts. C. Jacobs asked L. Brown to clarify. L. Brown is talking about the boards past action and particularly where they found they had no properly addressed regional impact and once the board knew it had not been properly addressed, if the board had continued to review the case without that knowledge it is in his opinion creating a second error, sees no error in their decision because they did best of knowledge and beliefs of the facts before them act properly on the case.

Chairman Tabory reiterated there is a motion on table is to deny the request for rehearing: yes vote is to not grant the rehearing, no vote is to have a rehearing.

**Vote: (C. Jacobs-yes, L. Brown-yes, Chairman Tabory-yes, S. Nadeau-yes) 4-0. Motion carried, the request (motion) for rehearing of the Case2017-7 submitted by Peter Malia representing Three Ponds Resort has not been granted.**

Attny Mitchell provided to the board a draft of the denial letter. Board reviewed the letter. First three paragraphs provide the history of the case, then describe the claims made in the motion for rehearing and attempted to anticipate the boards thought process based on comments made by the board during the hearings. Board discussed the points made in the denial letter. C. Jacobs stated that he respects the letter, wording and reasons, does not see anything that he would change. L. Brown noted the wording that is used for court does not agree with his English major self, under point 1 page 1 his wording would be ‘as a consequence of the board’s *initial failure* to make a decision on potential regional impact, three new parties...’ C. Jacobs likes because of the ‘...board’s *late discovery of...*’ removing ‘...early failure to make a decision on...’ Board was in favor of the change that C. Jacobs proposed.

S. Nadeau motions to adopt this letter of denial as amended and as the board’s decision. L. Brown seconds the motion, all in favor (4-0), motion carried. Board members (L. Brown, Chairman Tabory, C. Jacobs, S. Nadeau) signed the letter of denial.

D. Crossley questioned if they will revise the first page or send with the written correction. Board requested a revised first page to be sent out, and for the original with the noted changes to be kept for the record.

Review and Discuss: Request for Fee Waivers: Chairman Tabory stated that the board received a request for a case that is not before the board right now, the request went before the Board of Selectmen who have authority over the postage fees and public notice fees, where the Zoning Board has the authority over the application fee, on the night of August 20<sup>th</sup> the Board of Selectmen motioned to not waive the postage and public notice fees associated with the zoning case.

Chairman Tabory felt they should hear the case first before making a decision on waiving the fee. C. Jacobs questioned why it was coming up. Chairman Tabory replied the applicant requested the fees be waived for an appeal to an administrative decision that the board is hearing in two weeks, does not think it makes sense to hear it now and to decide now as a board before hearing the case and arguments.

*Point of Order from Attny Boldt:* would not expect the board to determine the fee waiver until the case has been heard, was surprised to see it on the agenda.

S. Nadeau motions table the request, L. Brown seconds the motion. All in favor. Motion carried. Fee waiver will be addressed as part of the public hearing of this case. (B. McQuade was brought back to the board as a full voting member and did vote on the tabling.)

S. Baker was brought back to the board as a full voting member, C. Jacobs stepped down.

Review and Approval of Formal Notice of Decision:

- Case 2018-1: B. McQuade noted that the only change he sees would be who is approving the notice tonight. B. McQuade motions to approve the formal decision of case 2018-1 with amendments. L. Brown seconds the motion. Three (3) in favor (S. Baker, L. Brown, B. McQuade) and two (2) abstentions (Chairman Tabory, S. Nadeau) motion carried. L. Brown signed the notice of decision as he was the acting chair for that case.

Review New Special Exception Application Forms: D. Crossley explained that she had drafted an updated Special Exception application based off of the State provided template in the ZBA handbook, not looking to change any other page in the application document just the page the applicant fills out, this is to benefit the nonprofessionals who ask for special exceptions, everyday person.

Chairman Tabory questioned if the rest of the application spells out the criteria. D. Crossley replied that it was listed on the first page.

Chairman Tabory asked if there was any public input on this application form, none heard, public input closed.

L. Brown likes forms that have the date of the form and revision on them, Chairman Tabory agreed. D. Crossley noted that change can be added. Chairman Tabory asked for clarity on the section that calls out where the criteria is listed. Discussed referencing that the criteria is listed in the application and making note of that and to add the specific article and section that the criteria is listed in the Milton Zoning Ordinance.

S. Nadeau motions to adopt the new special exception form with changes. L. Brown seconds the motion. All in favor, motion carried.

Discussion and Approval of Minutes:

- May 24, 2018 meeting minutes: S. Nadeau motions to table the minutes, Chairman Tabory seconds the motion. All in favor, motion carried.
- July 26, 2018 meeting minutes: B. McQuade motions to approve, S. Baker seconds the motion. (3) in favor, (0) opposed and (2) abstained (Chairman Tabory, S. Nadeau abstained)

Other Business: B. McQuade announced that he is expecting a baby around Christmas and will be unavailable around those potential meetings.

A member of the public stated that some of them went to the Planning Board meeting the other night and they are going to go through and take a look at all of the Special Exceptions the Town of Milton has and get rid of some or modify some, felt the board should at least discuss or touch basis with the Planning Board. Chairman Tabory replied that is under the Planning Board's purview to come up with what is appropriate for zoning, and leave this board to interpret and decide in the future, anyone of them could go as a member of the public, but does not know that this board should be telling them. D. Crossley added there would be a public hearing if the PB gets it done for this year's upcoming vote, and it would go to the voters, zoning amendment proposed to the voters. C. Jacobs added it would be very dangerous territory for a board member to actually express publicly an opinion in respect to zoning.

S. Nadeau motions to adjourn, L. Brown seconds the motion. All in favor meeting adjourned at 6:55pm.

Respectfully Submitted,

Dana Crossley  
Land Use Clerk