

Town of Milton
424 White Mtn Highway
Milton NH, 03851



Zoning Board of Adjustment
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October 8, 2021
Meeting Minutes
6:00PM

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

Absent Members:

Staff Present: Julius Peel, Land Use Clerk, Bruce Woodruff Town Planner.

Members of the Public: Roger Libby, Kym Libby, Frank Blaney, Paul Steer, Karen Golab

I. Pledge of Allegiance:

II. Roll Call:

All members were present

III. Public Comment:

Larry Brown commented on how October is National Fire prevention month.

IV. Appeal of Administrative Decision Kym Libby:

Stan Nadeau opens discussion on determining if the project is a Regional Impact.

Larry Brown expressed that he did not think it would be a regional impact.

***Stan Nadeau motions to determine the application as not a regional impact. Seconded by Steve Baker. All in favor. The motion passes determining the project as not a regional impact.**

Stan Nadeau explained that the nature of the application in front of them is to determine solely the timeframe of the project, rather than determining the merit of the cease and desist. He explained that the applicant is asking for an additional 18-month timeframe to complete the requirements listed on the cease and desist.

Kym Libby presented a written comment as presented by the Co-Owner Dawson Libby who was unable to attend the meeting in person.

Kym Libby continued to explain that the application in front of the board quite extensive and a lot of documentation from the history of the project. She explained that the board is not debating the best management practices and that she notes that she knows that the location needs to be cleaned up. She explains that the cease-and-desist order is what she is asking the board to review. She referenced the historic 2018 permit that was approved by the BOS and explained that she had asked for an extension from the Board of Selectman In 2019, which was refused. She referenced that they have 6 months from August 4th, to bring the property back to best management practices. She explained that they are working diligently to get the location back in compliance. In this diagram she noted the timeframe that they plan on taking to address the issues that are located within the report. It also notes the timeframe that she anticipates this will take. She explains that during the winter months, it significantly decreases the timeframe that it would take complete the project for a total of 18 months. She explains this is difficult, but something that can be done.

Stan Nadeau asked if the board had the ability to review the documentation. The board confirmed. Steve Baker noted the age of the process and asked why is it that the project has continued for so long.

Kym Libby explained that during 2018 their personal house burnt down, and nothing was able to be moved out. She stated that there was not an outside contractor for their personal house and that they did all the work themselves. She explained that during this period incoming cars along with equipment piled up. She continued to note that injuries to the family and deaths within the family caused further difficulties in 2019-2020. As 2021 came around she expressed that she had worked with the BOS to determine what needed to be done and had difficulties connecting with the right companies to complete the work.

Frank Blaney, business owner that assists Roger Libby, expressed that he used to crush for Roger on the regular basis and has been unable to help recently due a long list of requests for his work.

Stan Nadeau asked what the anticipated timeframe would be. Frank Blaney expressed that it would most likely take until after winter to complete the crushing on the location.

Kym Libby explained noted that there are several processes that need to be done and one business will not be enough to finish this. K. Libby referenced the best management

practices within the green yard program and explained that she had appealed because she believes that she needs more time to reach these standards.

She explained that they have shipped over 131,000 pounds of material out of the property, referencing the schedule again. She noted that there are challenges with the yard, and removal of substances like tires is a substantial cost. K. Libby finished by noting that she had removed the stacked cars as per one of the requests of the BOS.

The board discussed the fencing on the property and surmised that it was constructed in 2018 after request from the BOS.

Steve Baker noted that at some point this project needs to get done.

Kym Libby expressed that if she was in front of someone with this same issue, she would think the same way. She explained that she has done everything the BOS has asked her to do and feels that saying nothing has been done is not fair. She explained that they have allowed numerous times to be inspected. She explained that they have showed a good faith effort to get this project done.

Larry Brown noted that a Land Use board's job isn't to review the applicants' finances, but that they should review the lands usage itself. Larry continues to note that someone within the community believes that they have been disrespected by the applicant because the work has not been completed. He expressed that currently the regulating of this property is selective and discriminatory. Larry also noted that the town has been permissive and complaint in its review of the screening of the yard. Larry finished by expressing those hardships posed by lack of labor and Covid transcends the timeframe imposed by a cease-and-desist order.

Kym Libby noted that covid issues could go either way but wanted to address the resident who was upset about the property. She doesn't want to talk about this person in a negative light, but feels they are working in a positive way to protect the environment on their property.

Stan Nadeau ends discussion with the applicant regarding the property and asked Brian Boyers to present the topic.

Brian Boyers explained that since 2018 he has been requested by the BOS to review the site 3 times. Brian noted the fence was constructed as requested in 2018 and when asked by the Zoning Board of Adjustment why he chose the 6-month timeline, he explained that the Board of Selectman gave him the date.

S. Nadeau expressed that the town administrator was invited to the meeting as a representative for the BOS but was not here tonight.

Phil Bean expressed that there was significant difficulty with the length of the project and code enforcement has done a good job balancing this.

Stan Nadeau asked that Bruce present to the board his recommendations.

B. Woodruff noted that there are a few historic points that matter. He noted that because of the age of the yard, they would fall under RSA 236:125 and explained that the most important all other provisions must be met during the subsection. It references that the fence must be a solidly structured material.

B. Woodruff's second point is that the operation has a long history with the BOS and that currently there is no valid permit in place. He noted that the question that needs to be asked is how long the ZBA thinks it will take to get the project cleaned up.

His third point noted the cease-and-desist order statue. He expressed that the order shall state in writing, facts the violation, and the corrective action required along with a reasonable time for which actions can be completed. He said that the final requirement of the cease-and-desist order, reasonable timeframe, is what the board would be altering.

His final point is that legal case law has determined that ZBA has the right to change the length of time required within a Cease and Desist.

Larry Brown wanted to note that their conditions don't have to satisfy the conditions of the selectman.

Phil Bean stated that he had sent a letter to the town administrator, Julius, and Bruce. In this it asked for records of the location and what other similar documents might be available. He noted that Julius had forwarded this to the town administrator regarding this topic. Phil stated that he feels it feels unacceptable that there would not have been a response from the administrator regarding his questions.

Phil Bean asked if this would be a special exception for the applicant. Bruce explained that this would not require a special exception as the topic of discussion is the cease and desist not location's actions itself.

Phi explained that there are carryovers from the special exception and that he feels that it should be applied to this case. He noted the 1 year and 2-year periods mentioned in the statute.

Steve Baker said he is confused what the relevance of those documents requested by Phil and believes that the ZBA doesn't want to confuse itself with non-essential information.

Phil Bean explained that even though this may be non-essential he feels he should have had the opportunity to review these documents prior to the meeting.

S. Nadeau opens the meeting to public comment.

Karen Golab, representative of Salmon falls river. She noticed that the last time soil tests were done, was 2018 and believes that by having samples done may impact the board's decision when determining a timeline.

Stan explained that they cannot request a study as it does not relate to the topic of determining the end date of the Cease and Desist.

F. Blaney explained that every time a public official doesn't answer a question it further devalues the claims that the yard is not an environmentally safe location. He noted that if you are going to charge someone 275 a day for not clearing out the property then you are only harming the applicant.

S. Nadeau allowed for final comments from the applicant prior to discussion from the Board.

To finalize Kym noted that this could have stayed at the board of selectman level but believes that the cease and desist is supposed to be a carrot in front of them. She expressed that the 6 months was a determination made by the BOS and although she was unable to give them a timeframe the day of their hearing, she feels that there is no reasonable way to guarantee an exact date that their yard will be up to regulations.

Larry Brown explained that the regulations of the state do reference 300 ft and vegetation. Larry explained that a ft fence will be useless in this scenario as a school bus will sit at ten feet tall, four feet above the fence.

Steve made a note that it has been roughly 3 and ½ years since this started and feels that at some point the town needs to move on to other business.

Mike Beaulieu noted that at this point he had no questions.

Stan Nadeau closed public discussion on the topic and opened discussion amongst the board.

M. Beaulieu noted that a business of 25 years within the community has endured a hardship. He expressed that it is his opinion that this board should allow the 18 months for them to recoup.

Steve Baker stated that his original mindset was to not allow the extension, but after the discussion tonight he feels they should have the chance to review the documents.

P. Bean expressed that he supports the 18 months.

L. Brown said that he supports the 18 months.

S. Nadeau noted that he is torn and feels that one year should be long enough.

Larry Brown explained the brick in the driveway comment was to get the practical consequences of an exact date. He explained that 18 months might turn into 13 months with winter.

*** Stan Nadeau motioned to give the applicant one year to finish the work as stated in the Cease and Desist. Motion failed with no second.**

The board discussed the topic and P. Bean noted that the changes that they make are to the cease and desist.

*** Mike Beaulieu motioned to accept the 16-month request, amending the Cease and Desist. Motion seconded by Steve Baker. The vote is 4 in favor and 1 opposed (Stan Nadeau).**

Stan explained that he is opposed because he believes that one year should be enough time.

V. Review/Approval of Minutes:

*** Stan Nadeau motions to accept the minutes as written. Motion seconded by Phil Bean. M. Beaulieu/S. Baker abstain. The motion passes with three in favor and two abstentions.**

VI. ZBA schedule dates.

No applications for the next meeting so the board will meet when the next case is to be heard.

VII. Other Business:

Julius Peel, Land Use Clerk, explained to the board that he has given his notice to the office last week, and that he will be moving on to another community as a town administrator. The board expressed their appreciation for the attention to detail and courtesy that he has brought to the town hall.

VIII. Adjournment:

***Larry motions to adjourn, Seconded by Baker. All in favor. The motion passes adjourning the meeting.**

Chairman of the ZBA

Date