

Town of Milton
424 White Mtn Highway
Milton NH, 03851



Zoning Board of Adj.
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Meeting Minutes
January 26, 2017
6:00 PM

Members in Attendance: Lue Snyder, Larry Brown, Michael Tabory, Stan Nadeau, Bruce Woodruff, Sean Skillings, Also in attendance, Dana Crossley Land Use Clerk

Public Attendance: Mary Perkins, Kelly Eaves, Wayne Blair, Roberta Blair, Marie Doiron, Dennis Doiron, Celina Hill, Stan Finch, Marie Finch, Eric Ohlenbusch, Nancy Ohlenbusch, Abby Karowtas, Chris Wyskiel, Chuck Therriault, Shannon Foy, Timothy Foy

Chairman Tabory called the meeting to order at 6:03pm.

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. (B. Woodruff stepped down from this case, Chairman Tabory appointed S. Skillings in his place to act on this case) Applicant Chuck Therriault was present at the meeting, agent did not attend. Chairman Tabory asked C. Therriault if he received a copy of the Attorney's opinion. C. Therriault commented yes and that they are meeting with the Selectmen on Feb. 6 to discuss the issue of access. Chairman Tabory motions to table Case 2016-4 and public hearing to the February 23rd meeting at 6:00pm. S. Nadeau seconds the motion. All in favor. Public hearing of Case 2016-4 will be tabled till the meeting on February 23, 2017.

B. Woodruff came back to the board. S. Skillings stepped down and is acting as an alternate.

Case 2017-1: Request for a Variance from Article XVII, Section I(4) of the Milton Zoning Ordinance to permit a primary structure within 50 feet of the public boundary. Site located at Map 23 Lot 59, 318 Bolan Road, Milton NH 03851 in the Low Density Residential Zone: Chris Wyskiel lawyer in Dover of the firm Wyskiel, Boc, Tillinghast and Bolduc Attorneys at Law is representing the applicant Timothy and Shannon Foy. Also introduced was Abby Karowtas who assisted C. Wyskiel. Chairman Tabory explained the procedure of the public hearing to the applicant.

C. Wyskiel started with reviewing the provided exhibits to the board. Exhibit A page 1: shows a small scale of the Foy's property. Exhibit A page 2: shows a blown up example of the property as is it stands currently. C. Wyskiel explained that it is a tiny lot in the Shoreline protection district, the low density residential zone, it has 104.6 feet of frontage on Bolan Rd., approximately 100 feet frontage along the shoreline, facing the road on the property the left hand boundary is approximately 53 feet deep and the right hand side is approximately 88 feet deep and

in this zone the front set back is 40 feet, 50 feet from the pond putting those two together eliminates an building envelope. He continued that it is an old grandfathered lot (lot is not the 2 acre minimum required by zoning) that came into existence long ago. C. Wyksiel explained to the board the existing structures that can be found on the property, there is currently an existing 2 room shed with no plumbing (very close to pond), the 2 bed room 47x10 1950's metal trailer with deck. The approved replacement septic tank is also depicted on this exhibit. Exhibit B page 1: Shows the original cottage that is close to the lake. Exhibit B page 2: Shows how close the cottage is to the lake, the cottage is on cement blocks, it is the original structure on the camp lot, existing when S. Foy's parents bought the lot, they are the ones who brought the trailer onto the site in the 70's which was 20 years old at that time. There were no set back regulations at that time. The trailer has not been used as more than a bathroom for 10 years. Exhibit C page 1: Shows the 1950's metal trailer. Exhibit C page 2: shows the trailer and deck. Exhibit D page 1: is a plan that was prepared by Norway Plains Associates, Steve Oles is the engineer working on the project. Shown on this exhibit is the existing encroachment into the 50 setback, the proposed new structured is shown on this plan overlaid onto the existing trailer footprint. Exhibit E page 1: shows the elevation and floor plans of the proposed structure, this is the view as seen from the lake. Exhibit E page 2: shows a side view of the proposed structure. Exhibit E page 3: provides a detailed floor plan of the proposed structure. C. Wyksiel explained that this gives a visual for what the applicant hopes to build, they want to upgrade the property considerably. He continued that there is no way they could comply with any of the setbacks for the front and side yards, but they have a zoning right to replace in kind in the existing footprint, if the structure was destroyed by fire or other means. The idea would be that they could build in the same foot print, they could build a stick built structure in the same foot print, but to conforming to what a room should be, what they have proposed is still a very small room that can be kept sanitary, it will improve this property value and will improve the abutters property values. He continued that instead of looking at the 'eye sore' they would be getting rid of it and replacing it with something real, the plus side that addresses the consistent spirit of the ordinance, State regulations, etc. the Foy's are willing to get rid of the old original structure that is close to the pond. C. Wyskiel explained that if they receive a favorable decision, Steve Oles would next go to the State to seek a waiver from the State regulation which also has a 50 foot setback, the criteria for the State granting a waiver tracks the language of a variance request, the team decided to come to the Town first to ask for the variance from them first, they felt it to be prudent to get the local opinion and ruling first. He continued that if they receive approval from both the Zoning Board and the State they would then need to get a Shoreline permit from the Planning Board as well prior to getting a building permit.

C. Wyskiel provided an email that was sent to the applicant from an abutter (Denise Hudson, 320 Bolan Road) who spoke in favor of the approval of the variance. S. Foy commented that the neighbor had also been to the Town Hall and gave verbal support. D. Crossley confirmed that she did speak to Renee Porter (320 Bolan Road) and she did speak in favor and in the same tenor of the email.

1. The Variance will not be contrary to the public interest:

C. Wyskiel addressed the first two requirements. He said to the board that the Chester v. Chester Rod and Gun Club case as referenced in the application, tells us to address standard to say would granting the variance in an unduly and marked degree conflict with what you're trying to accomplish with the zoning ordinance or alter the essential character of the locality, there are

other little lots in the area, the agent believes that the character will be preserved. He continued that he does not think that it is in the spirit of the ordinance the encourage lots that are all beat up.

L. Brown questioned where in the statute you find the definition of eye sore that has not been condemned by the building inspector as unsafe inhabitation. C. Wyskiel replied that he is not prepared to answer that and is not sure that the ordinance defines eye sore. L. Brown questioned that if they would agree that it makes it an aesthetic decision and does not present a hardship. C. Wyskiel replied that not he would not, because jumping to the hardship argument one of the things is to see and address the specific characteristics of the land that distinguish it from other lots in the zone, besides size, its developed structure is a wreck, however you want to define it, he does not think it necessary for it to be condemned and uninhabitable, the ordinances and building code collectively promote good house, it is a trailer and not a stick built house that can be easily repaired piece by piece, it gets rusty, it leaks, it is depreciated, it has lived out its lifespan, it is appropriate to replace it and because it was a trailer, just because it was not condemned does not mean it is not a hardship. L. Brown commented the land retains its particular characteristics of hard ship irrespective of any structure on it, you are addressing hardship of the land one might argue that it is a defect of ownership not to maintain the property. C. Wyksiel replied that certainly one cannot create their own hardship, one cannot maintain a metal structure to the same standard one is obliged to keep up a typically wood structure, it is rusted out. Chairman Tabory added that a mobile home has according to most banks who would finance a life span of not more than 50 years, they will not provide funding or financing for someone to purchase or to upgrade an existing mobile home, they are considered by any financial institution life span over. C. Wyskiel also addressed the hardship is generally unique characteristic of the land itself, where the development of the structure has been tied in with the land hardship. He continued was the hardship self-created because they did not keep up the mobile home, no, as the Chairman pointed out at some point the metal trailers just wear out; can they rebuild in the same foot print, yes they have a right to, but the floor plans as shown in the last exhibit, it is a still a narrow structure compared to other homes built today and that is still going into the setback. In terms of spirt and intent of the ordinance they are lessening the non-conformity that exist on the lot now and they think that is consistent with the spirit and intent of the ordinance and not contrary to the public interest. Page four of the submitted application letter does the math for the existing structures and how much overlaps into the shore land zone, with the new proposal there is less total square footage for the non-conformity and more importantly dragging it back away from the shore line.

Board Comments: S. Nadeau commented there is no doubt in his mind removing the two structures would improve the lot, it is a matter of the neighbors and how they will feel about not just the removal but also the replacement, he questioned if there had been any letters for or against submitted. D. Crossley replied besides the email that has been brought up, there has not been any written letters, but abutter Renee Porter did express her support in person. L. Brown remembers the comment being made if the set backs are used nothing can be built, that seems to draconian, the question is how does it increase, preserve, or stay neutral to the impact of the shoreland protection act; the point was made that there is a matter of right, if that was true then they would not need to be here, so it is not a matter of right, it is a matter of decision.

C. Wyskiel commented that their matter of right is to replace/rebuild in the current footprint of both structures. They are asking for a variance to alter the right to allow them to build in the foot

print (shown in Exhibit D, green shows the current foot print, pink shows the proposed new foot print).

B. Woodruff speaking of not being contrary to public interest and having the spirit of the ordinance observed from what he's read in the application and heard in the presentation it is his belief that this proposal will not alter the essential character of the neighborhood, he thinks it will bring it more together; secondly with regard to whether or not the proposal threatens the public health, safety or welfare, it is his feeling that by doing three things by moving the structure farther from the shore, net reduction of square footage of impervious surface, and new septic system it improves public health, for the variance not being contrary to the public interest he believes that the applicant has proven this and with regard to substantial justice being done really the only thing they need to look at is whether or not the benefit of the applicant is greater than the harm of the public.

L. Brown does not remember if they had asked from any input from DPW for the so called road that Bolan becomes at that point, what impact would the new footprint would that have on the ditch. C. Wyskiel replied the building would not be impacted if the was updating the road, the new structure would not be any closer than the current structure to the road.

Chairman Tabory opened to public input:

Marie Doiron, daughter of abutter Celine Hill: commented that they are fine with the change, as long as it does no negative impact on the lake.

L. Brown does terrain disturbance enter in your opinion under these first two points of discussion. C. Wyskiel replied they did not because the focus of the variance request is in the terms of what they would do. T. Foy replied they have no intention of changing the landscaping, it already has grass up to the lake.

(yes vote means that yes they have met the requirements/criteria)

S. Nadeau motions that the variance will not be contrary to the public interest. L. Brown seconds the motion.

Yes (5) No (0)

Passed.

2. The spirit of the ordinance is observed.

S. Nadeau motions that the spirit of the ordinance is observed. L. Brown seconds the motion.

Yes (5) No(0)

Passed.

3. Substantial justice is done.

C. Wyskiel explained that case law tells them the best way to address this is to put on a scale the harm the Foy's would experience if you don't grant the variance and compare it to the benefit gained by the town by denying the variance. He feels that the Foy's are hurt, they are stuck with this eye sore and what was covered in arguments one and two and by granting the variance the Town would be benefiting.

Board Comment: none

Public Comment: none

S. Nadeau motions that substantial justice is done. L. Brown seconds the motion.

Yes(5) No(0)

Passed.

4. The values of the surrounding properties are not diminished.

C. Wyskiel explained that at times he has brought in an expert testimony, but case law also says that the Zoning Board member's know value and can take a common sense approach to that with their experience as board members. He continued that if he lived next door to this property he would express favorably to the proposed improvements, because not only are they increasing their value but the neighboring properties as well.

Board Discussion: L. Brown commented that he has read about what is being call 'spite garages' that are built in order to block a neighbors view, he presumes that the construction in the new foot print and the with 35 feet height regulation by the Town, substantial justice will be done because there is no impediment to the view or similar rights of the neighbors. T. Foy explained to the board the configuration of the neighboring houses, he said if you are facing the lake there is one house to the right, an empty lot to the left and the lot behind them undeveloped steep hill. L. Snyder asked if it is a one story building. T. Foy replied that is a one story home with a walkout basement, it will be built into the banking. C. Wyskiel if he was a neighbor he would be in favor of the voluntary removal of the structure close to the pond and replacing with a nice new structure that was set back farther than the current structure. He believes it will not diminish the property values.

Public input: no comment

S. Nadeau motions that the values of the surrounding properties are not diminished. L. Brown seconds the motion.

Yes(5) No(0)

Passed.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

C. Wyskiel addressed the board that the hardship as discussed earlier in the meeting, the building envelopes small size, there is a 67 year old rotting mobile home trailer, and you need to apply the overall concept to the applicants facts in the proposal, is it a reasonable use everything we've said so far they think supports that. He continued what's the fair and substantial relationship that exists between the general purposes this is a 50 foot set back, why do you have one, because you are trying to encourage development on the shore land away from the water; there is no more room, so is there fair and substantial relationship existing between these set of facts and enforcing the setback as an absolute, we do not think so, as the trailer is already encroaching with the existing deck but with the granting of this variance they will voluntarily remove the structures that are there currently. There is a fair and substantial relationship that exists between any development and having a 50 foot set back but to this case, this tiny lot, its set back confinements, its existing development and what can be done in the same foot print is there, it is a reasonable proposal and in enforcing the 50 foot as an absolute, are you enhancing or are you acknowledging or embracing and enforcing a fair and substantial relationship he thinks not because you are going to gain all the other things that have been talk about by granting the variance, allow some modest encroachment but for this lot, these circumstances, this proposal all reasonable and there is no fair and substantial relationship between enforcing that as an absolute to saying no.

Board discussion: L. Brown moves that there having been no fair and substantial relationship between the intent of the zoning and the good merit of the application, we accept the use as a reasonable one. S. Nadeau seconds the motion.

Discussion; L. Brown commented that he used to be on the Conservation Commission what he is interested in is as dealing with shore land apps, the criteria are that you review, follow, record and maintain the findings and directions of the shore line protection act, which is his concern for a good project.

Yes (5) No (0)

Passed.

B. Woodruff moves to grant the variance to permit a primary structure within 50 feet of the public boundary with the following conditions:

1. Obtain shore land permit from NH DES Shore Land Bureau.
2. Obtain Planning Board shore land permit from the Town of Milton Planning Board.
3. Install roof run off infiltration stone drip edge trenches around the perimeter of the roof line.

Board discussion: Chairman Tabory asked if they should specify that they do remove the existing structures. B. Woodruff replied that it is in their testimony, but they can add it. S. Nadeau commented that he would like to add that no additional structure be built on the property.

Chairman Tabory questioned if he meant within the 50 foot zone. S. Nadeau clarified that he mean like a garage. B. Woodruff replied that it would have to go through the Code Officer anyway and then they would end up back at the Zoning Board. L. Brown asked if S. Nadeau point is that they are reducing the impervious surface which is part of the agreement to why they can have the setback change and if you add a garage onto that we are back to the original damage. S. Nadeau agreed. B. Woodruff replied that they would have to come back to the ZBA for another variance. L. Brown asked if anyone wanted to add anything about vegetation changes, rain gardens, etc. B. Woodruff replied that he was pretty sure the Shoreland Bureau would invoke those requirements in their plan.

C. Wyskiel commented that the proposed condition to not add any additional structure, he would say that that is contrary to the Milton Zoning, accessory structures are allowed through a permitting process. B. Woodruff added that the permitting process is through the Code Officer and if the proposed structure does not meet Zoning then the CO would send the applicant to the Zoning Board. Chairman Tabory clarified that they can build another structure if it passes by the Building Inspector (code officer). D. Crossley added that if they can fit in their setbacks they could build something with an approved building permit by the Building Inspector. B. Woodruff commented that it would be an administrative process through the town and if it didn't meet zoning or shoreland regulations it would come to the Zoning Board for review, he does not think they need to add that type of conditions. C. Wyskiel commented that he would ask that they did not add that condition.

B. Woodruff moves to grant the variance to permit a primary structure within 50 feet of the public boundary with the following 4 conditions:

1. Obtain a shore land permit from NH DES Shore Land Bureau.
2. Obtain a Planning Board shore land permit from the Town of Milton Planning Board.

3. Install a roof run off infiltration stone drip edge trenches around the perimeter of the roof line.

4. Removal of existing camp and trailer.

L. Synder seconds the motion. In Favor (5) Against (0) Motion passed and variance granted.

Chairman Tabory informed the applicant of the appeal process and that if work has not started within 2 years then the variance becomes null and void.

Discussion and Approval of Minutes: November 17, 2016 meeting minutes, L. Brown motions to approve the minutes as written. S. Nadeau seconds the motion. All in favor. (B. Woodruff and L. Snyder abstained)

December 22, 2016 meeting minutes. S. Nadeau motions to table the minutes. L. Brown seconds the motion. All in favor.

Other Business: S. Nadeau commented that he will not be in March for a meeting. B. Woodruff would also be unable to attend a March meeting.

S. Nadeau motions to adjourn. L. Brown seconds the motion. All in favor, meeting adjourned at 7:04pm.

Respectfully Submitted,

Dana Crossley, Land Use Clerk