

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



**Zoning Board of Adj.**  
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**Meeting Minutes**  
**February 23, 2017**  
**6:00 PM**

Members in Attendance: Larry Brown, Michael Tabory, Sean Skillings (Alt), Stan Nadeau, Also in attendance, Dana Crossley Land Use Clerk

Excused Members: Bruce Woodruff, Lue Snyder

Public Attendance: Chuck Therriault, Chris Berry, Mary Perkins, Kelly Eaves, Stan Finch, Marie Finch, Eric Ohlenbusch, Nancy Ohlenbusch, Wayne Blair, Roberta Blair

Chairman Tabory called the meeting to order at 6:00pm.

S. Skillings will sit on the board as a full voting member in place of L. Snyder.

Public Comment: No public comment.

Continuation of Case 2016-4: Request for a Variance from Article III, Section 3.5 to allow the following uses not otherwise permitted within the LDR zone: contractor office/yard/storage yard and accessory structure. Site located at Map 45 Lot 23, Off Rt. 75, Milton NH in the Low Density Residential Zone.: Applicant Chuck Therriault and Agent Chris Berry were present at the meeting. Chairman Tabory reiterated that at last month's meeting they left off with a letter from the Town Attorney on his opinion on if the Zoning Board should hear the case and the applicant had said they were going to be going to speak with the Board of Selectmen and the Zoning Board thus table the case till this meeting.

Agent Chris Berry spoke stating that they were under the impression at the time that the Town Attorney and Town Administrator would have gotten together spoken about what was supposed to transpire as part of the Selectmen's conditions of approval for access, but that has not taken place and from the conversation between himself and the TA this afternoon led him to believe that it is the Town Attorney's opinion that the Board of Selectmen could not discuss this particular piece of property with them any longer as it is in front of the ZBA and the ZBA needs to make a decision, because the Select Board is the appealing authority to the ZBA which is false. He continued that he is getting frustrated in that they have done everything they have been asked to do, and they are here asking the Board to hear a case that has to do with a use on a piece of property that they have asked the BOS for access for, they have other potential access points to the piece of property if that is an issue, it is not the preferred way to go and would certainly like access through the Town property as they have worked out with the BOS, but he believes it is frustrating to his applicant when they've been asking to have the Town Attorney do certain things that he was supposed to do and provide guidance to the Town and they have not heard from him. C. Berry continued the guidance that we or you keep getting is to not hear this case and we think that that is legally incorrect and the Board needs to hear this case.

S. Nadeau asked if the Board has had any other communication other than the letter with the Town Attorney. Chairman Tabory replied that he followed up this week with the Town Attorney to see if a meeting did happen with the Board of Selectmen and all he got was that this is done, the BOS has denied it, there is no access, he (Town Attorney) stands by that the board should not hear it. C. Therriault commented that the Board of Selectmen did not deny it, they had conditions. Chairman Tabory clarified that the conditions that the applicant was given weren't met therefore there isn't any...

C. Therriault and C. Berry replied that the condition was on him (Town Attorney), it was his condition to fulfill and he didn't do it, according to the email from the old Town Administrator to the old Planner at the time they were told that the Town Attorney was to handle the condition, the first 45 day condition was the condition to make sure the Town owned the property legally and then he had the email that said they were not allowed to do it, the Town Attorney had to, they assumed it was done, it is all news to them when it comes back to that they were supposed to do it as they had clear instruction not to do it. He continued that his attorney had been working on it and was told to stop, they were in the process of doing it. Chairman Tabory replied that it is his understanding from the Attorney was that he was to review the information (title research) when the applicant presented it. C. Therriault replied that they were instructed not to do the research by the previous Town Administrator.

L. Brown commented that the question would be whether or not a town administrator no longer an employee of the Town has the uncontested executive power to commit the Town in this action, he suggests that she did not and does not, he stated again the uncontested executive power to commit the Town. He continued his second point that he believes is important that there is to the best of his knowledge and belief no uncontested, adjudicated ownership of that parcel in the name of the Town, the third point is he thinks it would be remiss of this board of adjustment not to respond to the clear direction of the Town Attorney. L. Brown added that if their attorney (speaking for himself in the discussion) can present substantive written documentation of the points they wish to raise and put them in contention in a formal letter of record to the Town Attorney then they have a basis of discussion, they are not at the discussion of what the previous TA may have said, they are on the discussion of the variance request and the written opinion and recommendation of the Town Attorney, and L. Brown continued in a vote apart from any thoughts he may have of the possible potential merit of the case once resolved, at this point would not vote against advice of counsel.

C. Therriault commented that he has not seen the advice from counsel's letter.

Chairman Tabory commented to the applicant that they are only a four person board.

C. Therriault commented that he agrees with L. Brown, he thinks it would be good to get his attorney who had been working on the issue to put a letter together for the Town Attorney and let them figure it out. C. Berry asked if there is an obligation for the Town Attorney to respond. Chairman Tabory replied that the applicant's attorney may know the proper procedure for that and that he has to agree with L. Brown as well, when the Attorney says to the board that they do not have the authority to hear the case, they need to follow that advice. S. Nadeau thinks it would be in the applicant's best interest to freeze the case and get the ducks in a row.

L. Brown motions to table Case2016-4 to the date certain of April 27, 2017 at 6:00 pm. S.

Nadeau seconds the motion. All in favor, motion passed, Case 2016-4 tabled till April 27, 2017.

Discussion and Approval of Minutes: December 22, 2016 meeting minutes, S. Nadeau motions to accept the minutes with changes. L. Brown seconds the motion. All in favor. Motion passed and December 22, 2016 minutes approved.

January 26, 2017 meeting minutes, S. Nadeau motions to approve as written, L. Brown seconds the motion. All in favor, motion passed and January 26, 2017 minutes approved.

Other Business: S. Nadeau will not be here for the March meeting.

S. Nadeau motions to adjourn, L. Brown seconds the motion. All in favor, meeting adjourned at 6:22pm.

Respectfully Submitted,

Dana Crossley, Land Use Clerk