

Town of Milton

424 White Mtn Highway
Milton NH, 03851



Zoning Board of Adj.

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Meeting Minutes

May 25, 2017

6:00 PM

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

Public Attendance: Alexx Monastiero, Walter Cheney, Don Dunton, Jeff Lord, Steve Elliot, Brian Boyers, Polly Katwick, John Katwick, Mary Jacobs, Kelly Eaves, Bob Bourdeau, Wayne Sylvester, Jill Guptill, Tyler Guptill, Kristin Wilson, Chris Ward, Wayne Blair, Roberta Blair, Jeff Theriault, Brett McKenzie, Danielle McKenzie, Connie Whitten, Andy Rawson, Stan Finch, Marie Finch, Molly Wilson, Sally Miller, Bradley Winn, Erin Mawn, Eric Salmonser, Robert Hart, Russell Neal, Jennifer Duprat, Scott Duprat, Jason Poth, Scott Duprat, Denise Brozeau, John Geronaitis

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

Chairman Tabory held a moment of silence in remembrance of Lue Snyder who passed away recently, Lue was a member of the Zoning Board for many years and will be missed.

B. Woodruff stepped down from the board for the cases and L. Brown was brought to the board to sit in place of him.

Public Comment: None

Case 2017-3: Request for a Variance from Article III, section 3.5 Table of Principal and Accessory Uses and Table of Dimensional Requirements, of the Milton Zoning Ordinance to allow single family, duplexes and multifamily housing with a density of 5,445 sq. ft/unit (based on HDR zoning section 3.5 note 3) on Tax Map 42, Lot 11, located on Elm Street, 89.76 acres, owner: Real Estate Advisors, Inc. Applicant: Alexx Monastiero: Chairman Tabory explained to the audience the procedure the review of the case will follow, the board members introduced themselves. Applicant Alexx Monastiero was in attendance to present their case, she gave an overview of their request, this is the first step in a long process for them, if the variance is approved nothing will change to the property, it will allow them the opportunity to invest in the engineering and go through with the planning process, development will not happen overnight. She continued that what they asked for is the increased density and uses allowed in the High Density Zone (HDR), she explained that first portion of their property is zoned high density, from the road it is 200' off the road like the other surrounding properties, and the rest of the property is Low Density (LDR) but there is water and sewer available to the parcel, so they think it makes a lot of sense to be able to have the HDR use for the increased density and residential uses of duplexes, triplexes etc. on the entire lot to justify the cost of bringing sewer and water up the parcel. A. Monastiero further explained that their vision is to create a community, they see the market of primarily 55+ and young millennials who are not having kids, hope to build two bedroom units with small office, not conducive to families, and the target is more for 55 plus and young professionals. She expressed that they believe having this zoning provides the maximum flexibility to cater to the market, with this location so close to

downtown residents are able to walk downtown to support churches and businesses, they think it is a great resource that would be misused if they have to follow the 2 acre LDR.

Chairman Tabory read into the record the Land Use Review forms from Waste Water, Bob Taatjes (was a member of the Sewer Commission before it came to the town) submitted documentation on the history of the Sewer Ordinance, Water Department, Fire Department, Police Department, Town Planner, PWD and a letter from an abutter who is opposed to the project, all reviews will be part of the file and available to the public. Chairman Tabory asked if any of the board members had a reason they would need to step down. Besides the board member who had already stepped down no board member expressed a reason they would need to step down. Chairman Tabory asked the secretary if the public notices had gone out. She replied that yes the public notices were sent out to their abutters list, notice was placed in the paper on the 15th and all fees were paid. Brad Winn (78 B Elm St) inputted that his neighbor that shares his duplex did not get a notice, 78 A Elm St. was aware of the case but did not get notified. Secretary D. Crossley checked the abutter list and did not find 78 A Elm St. listed as an abutter. Jason Poth (70 Elm St) noted that he did not receive a notice for this case, got one the first time around. D. Crossley showed him the certified mail stubbed that was signed for at his address showing that he was notified. Chairman Tabory stated that since everyone who stated that they did not receive notice, but are aware and here or aware of the meeting happening tonight, will leave it to the board to decide if they will proceed with hearing the case. S. Nadeau motions to proceed, S. Skillings seconds the motion. All in favor, board will proceed. (L. Brown abstained)

1. A. Monastiero first addressed as it will be part of the first questions answer, they know that there will be off-site improvements and engineering work to get water and sewer to the site and that will all happen during the planning process as well as fire. A. Monastiero explained that *the Variance will not be contrary to the public interest because: (in responding to this questions, please address: 1. Whether granting the variance would be alter the essential character of the locality and 2. Whether granting the variance would threaten public health safety or welfare)* the subject parcel has water and sewer available and is currently zoned partially HDR (multifamily) but primarily LDR. The current LDR zone is “rural” which makes it impractical to utilize town water and sewerage due to the 2-acre density lot size. The HDR zone allows for increased density, multifamily housing choices with water and sewer. The subject parcel is adjacent to the downtown lake area on two sides (north and east), while the other two sides of the property are adjacent to Route 16 (south and west). The highway and downtown lake area serve as boundaries in defining the locality by creating more in-town housing options, which supports the master plan and uses the resources of water and sewer. The essential character of the locality will not be altered since the locality already allows for multifamily buildings with increased density (HDR) nor will there be a threat to public health, safety, or welfare as proven by the allowed multifamily housing choices in the existing HDR zone that allows the same use and density requested in this case. Additional increased density multifamily housing choices in this location (less than a mile from town hall, downtown/village, churches, schools, lake, etc.) would maximize the number of people who could take advantage of the opportunity to walk to the above. In turn, this provides the powerful impetus to make the downtown vibrant. This enhances the essential character of the in-town locality and makes the whole community stronger. All of this is in the public’s best interest.

Board Discussion: L. Brown asked in your introductory comments you said that the parcel would be misused if not coming under high density zoning, that raises the question are the peoples whose houses are presently on the road misused, have you done a count of the number of houses from Dawson to Rte 75, by number of residents, by type of housing, can you provide a build out as too the number of units, the number of residents expected, the acreage reserved for public park, or park for the use of in-dwellers. He continued what do you see the present essential character of that neighborhood, given the number of dwelling units there and given the buildout that they expect how is that essential character preserved. A.

Monastiero replied that in regards to if the current residents are misusing their properties she does not think that is a fair comparison they have almost 90 acres and the lots surrounding them are 1 acre lots, what the neighbors can do on their property vs they can do on their own property is very different, so no she does not think they misuse their lots, believe they were intended to be single family/duplex lots, there are no other lots in this area that is about 90 acres or could do what they can do for the downtown. She continued that she has not driven or counted the houses, but is familiar with the neighborhood, seen the neighborhood and the variety of houses, mostly single family some duplexes, old/new. A. Monastiero added that she cannot give a number for the acreage that would be put in a park or the number of units they would have that would all be decided through the planning process, they have people studying the wetlands currently to decide the buildable acreage, will then look at setbacks and what would make the most sense to decide what the site will look like and what will be preserved, does think there will be a large amount of the land kept in open space as required by most towns, it will be decided during the planning process. L. Brown asked is there a particular physical condition of the parcel that precludes its use under present zoning. A. Monastiero replied that there is a large amount of ledge and wetland, what precludes it is the fact that water and sewer and that they are less than a mile from downtown, they won't be able to utilize that resource, they could bring the water and sewer onto their lot for the small HDR portion and develop it in high density, but because of the ledge and acreage the low density in the back they could not afford to bring water and sewer back to service the back portion with 2 acre density zoning, the frontage alone between high density and low density if a 125 foot difference, so every home put in low density that's another 125 feet of water and sewer; with the existing ledge and wetlands given the size of the parcel and its proximity to downtown those all are factors that preclude them from zoning of 2 acres. Chairman Tabory stated that he understands they need to figure out how much of the lot is buildable and that a portion may be left as park or conservation, but what is the projected goal over time for the number of units over time. A. Monastiero replied it is going to depend on what the town wants and the usable buildable acreage that there is, they plan to do it slowly build one building see if the market is there and continue in that pattern. Chairman Tabory asked what the goal for the number in the units, will they be building four unit buildings generally. A. Monastiero replied that the plan is do a mix of different sized buildings, single family, fourplexes, duplexes, 12 unit apartments, they have other developments in another community with those mixes that do very well together. Chairman Tabory asked if they would be doing any of the buildings for a tax credit. A. Monastiero replied their plan currently is to do no low income housing, they plan to have affordable rentals or condos to sell. She explained that she grew up in Newmarket and it looked a lot like Milton now, the Cheney Company has built 1,400 within a mile of downtown Newmarket and the downtown there is thriving, sees the similarities of Newmarket before those units went in with Milton now. L. Brown asked what they see as the essential character of the neighborhood now. A. Monastiero replied she sees it as an in town community that includes the variety of residencies, apartment buildings and single family homes, Elm Street community is connected to the downtown, there is an apartment building on Elm Street, the school on Elm Street, single families and duplexes close to town. L. Brown questioned how many properties are one Elm Street. A. Monastiero replied that her guess would be 100 but cannot say for sure. L. Brown asked for planning purposes how many people they assign to a unit. A. Monastiero replied for those units two, she explained that the housing style that exist now is different than the housing style they plan to build, the homes in the surrounding area are for some larger families, their units will be geared towards two dwellers, if they built all 500 units over 30 years likely that new community would be more than the existing community today. L. Brown spoke for clarification asking if they are saying that the housing which will be built is not the housing that exists in that neighborhood, then how does it maintain the essential qualities of that neighborhood. A. Monastiero replied that it will still be single family, duplexes and apartments but they will be marketing not to young families with children but to 55+ age in place. L. Brown questioned if it is a different age and cliental, then how does it maintain the quality of the existing neighborhood. A. Monastiero replied that she does not know the

existing neighborhood, they have not surveyed the houses nor know who lives in the houses, and they are doing their best to guess and cannot answer his question as they are not sure.

Chairman Tabory opened the floor to the public.

Jenn Duprat, Spring Brook Drive: commented that she is an abutter and that it would appear in the application they are claiming something they do not know anything about, if they are claiming your property will not change the community on that street, then they need to do the research to see if that is the case or not, also would like to comment on the fact that Newmarket and Milton are completely different in terms of demographics, Newmarket in a very close proximity has UNH, Portsmouth, Phillips Exeter Academy all of which probably use Newmarket for housing we don't have any of those things in our town or close proximity and does not think it is a good idea.

Robert Hart, Elm St: commented that the way he understands the exit and entrance to the development would dump onto Elm St. A. Monastiero showed the access on Elm Street and a right of way through a lot on Elm St, they won't know which access they will use till the planning process. R. Hart continued that Elm St. has no pedestrian access of sidewalks to downtown, with an additional 1000 cars on that road, the speed limit is 30mph but people already go 50mph down the street and with people and children walking down the road that is the biggest safety concern right there.

A. Monastiero commented that as part of the planning process they envision they may be required to build sidewalks from their point of access, from their understanding Elm Street is an old state highway, so they know it has the capacity and in the past has seen the heavy traffic.

Wayne Blair Elm St: commented that before 1980 Elm St was the DOT state road from Farmington to Milton before 1980, when the section of 75 was finished in 1980 before the Spaulding Turnpike in 1981 was when they turned the section of Dawson St to RT 75 turned it back over to the town, so it was a state road before 1980.

Jason Poth Elm St: commented if you have been up Elm St there are chickens, goats, pigs, does not see how the farm animals and that culture fits in with the culture they are proposing, agrees with L. Brown, it does not match the community on Elm St, and Silver St seems like the quietest neighborhood ever, how does that improve that situation for either of the streets.

A. Monastiero has not crossed paths with the animals, this development would happen slowly, when they say 500 units, it is likely many of the residents won't see those be built out, if they put 10 units it would not change the character of the neighborhood, five years later adding 10 more units would not change the character, maybe getting over 100, but that is years out, Walter's grandkids own the land and company they are working for the youngest is 5 years old this is for them to work on and own in the future, they don't plan to put 500 units in the next year or two, it is going to be slow developing.

Jason Poth Elm St: continued you have mentioned Newmarket he's noted that in public record there has been a significant amount of litigation between their business and Newmarket over the property they have built in Newmarket. So aside from the money that has been discussed already with updating water, sewer, now there is the cost of legal fees, so if the school system doesn't support, maybe it supports the first 2-3 years, the school can't support the amount of kids...if they end up in superior court arguing this can the Town afford it or are they going to go bankrupt over it.

Molly Wilson, Evergreen Valley: commented she has lived here forever, grew up on Elm Street, does not think this is just about Elm Street, it is about everyone here, it will cost everybody money, as far as safety it is unknown, the more people who come up from out of state who did not grow up around here, there is more crime coming north all the time, rental units vs owned single family, will put a strain on police dept., fire dept., the road works people, the have a hard time keeping up with snow now, as far as contributing to the down town area, Pizza Nook and Cumberland Farms that's not going to help Milton thrive bringing in a bunch of residents they'll pay taxes if the building sells, but in her opinion would cost more than it worth, once it is rezoned can be a free for all, you just don't know what's going to happen.

Tyler Guptil Micah Terrace student at Nute: Asked how close the entrances are to the School parking lots. *A. Monastiero* replied about two tenths of a mile. *Tyler Guptil* asked how it would affect traffic around the 7:30 and 2:15 times because the student parking lot already gets backed up with kids trying to get out with just the normal traffic without adding in more traffic over time.

A. Monastiero replied that traffic studies will be done as part of the planning process and can have an effect on the number of units allowed, along with the capacity for sewer and water. As far as the school goes they will connect and expect to connect sidewalks from their development to the school, the developer takes on costs for off site development to improve things in town, another thing is they may have private roads in the development which may release a burden from the town in that aspect.

Connie Whitten Elm Street: commented that she does not agree with this change, if sidewalks are put in it takes away from their yards, taxes never go down, concerned with the traffic, and has had bad experiences with builders around their property and their property suffers from it twelve years later, even when plans are brought forward but nothing is followed through they do what they want.

Andrew Rawson Teneriffe Mtn Rd: spoke that he is a Selectman but not here to represent the Selectmen, here to represent himself as a town resident, he understands that Walter Cheney wants to set up his grandchildren for the future, but this is not a way to set our own children up for the future, our school system cannot support...Nute is tapped out, we cannot afford to expand the school. This project he foresees to not help Milton has a lot of trust in the ZBA and the people who came out tonight that they will do the best for us

Billie Jo Ainsworth Elm Street: commented that she knows the road would be going right beside her house, concerned about her property and her kid's safety and if that is where all the construction vehicles would be going through. *A. Monastiero* explained that there can be screening put in to protect the homeowner, she explained further that they want to do what's best for the town, if what they are hearing is that no one wants this, the town doesn't want it they don't want more people to come in, build businesses, lower the taxes, then the property will sit there, but at some point this property will likely be developed and a road will likely go in there, hopefully it is us and we can do the best they can do for them.

Brad Winn Elm Street: commented on the topic of construction vehicles and safety, asked what typical traffic for construction vehicles concerned with safety with construction vehicles. *A. Monastiero* at this time they cannot answer that question because they do not know what the extent to which they will be able to build, but there are ways to limit the impact to the neighbors.

Steve Elliot Milton Water Dept.: asked how many houses would be part of each phase, and when the water study would happen. *A. Monastiero* replied that if they got an approval tonight here they would move forward to invest the money in a water survey, they do not have a phasing plan nor knowledge of how many houses they will have.

Russell Neal Evergreen Valley Rd: commented just to play devil's advocate if they built 400 units that sold for 250,000 each, which is less than what they are saying, that's 2.48 million in revenue for the school and about half of that would go to the school, even if they don't get the density approval they can still build, 40-50 houses up there and all the construction traffic that would all still happen, it would change nothing, except that if you build single family houses up there you may or may not get the same increased residents, but start building 3-4 bedroom houses you'll end up getting a lot more kids into the system anyways, understands that to the people who live right there it is a huge shock but you got to look at the whole town, and if you look at the current use and look at this as an extension of the downtown area, which it is there is already a portion in HDR, you can put a row of apartments in the there with 30-40 single family homes in the back and there would still be every problem being talked about now, but there would be less revenue and more expenses, have to look at the whole thing.

Chris Ward Elm St: asked if blasting would be going on for the next 30 years and what safety precautions would be taken for the resident's homes, foundations and safety of the people traveling and children going by to the schools. *A. Monastiero* replied that she has heard some of the horror stories

from the past and is sympathetic, there would not be straight blasting for the next 30 years and with a good respectable company coming in doing the blasting it would be done to the regulations.

Scott Duprat Spring Brook: commented that the area where they are has been in place for the past 12 years upside of the hill, has noticed more wildlife, people recreate in the area during the winter the development would affect their usage of surrounding lands, in their personal standpoint they are on wells and the blasting could have an effect groundwater and water flow. Concerned of noise increase and that is why they are opposed, would prefer the higher density to stay towards Elm St.

John Geronaitis Gold Street: commented that the current question to the board is how does this change the character of the community, thinks it is a great question but so far has not gotten an answer to what the plan is, so how can the question be answered in its current state, gotten a lot of promises and we'll see, does not feel at this point that they could say they won't change the character of the community, by making a variance to the zoning we are writing them a blank check so that if in ten years they do not uphold this and do change the character there is nothing we can do.

Kristin Wilson Elm Street: shares the right of way on her driveway, does not want the construction vehicles and 1000 of cars up her driveway, is 28 years old and will see the changes in 30 years, it is going to change the character of the town, it is going to change the character of her property, she moved there because it is 500' off the road, because there was wildlife behind her, because it was undeveloped, did not know that a construction company shared the right of way through their driveway, but they are changing so much about this town, cannot say some won't see this in 30 years because some will, some of their kids will. This is a huge project to welcome into the town it does not stop here, does not stop at Cheney, no one should have the right to come into our town and dictate how they are going to zone our property, this was set up for a reason and her hope is that ZBA will hear the residents and speak for the town and not someone who wants to make a financial gain.

Don Dunton Governors Rd: commented that this project would impact the utilities in town, the kids in the high school, the safety of travel to the school, concerned if they have 55+ and they don't receive the market what they would turn to, questioned the size of the right of way. (*A. Monastiero* inputted it is a 60' right of way) commented that we have a lot of land in this town and a lot is zoned rural residential, if this is passed it'll be setting a precedence to other people in town.

Chairman Tabory closed public comment.

A. Monastiero first wanted to point out that some of these larger lots have the potential to put in apartments on their lot if they are zoned HDR, for the character anyone who has a large enough parcel in the area could put in apartments themselves, and by allowing development to be dense in town where it is already dense and a lot of housing already, close to the resources already, you are able to preserve the rural character out of town, having a very rural lot is a different market than what they are aiming for in a higher density lot.

Board discussion: S. Nadeau does not feel he has enough answers to the questions, to say whether or not it is going to change the character of the community on that street. Chairman Tabory looks at the lots along there and looking at the size of them all and majority run between one and two acres, now one acre was LDR ten years ago, and then it went to 1.5 acres and is now two acre minimum, so he looks at the character of what's there, could they sell their house and turn it into a multi-unit property, they could, but what is the character today. He continued another argument he is hearing is that it is a mile to downtown walking distance, he lives a mile from the beach and has 40 acres what is to say that he shouldn't go do that, the precedent of that concerns him, that they are saying okay let's take 90 acres split it up into smaller spots, his question is understanding that making 90 acres into 2 acres lots you have to get all of that infrastructure out there it is not cost effective per house to get that up there, what is to stop a cluster development from being profitable, half acre lots on 90 acres would be 180 lots, if you did a cluster approach it would be 45 acres in LDR, why not do a cluster in the front with the max number you could add as it is zoned today.

A. Monastiero replied that that is good in theory, but 45 acres is a myth because you have to subtract the wetlands, the slope, etc., it would be closer to 30. Bruce Woodruff as Town Planner noted for clarification cluster subdivisions ordinance in Milton says that a developer has to do a yield plan first to determine the maximum number of developable lots and cluster together, they can be smaller but can't exceed the number in the yield plan, the yield plan is done by using the 2 acre minimum once you subtract the wetlands, steep slopes and conservation land around brooks, so what the applicant is saying is true, not sure on the 30 number, but it is defiantly not 45 and it cannot increase the number from the yield plan, the highest could be 45 out of a 90 acre lot. Chairman Tabory commented say that 30 acres is there, those could be duplexes in the cluster which would bring it up to 60 units, but that is 10% of the maximum that is being proposed. A. Monastiero replied that the 500 is just a number as is the 30, it takes a lot of the planning to figure out how much they can actually determine the number, in order for them to have all the answers they would need to invest a significant amount of money.

L. Brown asked B. Woodruff about the new Accessory Dwelling Unit law, B. Woodruff replied that it supersedes zoning to allow anyone to have an ADU in the existing footprint of their home or if they ask for a building permit to expand, but it cannot exceed 750 square feet of livable space, but can happen in any zone on any property. L. Brown asked if it would become a right superior in some instances to a variance and could be added to a variance. B. Woodruff replied that he does not see where a variance comes into play, there is no variance to be asked for. L. Brown replied assuming a development includes 'X' amount of duplexes which the Planning Board agrees will increase housing stock by 'X' each of those owners adds an ADU. B. Woodruff replied no, believes it is pretty clear in the statute or could be written into the town ordinance. L. Brown stated that variance runs with the land, rights of the variance can pass to a second owner without intervention from the town.

Board Vote on the first condition to see if the condition has been met: (1) Yes (4) No

2. A. Monastiero explained *the spirit of the ordinance is observed because*: since the subject property is currently zoned under the ordinance for both the HDR and LDR zones, to understand which zone is best in the spirit of the ordinance, one needs to look at the definition of each zone. "High density Residential (HDR) zone is established to accommodate single family housing apartments and dwellings with two units with a minimum lot size of .5 acre and served by municipal water and sewer. Developed lots shall be connected to the Milton Water District system and Milton Sewer District system if available. (Note in order to receive the benefits of the HDR zoning district the parcel shall be served by municipal water and sewer)." (pg. 11, Milton zoning ordinance). The property is currently zoned mostly LDR, but we propose to allow increased density multifamily housing choices which are allowed in the HDR zone above due to the in-town location and the availability of water and sewer. This will help realize the vision described in the Town of Milton Master Plan. Due to the property's location (less than a mile from town hall, downtown/village, churches, schools, lake, etc.) allowing in-town, multifamily residential choices and concentrating higher density multifamily residential areas in the downtown area as proposed is in the spirit of the ordinance as it maximizes the number of people who could take advantage of the opportunity to walk to all of the above. This in turn helps to make the down town vibrant and makes the whole village community stronger. This is consistent with the Master Plan's vision of Milton as "as quality residential community with a New England village style town center that preserves and maintains the Town's historic and rural character (pg. 6 Milton Master Plan)" and is in the spirit of the ordinance. "The Low Density Residential (LDR) zone comprises the largest land area in Milton, approximately 90% of the land area, and is established to accommodate residential, agricultural, recreational and rural type land uses in a low-density environment with a minimum lot size of two acres. (pg. 12 Milton Zoning Ordinance)" Due to the property's in-town location and existing/natural barriers, the allowed uses in the LDR zone do not meet the goals of the master plan or the spirit of the LDR ordinance, nor do they achieve the allowed uses of increased density multifamily housing choices on the HDR portion of this parcel. The LDR zone's minimum lot size of 2 acres does not provide sufficient

density to support the downtown. While water and sewer is available to said parcel, it is impractical to utilize this resource in the LDR zone due to the 2-acre zoning with no decrease in lot size for use of water and sewer. The Master Plan states the following: “concentrate development in the town center” (pg 32, Milton Master Plan) and “encourage any future site design to provide pedestrian linkages with the town center” (pg. 32 Milton Master Plan) If the subject parcel in this location is allowed to be developed with increased density multifamily housing choices, it will have the density/opportunity to carry out the spirit and vision of the master plan. If left with only LDR uses and density (“residential, agricultural, recreational and rural type land uses in a low-density environment with a minimum lot size of two acres”) development of said property will not have the opportunity to meet the goals of the Master Plan (above) or the spirit of the ordinance. The Master Plan states the following on page 3: “Policy goals: general statements expressing citizens’ desires or what the citizens want to achieve relative to an issue” The downtown cannot grow and thrive if said property is limited to LDR uses/density at this in-town location. The downtown needs high density plus a diversified range of housing choices which can only be achieved through multifamily housing options that could consist of a variety/choice of apartments, townhouses, condominiums. This would provide for young professional/millennial and elderly/age in place housing choices that could consist of 1, 2 and 3 story buildings—all of which is consistent with the Town of Milton Master Plan and the spirit of the zoning ordinance.

Chairman Tabory opened for public comment.

Kristin Wilson Elm Street: commented it notes in the application that there will be many pedestrian linkages provided to downtown and that strong interest in elderly housing, her question is have they looked at the elevation of this lot compared to downtown, putting elderly housing into this lot with its high elevation compared to downtown, you would be hiking a concrete mountain back from downtown, are those pedestrian linkages really going to be helpful to the downtown, town and elderly, she does not think they are, she wouldn’t want to hike the concrete mountain back to the top, does not think it is a huge benefit to putting more housing on that lot. The application speaks to if it was left to LDR, people have spoken to the recreating that people do in the land of Milton, the wildlife they like having the farm animals in their back yard.

Scott Duprat Spring Brook: commented that zoning as it is set up right now that was set up for the reason, and the intentions of the past should be upheld, they could use their front part in HDR and the rest in LDR as they have suggested for the other land owners.

A. Monastiero responded that the LDR ensures that wildlife will remain and recreation will remain and thinks that to be untrue, understands where she is coming from but if you have 2 acre density zoning vs a half acre density zoning, what you could put 4 houses in you can only put 1 house, they have a lawn, driveway or whatever they want to do, so their sprawl of 2 acres could have been condensed to many more units so more can be preserved, the wetlands are not preserved as well in the 2 acre lots as they would be if the density is concentrated. She responded that she understands the comments to the elderly but when they say elderly we intend 55+ rather than the traditional 75-80, a lot of people at 55 are still very active, one of their current developments of 55+ has very active residents who have formed a walking group, definition of 55 is different than 80 who may not be able to move around as easily. She believes strongly that if this development were to happen, restaurants and other businesses would come to Milton.

Chris Ward Elm Street: commented where they are trying to address the spirit of the ordinance, the fact that the proposal is so vague, has heard the term multi-family, duplex, condo, apartments, 50+, the fact that this has changed so much in a short amount of time concerns him as a resident, it’s hard to speak about how it will affect something if we can’t get a clear answer to what we are looking at, and it will probably continue to change as they continue to talk, understands not spending a great deal of money before something but hard to make a decision as a community if they don’t know what to expect.

Chairman Tabory closed public input.

Board discussion: S. Nadeau commented again that he does not think he has enough answers. L. Brown asked what the existing natural barriers are that are referenced. A. *Monastiero* replied looking at their lot they are surrounded, the barriers being referred to are the lake and RTE 16, this section of land makes the most sense to be high density as it won't be expanded past these referenced barriers, it would be difficult to expand water and sewer past the referenced barriers, in her opinion this lot is the place to put High Density, at some point the Town will want more housing opportunities. A. *Monastiero* L. Brown questioned how it is different than saying other people own more useful parcels with better access. A. *Monastiero* replied she did not think that was what she said, but could have misspoke, they have great road access they are right off the highway they believe their location is prime. L. Brown continued then what is the barrier. A. *Monastiero* explained that what she was saying was that the high density zone can't expand past RT 16 because they would not be able to get to downtown, and can't expand past the water because you can't expand the water and sewer with it, high density has to go with the water, sewer and close to downtown, this lot is one of the last places it could go. L. Brown clarified that it is a restriction of the existing infrastructure. A. *Monastiero* agreed. L. Brown questioned the barriers...do not achieve the allowed use of increased density multifamily housing units on the HDR portion of the parcel, the suggestion was made by the chair that a bifurcated development might be possible, somewhere someone referred to the arbitrary 200' nature high density zone, and on behalf of previous Planning and Zoning Boards would suggest that it was a reasonable decision based on the even more rural nature of Milton at the time, 200 was arbitrary, 500 is arbitrary, 600...if there were 600 feet and the town by its own legislative action increased high density distance from the road to 500, since it is a theoretical question it is a theoretical answer, what would that do for them. A. *Monastiero* replied it would give them 300 more feet to do high density, what she meant by arbitrary is that there is water and sewer available in the first 200' feet, on their lot which is different from other lots, the water and sewer is available to even past the first 200' feet, if they put the infrastructure in, the other lots cannot go further back, by saying arbitrary she meant that in their case the water and sewer can go much farther than the 200 feet they have in HDR, agrees with him that 500, 700 would still be arbitrary, they also have a lot of ledge at their entrance to bring water and sewer just to the front of the parcel and not to the back is not cost effective, they cannot afford the bring the water and sewer just to the front for an apartment building because it is 100% ledge. L. Brown asked if they would agree that given the access can be established with minimum blasting and change of slope to minimum requirements that the cost of sewer and water would not exist if the parcel were developed on the incredible technological improvements of small site septic fields and private wells. A. *Monastiero* replied yes, if they were going to develop tomorrow and just do 2 acre lots, single family homes, they would not utilize town water and sewer because it would not be cost effective they would have to do septic's and wells. Chairman Tabory is seeing a lot of how they meet the Master Plan, but does not see how they answer the spirit of the zoning. A. *Monastiero* replied with a quote from the Master Plan, the Master Plan is supposed to provide guidance and a vision to what the town wants to see in their zoning ordinance, they looked at the Master Plan for guidance as there was not much else, read through the zoning ordinance and in their answer put the definitions of high and low density and feels strongly that their parcel does not fit in with the definition of low density being this close to town with the density that surrounds it with the availability of water and sewer which is all parts of the high density definition, thinks that where there is HDR and LDR on this lot the spirit of the ordinance fits better with the HDR on the entire lot not just the 200' than the LDR does on the lot. L. Brown commented that he generally looks to the legislative vote of the citizens contained in a warrant to establish and modify a zone, how would you respond to the assertion that this development as projected thus far short circuits that process. A. *Monastiero* replied that first this is an idea and did not realize this would be a one night meeting, what they want to do is what the town wants, 500 may be too many and scare everyone, but anything would be better than the 2 acre lots, some zoning ordinances need a push to be updated. Chairman Tabory commented that he sees a portion of that

argument on a scale, thinks as far as the location goes, yes that is more of the intent of a higher density building of homes would be, but thinks that if the town intended when voted on the zoning thought that all 90 acres should be HDR they would have pushed it further out. *A. Monastiero* replied there isn't a limited number to just push it back that would have made sense, most of the lots surrounding are 200' so that makes sense to why they would have it be 200' but their lot is completely out of character for the lots on Elm St. Chairman Tabory replied but before the front lots were subdivided off it would have been a different scenario, asked if they owned it when it was subdivided off and if not when they bought it. *Walter Cheney* replied that he did not and they bought it around 2005. Chairman Tabory clarified that then the zoning was in effect at that time. *A. Monastiero* replied it is possible. Chairman Tabory commented that he will admit he is torn because he does believe the Master Plan suggests this more of an area for it to happen, but not personally comfortable with the 90 acres, but needs to step back from that and have to look at it as the release valve and look at the facts and the specific qualities. Board Vote on the second condition to if the criteria has been met: **(4) Yes (1) No**

3. *A. Monastiero* explained that *Granting the variance would do substantial justice because*: the first 200' of the subject property is presently zoned HDR which was arbitrarily created in spite of the availability of water and sewer on the whole parcel. Therefore, the property should have the benefit of increased density while using the available water and sewer which is impractical to use in the LDR zone due to the 2-acre minimum lot size requirement. Due to the property's location (less than a mile from town hall, downtown/village, churches, schools, lake, etc.) allowing increased density multifamily housing would do substantial justice by maximizing the number of people who could take advantage of the opportunity to walk to all of the above. This in turn helps to make the downtown/village vibrant and makes the whole community stronger. This does justice to the community's vision through the Master Plan of Milton as "a quality residential community with a New England village style town center that preserves and maintains the Town's historic and rural character" (pg. 6, Milton Master Plan) It makes good planning sense and does substantial justice to develop this parcel as increased density with multifamily housing choices because it complements the downtown/village character. This property is one the last large undeveloped parcels before the barrier of Route 16 which could prevent any further expansion of water and sewer. Increasing the allowed density in this location does substantial justice as it encourages the positive economic growth of the town center. The Master Plan under Town Center Development states that the town should "concentrate development in the town center" (pg. 32 Milton Master Plan) and "encourage any future site design to provide pedestrian linkages with the town center" (pg. 32 Milton Master Plan). Increased density, multifamily housing choices at this in-town property does substantial justice to the Master Plan, the resource of water and sewer, and to the residents and community as a whole. The master plan states the following on page 4: "citizens drive the standards: their aspirations, expectations, goals and policies or principles...the Master Plan will describe these Standards. Some exist in current ordinances and regulations. Others will need to be prepared and adopted over time. Achieving them will result in achieving the vision of a quality residential community."

Chairman Tabory opened the floor to the public.

Connie Whitten Elm Street: said on Elm St we keep talking about sewer and water is available she is not on Sewer, but is on public water. Doesn't it stop half way up the hill on Elm St. *Steve Elliot* noted that it stops just about Davey Paey's house. *Chairman Tabory* spoke that if he is correct and they put in the infrastructure those people along the way would be able to connect into the sewer as well.

Jason Poth Elm St: asked if the board could you define justice to how it pertains to this. Chairman Tabory read the definition. *Jason Poth* continued that he has lived here for 6-7years, some neighbors are newer and some have been there a long time, listening to the surrounding properties gives them joy, the

last thing he wants to hear is the hum of 500 air conditioners, keep talking about rural new England community, not going to be rural with 500 units, with 30 units over 90 acres that's still rural.

Brad Winn Elm St: commented he thinks benefit and justice from a lot of things brought up talking about wildlife, etc, since moving here there is potential for a lot of change, came from a very developed area, moved to Milton for the rural atmosphere, and enjoys the rural aspect, but we talk about benefit of recreating or hunting, being able to see wildlife you can argue that taking 2 acres and building a house there is the likely hood that it will lessen the visibility, having this development would keep the wildlife further away with the public lighting, ac etc. it will keep the wildlife further away. Also how does bring in a few hundred units benefit the downtown or what will all the units bring to Milton to offer the downtown or what will our downtown draw for people.

Jenn Duprat Spring Brook: asked the zoning was in place prior to them buying the parcel, they purchased property and were unsure of what the zone was, that seems to her a buyers issue, it is not their fault they bought property and can't build the way they want to, but it should not impact, she knew what her property was zoned and the surrounding properties, she did her research and shouldn't have to suffer a substantial injustice because they chose not to.

Molly Wilson Evergreen Valley: commented they knew what it was zoned when they bought it, when was the last time ten houses went up and your taxes went down, just because they are paying a tax bill the taxes still go up, people coming in a 100 units will not bring down our taxes, we'll pay more for all the services, they should find another town that wants something like this. If they want to put in whatever is allowed in there that's fine.

Chairman Tabory closed public comment.

A. Monastiero commented that the property will likely be developed regardless, can be one way or the other way, have a similar case in Newmarket who brings in a million dollars in tax revenue without a single child in the development not even restricted to 55+, understands the due diligence, they know what the zone it is today and happy to leave it as it if that's what is desired, but thinks justice would be done to the town and parcel with its uniqueness if it was developed in a different way.

Board discussion: S. Skillings does not see how they will sell \$300,000 townhouses here in Milton.

Chairman Tabory does not know if that necessarily is an issue they need to worry about, he sees the benefit to the applicant but the general public perceives harm. L. Brown commented that economic goals of the applicant are not the issue, chapter 672 in the land use books... 'just because you bought it doesn't mean you'll make money'.

Board Vote to see if the third criteria has been met: (0) Yes **(5) No**

4. *A. Monastiero* explained to the board that *the values of surrounding properties are not diminished because:* by allowing increased density, multifamily housing choices, there is no physical change to the property; it is only the first step in the planning process. The use and density change only allows the opportunity for the creation of potential plans which the planning board will review in conjunction with abutters' input/concerns. To develop said property will cost many tens of millions of dollars and will require us to promote the town of Milton and the area to attract customers. Given current building costs, it is not possible to build new construction at a lesser value than the surrounding properties so property values on new construction will be substantially higher than values of the surrounding properties.

Therefore surrounding property values would not diminish and the value of the town as a whole will improve. Increased density multifamily housing is currently an allowed use in the HDR zone throughout the community and on the first 200' of the subject property and has not knowingly diminished property values. Our variance requests multifamily housing choices to be allowed at the same density in HDR as it is today. Increased density multifamily housing choices on the subject parcel is all in keeping with the Town of Milton Master Plan which describes the following vision and goals for the town: "concentrate development in the town center (pg. 32 Milton Master Plan) and "Encourage any future site design to provide pedestrian linkages with the town center" (pg. 32 Milton Master Plan) "A quality residential

community with a New England village style town center that preserves and maintains the Town's historic and rural character" (pg. 6 Milton Master Plan) Residents/Planning Board of the town of Milton voted to adopt the master plan because its outlined goals/vision would be positive for the town. "as the Master Plan was developed the Planning board listened closely to the concerns, perceptions, and wishes of the residents and worked to craft a document that sustains and further develops the quality of life that the residents of Milton enjoy" (pg. 7 Milton Master Plan). Increased density, multifamily housing will provide a range of housing choices, including apartments, condos and townhouses. This will allow young professional/millennial and elderly/age in place housing all within 1 mile of downtown. As such, property values will not be diminished.

Chairman Tabory opened the floor to the public:

Molly Wilson Evergreen Valley: if you build a beautiful house in a trailer park, the house isn't worth any more than the surrounding properties, if all the houses on Elm St are about the same, putting townhouses or apartments, you have a bunch of single family homes in the area, putting in the townhouse/triplexes etc. even if they are \$300,000 units it will not help the properties around it, having apartments around the single family homes would deprecate the homes more than it helps grow the value.

Jason Poth Elm St: if you take the 60 foot right of way that goes through someone's parcel will lower the value of that property and the properties next to the entrance with all the ledge will depreciate, that's three homes to show your answer.

Kristin Wilson Elm St: as far as property values, the water runoff from their property floods onto their neighbor's property because they are built up higher than the neighbors, that will happen to all of the houses along Elm St. with this development because of its higher elevation.

Scott Dupret Spring Brook: with the high concentration of cars and traffic of Elm St, increase of rubbish on the roads, run off from parking lots, drainage systems would need to be dealt and put somewhere, considerations that will effect values of homes surrounding.

Chris Ward Elm St: the taxes in this town are extremely high already and it's obvious the infrastructure in place will not support the ideas being thrown at us, taxes will go up and depreciate our resale value, no one wants to come in if the taxes double.

Chairman Tabory closed the public.

Board discussion: B. McQuade thinks property values is all speculative, understands the concerns, but does not feel there is enough information to show it as a fact, has seen articles on low income housing built new high income homes and surrounding properties value actually raised some. Chairman Tabory commented that he finds it inconclusive, not necessarily convinced they are not going down, some of the arguments would be addressed during the planning process such as drainage, sidewalks etc., but a lot of it is the unknowns about what will be developed, again does not know if it has been proven one way or the other. He continued considering what is the impact over time, not saying it won't help property values, what happens if they sell to someone else who wants to take advantage, does not see anything to tell them it has been met. L. Brown commented three direct abutting properties are at risk, they have a 60 foot right of way, the town requires 50 feet for a dedicated road, the 60 foot right of way leaves 5 feet on the sides, if he had that property and offers it for sale today and after a 50 foot road went through their side yard what is the better price, how many of those make surrounding properties.

A. Monastiero responded to the public comments, during planning process they would have to take care of the water runoff and it could be improved regulations require them to make sure no run off goes off site, in regards to the home with the right of way understands where they are coming from but doing their own due diligence during the buying process would have known about the 60 foot right of way and property value would reflect that when they bought the property knowing there was an easement on the property already, encroachment on the clear title. As far as the affect the board says it is inconclusive, when reading what you have to think about to answer this question it says that expert testimony is not

conclusive in her experience they as a company have never decreased property values in the 56 years of business.

S. Nadeau commented that again there are a lot of ifs.

Board Vote on the fourth condition to see if the criteria has been met: (1) Yes **(3) No** (1) abstained (L. Brown explained why he abstained)

5. A. Monastiero explained to the board that *Literal enforcement of the provision of the ordinance would result in an unnecessary hardship. Special conditions of the property distinguish it from other properties in the area because:* The Master Plan states the following: “concentrate development in the town center” (pg. 32 Milton Master Plan) and “encourage any future site design to provide pedestrian linkages with the town center” (pg. 32, Milton Master Plan). The barrier of Route 16 limits how far the downtown/village can expand as a village. It would be an unnecessary hardship to leave this property with only the use/density allowed in the LDR because it is one of the last remaining large parcels adjacent to the town center (but before Route 16) that could achieve the Town of Milton Master Plan goals. LDR is “rural type land use in a low-density environment” (pg. 12, Milton Zoning Ordinance) which, by definition, does not create a “New England village style town center” (pg. 6, Milton Master Plan) as envisioned in the Master Plan. This requires the increased density, multifamily housing choices to be allowed on in-town parcels, such as the subject parcel, to achieve these goals. It is an unnecessary hardship to have water and sewer in the LDR zone when it is impractical to use due to the two-acre density. It is a hardship in itself that the 200’ HDR zone was arbitrarily created where there is the availability of water and sewer; in this case, the whole parcel has the availability of water and sewer. Therefore, the property should have the benefit of increased density on the entire parcel. The parcel’s proximity to downtown with LDR zoning described as “rural type land use in a low density environment” (pg. 12, Milton Zoning Ordinance) is a hardship to the downtown because it underutilizes the subject parcel’s size, location, the resource of water and sewer, and provides fewer patrons to support the downtown businesses.

A. Monastiero continued that *this parcel has the following special conditions that distinguish it from other properties in the area:* Substantial acreage (90 acres), undeveloped with no buildings, portion of the lot in the HDR zone, less than a mile from downtown, availability of water and sewer although it is impractical to use the water/sewer under LDR (rural) zoning due to the large two-acre density, presently zoned primarily LDR, defined as “rural type land use in a low-density environment” (pg. 12 Milton Master Plan) yet has the availability of water and sewer and proximity to the town center that the majority of the other LDR parcels do not have, and the barrier of the Milton Three Ponds on the south and west and of Route 16 on the norther and east sides of the property. The Master Plan states the following: “concentrate development in the town center” (pg. 32, Milton Master Plan) and “encourage any future site design to provide pedestrian linkages with the town center” (pg. 32, Milton Master Plan). The subject parcel is distinguished from other properties in the area because it is one of the last remaining large parcels adjacent to the town center that could help achieve the goals of the Master Plan for a “New England village style town center” (pg. 6, Milton Master Plan) if allowed to be increased density, multifamily housing choices.

A. Monastiero further explained that *the proposed use is a reasonable one because:* the Town of Milton Master Plan has the following vision and goals: “a quality residential community with a New England village style town center that preserves and maintains the Town’s historic and rural character” (pg. 6, Milton Master Plan). “Concentrate development in the town center” (pg. 32 Milton Master Plan) and “Encourage any future site design to provide pedestrian linkages with the town center” (pg. 32 Milton Master Plan) Increased density, multifamily housing choices on said property can help achieve the vision and goals for the town in full support of the master plan above. “The Master Plan is a policy document that will be referred to when members of the Town government are developing and modifying Town ordinances” (pg. 4 Milton Master Plan). Increased density, multifamily housing choices promotes

the Master Plan's vision, and therefore it is reasonable. Since the subject property is currently zoned under the ordinance for both the HDR and LDR zones, allowing the increased density, multifamily housing choices currently allowed in the HDR zone makes common sense at this in-town location. Said property has available town water and sewer which is a requirement of the increased density, multifamily housing choices and maximizes the usage of those resources. The allowed uses in the LDR zoning is consistent with the character of rural parts of town, but does not fit this in-town location. Increased density, multifamily housing choices is a far better fit with the surrounding properties and community, as supported by the first 200' which is already zoned HDR. The town has already zoned a portion (200') of said property as an HDR zone. If approved, this variance would allow the same density and the multifamily housing choices on the entire parcel. Increased density, multifamily housing choices allows for a mix of housing types, including the opportunity for affordable and elderly housing, a goal of the Master Plan. Said property is within 1 mile of downtown/village, giving residents the opportunity to walk to the town center, the town hall, schools, churches, and the town lake—all in keeping with Milton's small-town character. Increased density, multifamily housing choices on this property in this location will not generally be seen since there is limited visibility of said property off of Elm Street due to the property's elevation. In addition, the area is heavily wooded which visually protects abutting properties. Increased density, multifamily housing choices helps accomplish the goals and strategies of the Master Plan by concentrating high density developed with water and sewer that make in-town residential use available within walking distance of the downtown/village. Granting this variance with increased density would require the use of water and sewer which would help protect the groundwater.

Chairman Tabory opened to the public:

Erin Hutchins Depot Pond Rd: recently moved to Milton, chose Milton for all of the qualities that have been mentioned, the ruralness of it, does not see adding 500 units to the town and add a strain on to the departments who do an awesome job, but there is already a strain there, granting the housing would create a greater hardship on the town departments, feels that the single family homes would be better.

Kristin Wilson Elm St: did know the 60 foot right of way was there on her property knowing it was LDR and might share a right of way with a few homes behind hers, she believes it would be a hardship on her. Chairman Tabory closed public comment.

A. Monastiero replied that if the ZBA felt strongly that the idea was something that they wanted but needed to be reformed, ZBA could approve this with restrictions if that was something would alleviate some of the issues, anything would be better than the zoning today.

Board comment: Chairman Tabory commented that the difficulty he has with setting those conditions, they know roughly what they think they want to do, does not know they are in a position to say a number is okay if they do certain things, nor does he think it is the burden of this board to do that, that could set conditions, could see this going before the voters to see if they want to approve a zone change, or if they came back to the board with the plans for a cluster but maybe more than duplexes it would be something to consider. He continued that they keep commenting on a 200 foot arbitrary distance back, does not know if it is arbitrary, may be a control set for a reason because the resources are not unlimited, understands that in concept they should increase the capacity of the water and sewer, which could be a very big benefit for the plan but not knowing enough about this plan if that would happen. A.

Monastiero this will remain unknown until it goes to the Planning Board. Chairman Tabory personally does not see the scope of this does not meet the arguments being made. L. Brown stated one of the questions going through his mind, is ledge a hardship imposed by zoning. *A. Monastiero* replied it is a hardship of the land. L. Brown continued the hardship of the zone applied to the land and the access to it, if this was a place without ledge what hardship would exist, still have the same zoning, right of way, nominal affected abutters, the hardship is in the development costs which is a risk of ownership, does not see where the line is with the cost of development 'properly recognize the difference between the

two zones' thinks that the town planner is a wonderful resource, for himself would be looking for the specifics of a March vote.

Board Vote on the fifth condition to see if the criteria has been met: (1) Yes (4) No

B. Woodruff explained that the hardship condition has to be winner to really need a binding vote, the hardship is the one criteria that needs to be met in order to have a chance at passing. Chairman Tabory decided that to be consistent they will still do a final vote.

S. Nadeau motions to deny the application. S. Skillings seconds the motion. Board voted in favor of denying the application. (5-0)

Case 2017-4: Request for a Variance from Article III, Section 3.4d and Section 3.5 Table of Principal and Accessory Uses and Table of Dimensional Requirements of the Milton Zoning Ordinance to allow the Agritourism Accessory Use of Weddings, Functions, Private Events, Charity Events, and farm to table dinners to be held on McKenzie's Farm property at 71 Northeast Pond Rd Milton NH, Tax Map 23 Lot 1. Owner: Stewart and Ann McKenzie, Applicant Brett and Danielle McKenzie: D. Crossley explained to the board that the applicant was not asking for any variance from the table of dimensional requirements. Danielle McKenzie and Brett McKenzie was in attendance to present their case. L. Brown stepped down from the board. The applicant was asked if they would be okay with B. Woodruff sitting on the board as an elected member/town planner or if they would rather have a 4 person board. D. McKenzie decided they were good with a 4 person board.

D. McKenzie explained to the board that they would like to build a barn in one of McKenzie's Farm's back fields to host weddings, charity events, and farm to table dinners, reunions, and other events seasonally from April through November with approximately one event per weekend. Each event will be coordinated with fire and police personnel prior to the event to ensure safety at the event as well as traffic control if needed. Each event would have a curfew ending not later than 12am, the site where the events would be located would be set back from the road and surrounding neighbors. They would work closely with the nearest neighbor on any issues of noise if those arise. The increase of cars would be addressed by creating a designated parking area right next to the barn. (Provided a sketch of the property and proposed site.)

S. Nadeau questioned if they had decided on the exact site for the barn. D. McKenzie explained it would be in a back field and B. McKenzie clarified that the exact alignment has not been decided but overall area is. S. Nadeau thinks there should be a walk through, because if they do not have a definite location and not everyone has been there does not think it would be a bad suggestion to do that. D. McKenzie showed the board the general area of where the barn is going to be located. Chairman Tabory stated he does not need to have a site walk.

S. Nadeau motions to do a site walk of the property. S. Skillings seconds the motion. Board vote: 3-1. S. Nadeau commented when talking about functions its live bands, laughing till midnight that is late to a lot of people. Bruce Woodruff explained to the board why the board is here, State legislature passed some legislature to promote the stability of existing farms and allow for farms to continue to be profitable and allowing certain things to happen on farms under the term agritourism, it was later amended to be more in line with the planning process to button up loop holes, they did some extra language but it is not specific enough in regards to specific accessory uses under agritourism that may be allowed on farms, the farm is still the principle use of the farm and weddings and farm to tables are the accessory uses. He continued that if each Town's zoning does not list anything specifically it is not allowed, so they are asking for a variance for specific uses, the Planning Board may address the ordinance in the future. Chairman Tabory asked what stops this from being an owner run business and making so they did not have to come before the board. B. Woodruff replied they have an owner occupied business farming operations, bottom line is the things they do today are customary to the

incidental use of farming operation, but agritourism is a horse of a different color because there are some impacts to roads, neighbors in regards to what they may want to do, the statute is not specific enough and the answer that came from the attorney at the Municipal Association to make sure they follow the right planning pattern to allow the public and the abutters to see what they are proposing and make comment, the application is granted it will go to the Planning Board for site plan to review traffic control, hours of operation, etc. Chairman Tabory asked again if a site walk is necessary. Board discussed what a site walk and next meeting would take place, B. McQuade would not be present for the June meeting. Board reviewed the submitted sketch of where the barn would be located. S. Nadeau asked the abutter Christa Capello her opinion of the case. *Christa Capello* commented that she is in favor for the project, and knows from her own experience going through this board, that the planning process has an effect and trees can be added to increase the aesthetics and she appreciates that. S. Nadeau motions to reconsider tabling for site walk. S. Skillings seconds the motion. Board vote 4-0. Board decided there will not be a site walk.

1. D. McKenzie explained that the ***variance will not be contrary to the public interest because:*** there is already state law that speaks directly to Agritourism as referenced in RSA 21:34-a. An amendment to RSA 21:34-a now includes events as an Accessory Use related to Agritourism. This variance is not contrary to the public interest because we are keeping with RSA 672:1, III-b in that agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and is an essential factor in providing for the favorable quality of life in the state. The current Milton Zoning Ordinance does not mention anything about Agritourism and it should, as state law dictates. This variance would allow for our farm to continue operating and will remain a farm in both look and feel. We are planning on building a barn structure to have the dual purpose acting as an Accessory use of Agritourism by hosting events as well as storage of vital farm equipment in the winter months. This variance will act in the public interest by also allowing for a new parking area to be constructed which will alleviate the pressure of traffic currently put on Northeast Pond road during the farm season.

Chairman Tabory opened to public comment.

Christa Capello White Mountain Highway: supports this idea of enhancing the agricultural uses and using the highest standards and best use of the property, appreciates that they are taking this on and looking forward being their neighbor in this venture.

Larry Brown White Mountain Highway: 673 and 24-a both speak to the compact nature of the state, what is left unaddressed is the 35% rule for the income from all farm products. Does not think they need to address the issue of parking as parking is not part of the variance, the other point to address is rock concerts at midnight, the area is a bowl sound travels and you can hear dogs barking from the far side of the road.

D. McKenzie replied that they put 12 am as a stop mark, *B. McKenzie* commented that for a Saturday they felt 12 am was a reasonable time frame, they looked at what bars and restaurants stay open to, and stop selling alcohol, which is later than 12. He continued they looked at that it'll be closed structure for the bands and parties contained in the barn in part and there isn't real strict noise ordinance in Milton but as far as noise goes they would take into account neighbors at all times and if there is an issue they would want to talk with the neighbors.

Board Discussion: S. Nadeau questioned if they were selling alcohol. *B. McKenzie* replied that no they would not be getting a liquor license and do not plan on selling alcohol or serving. S. Nadeau questioned if it would be BYOB. *B. McKenzie* replied yes it will mostly be all BYOB as they are just providing a venue, vendors will have their own licenses. *D. McKenzie* explained they are just renting out their venue, customer would be in charge or hiring the bartending services who have the liquor license, so no exchanging of money on their part with the vendor, and with the State of NH you don't need a license if you are not directly purchasing it. Chairman Tabory asked if the meals would be happening in the barn.

D. McKenzie replied there will be a spot for caterers to prepare food, they do not plan to have a commercial kitchen specifically to the weddings and large events, if they were having a farm to table event they would still hire a caterer but provide the food for the caterer to prepare, they would not serve alcohol but guests could again BYOB.

Larry Brown White Mountain Highway: extent of his quibbles support is there.

Chairman Tabory questioned what is to stop this from happening four nights a week. *D. McKenzie* explained she does not have enough time for that. S. Nadeau commented that the variance is forever. *B. McKenzie* they are looking for relief to hold specific events, they could hold farm to table events without special permission. Chairman Tabory questioned how often they plan to hold events over the weekends. *D. McKenzie* explained that they would rent the venue for the weekend allowing them to have one main event over the weekend whether that be Friday night, Saturday or Sunday afternoon.

Russell Neal Evergreen Valley: rather than limit of the weekend, could limit to a number of events in a month allows for flexibility. S. Nadeau does not think they should limit it to a number of events, but more so just allow the events on the weekend.

Chairman Tabory closed to public comment.

Board Vote if the first criteria has been met: **(4) Yes** (0) No

2. *D. McKenzie* explained that ***the spirit of the ordinance is observed because***: state law mandates that Accessory Use of the farm is permitted under RSA 21:34-a. The Milton Zoning Ordinance as it is currently written does not include Agritourism including Accessory Uses of farms and it should be as state law says. The variance would allow for our farm to continually evolve and support three generations to keep in line with agriculture features that make New Hampshire desirable.

Chairman Tabory opened to public comment:

Jenn Duprat Spring Brook: commented that anything that can foster and encourage farming and extend their seasons is a great thing.

Chairman Tabory closed public comment.

Board Deliberation: None

Board Vote if the second criteria has been met: **(4) Yes** (0) No

3. *D. McKenzie* explained ***that granting the variance would be substantial justice because***: without it, the farm still needs to support three generations. There is a risk of harm to the farm if this variance is not granted. An important farm in Milton will go on and the benefit to us is not outweighed by the harm done to the general public. There is no benefit to the public if this variance is not granted.

Chairman Tabory opened to public comment: No public comment.

Chairman Tabory closed public comment.

Board Deliberation: None

Board Vote if the third criteria has been met: **(4) Yes** (0) No

4. *D. McKenzie* explained ***that the values of the surrounding properties are not diminished because***: the landscaping, construction of the new barn, and the site work will only serve to increase property value. Additionally, we are improving the safety and accessibility of Northeast Pond Road by building another large parking area to alleviate congestion during the busy summer months.

Chairman Tabory opened to public comment: No public comment.

Chairman Tabory closed public comment.

Board Deliberation: Chairman Tabory questioned by building another parking lot does that mean there will be less parking on the road. *D. McKenzie* it will allow for more parking and pull from off the road.

Board Vote if the fourth criteria has been met: **(4) Yes (0) No**

5. D. McKenzie explained that ***literal enforcement of the provisions of the ordinance would result in an unnecessary hardship***: special conditions of the property distinguish it from other properties in the area because our property is a working farm as defined in RSA 21:34-a. we have 71.34 acres and operate a farm business and there is no place around our property that is like ours.

(A) i) *The denial of this variance would result in an unnecessary hardship because*: the current ordinance provisions are out of date as they have been last revised in 2010. The New Hampshire state RSA 21:34-a was updated in 2016 to include Agritourism and events as an Accessory Use for farms.

ii) *The proposed uses are reasonable because*: the state has already said in law that Agritourism uses which are also Accessory Uses are allowed. The state law preempts the town's ordinance and it is the Town of Milton's responsibility to continually update town ordinances as it affects land use. The way the current ordinance is written because the hardship in our case. It has not been updated to reflect the amendments made to RSA 21:34-a.

Chairman Tabory opened to public comment: No public comment.

Chairman Tabory closed public comment.

Board Deliberation: None

Board Vote if the fifth criteria has been met: **(4) Yes (0) No**

Board discussed possible conditions in regards to recording at Reg of Deeds and times for the events.

S. Nadeau motions to approve the variance from Article III, Section 3.4d and Section 3.5 Table of Principal and Accessory Uses and Table of Dimensional Requirements of the Milton Zoning Ordinance to allow the Agritourism Accessory Use of Weddings, Functions, Private Events, Charity Events, and farm to table dinners to be held on McKenzie's Farm property at 71 Northeast Pond Rd Milton NH, Tax Map 23 Lot 1. Owner: Stewart and Ann McKenzie, Applicant Brett and Danielle McKenzie with the following conditions:

1. Sunday through Thursday events will conclude by 9pm.

2. Friday and Saturday events will conclude by 12am.

3. The notice of approval will be recorded at the Strafford County Registry of Deeds.

4. Conditions will be noted on Site Plan that goes before the Planning Board.

B. McQuade seconds the motion.

Board vote **(4) Yes (0) No**

Discussion and Approval of Minutes: April 27, 2017 meeting minutes, S. Nadeau motions to table till next meeting. B. McQuade seconds the motion. All in favor, Minutes tabled till next meeting.

Other Business: No other business.

S. Nadeau motions to adjourn, B. McQuade seconds the motion. All in favor, meeting adjourned at 9:37pm.

Respectfully Submitted,

Dana Crossley, Land Use Clerk