

Town of Milton

424 White Mtn Highway
Milton NH, 03851



Zoning Board of Adj.

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Meeting Minutes

September 27, 2018

6:00 PM

Members in Attendance: Larry Brown, Stan Nadeau, Brian McQuade, Michael Tabory, Chris Jacobs Alt. Also in Attendance Dana Crossley Land Use Clerk

Excused Members: Andy Rawson Alt. Steve Baker

Public Attendance: Diane Rabideau, Deborah Lopez, Cheryl Donahu, Ramino Lopez, Melissa Brown, Patti Buonopane, Ben Paul, Chris Penta, Michele Penta, Peg Hurd, Dan Bisson, Cathleen Rogers, Glenn Bailey, Dawn Zahn, Jessica Wood, Jason Wood, Joe Cyr, Rachel Bernaby, Gloria Hutchins, Charolette Mee, Amy Mann, Steve, Al Banks, Loretta Banks, Stephen Palmisano, Aaron Thompson, Paul B, Rob S, Linda Kane, John Kane, Amber Marcoux, Jesse Muldoon

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

Public Comment: No public comment.

Chairman Tabory brought C. Jacobs to the board as a full voting member in place of excused member S. Baker.

Public Hearing: Case 2018-2 Request for Special Exception from Article III Section 3.5 Table of Principal Uses (D) Retail Sales and Services; applicant proposed to open a 960 sq ft. antique shop at property located 1 Jug Hill Rd, Milton Mills in the Commercial Residential Zone (Map 9 Lot 97); Applicant Chris & Michelle Penta

Chairman Tabory confirmed with the clerk that all fees had been paid and notices posted.

Applicant Proposal: Chris and Michele Penta were in attendance at the meeting to represent the application. Explained to the board their proposal: M. Penta explained an overview of their history which brought them to this point, currently sell antiques online and at various other places, have been successful and looking to bring their success to Milton Mills, purchased the old Grange Hall building and have started the process of re-vitalizing the building in preparation to bring their business there, want to open the first floor to sell antiques and vintage, also looking to open it to consigners and artisans.

Board Determination of Potential Regional Impact: Board discussed the process they would follow for reviewing regional impact, discussion if they should allow public comment, board in the end decided to not take in public comment on each aspect, board decision to make if there is potential regional impact. Board reviewed the aspects of potential regional impact. L. Brown noted the only ones that could have the slightest would be proximately due to Milton Mills is next to Maine and the Salmon Falls is close, but there is no effect. **S. Nadeau motions that there is not potential for regional impact for this project. All in favor, motion carried that there is not potential regional impact.**

Ray Lopez of Liberty Chapel from Acton: questioned if there are any plans for the second floor in the near future. Chairman Tabory expressed they are addressing what is in front of them at this point, if in the future they do plan to expand it would be reviewed to if it needed to go back to the board.

1. *That the specific site is an appropriate location for the proposed use:* M. Penta testified believe this site is appropriate for our business due to the location within the Milton Mills community, the on street parking availability and the potential off street parking. We also believe the structure/location is a convenient location to locals as well as out of town customers due to its proximity to Rt. 16 and 125. The building location fits with traffic flow of the neighborhood. Anticipates 2-3 customer cars will be the max. during business hours, believe that this business and its location fit the agenda of the Master Plan.

Chairman Tabory opened to the public:

Rev. John King 23 Church St: stated that they are limited in parking want it on record the Church does not want them to use their parking lot, due to it becoming their liability.

M. Penta explained they were not going to ask the Church about parking, fine with not using the Church parking lot and that they only anticipate one to three cars.

Jesse Muldoon Highland Ave: does not think parking is an issue because historically with other businesses there has not been an issue.

Mellissa Brown Willey Rd: location is perfect, never had a parking issue in the Mills, and should be approved.

Rachel Bernaby 43 Main St: there is a park across from their location where there is more parking available and parking in front of old Auction house, not much traffic during the day. All support re-vitalizing area.

Al Banks, Milton Mills: asked what happened to the old microphone for hard of hearing people. (C. Jacobs stated they could forward that request to the Selectmen)

Lorretta Banks Highland Ave: in the 80's there were a lot of in-home gift shops which provided a lot more traffic in and out of town, welcomes the new couple and restoration of the building.

Amy Mann Ford Farm Rd: thinks having out of town traffic will be beneficial to the Town.

Chairman Tabory closed public comment.

Board Comment: S. Nadeau expressed they did have land use review forms from departments. Chairman Tabory read into the record the letters from Police expressed concern of the parking plan and would like to see those plans, Public Works had no concerns with the parking felt there was adequate parking on Jug Hill and Church St and referenced the Fire Dept's letter. C. Jacobs questioned if this would need to go the Planning Board for site review. D. Crossley replied yes, also informed the board that the applicant has started that process by going through a meeting with the Technical Review Committee (Fire, Police, Highway, Code Enforcement and Town Planner) discussed parking and came up with a proposed plan to present to the Planning Board, Chief Krauss wanted to make sure there were rules for the people parking to follow such lined parking spots, the Planning Board will review what he proposes to see if it is adequate, conclusion from the TRC meeting was to propose angled parking spots on street, which would make so that cars would only be able to back out in one direction.

S. Nadeau motions that it is an appropriate location for the proposed use. C. Jacobs seconded motion.

Discussion: C. Jacobs feels that for something that is only about a 1000 sq. ft. does not have a sewer system by their own presentation, not proposing a drive-thru, 3 parking spaces to him laborious to go through all five conditions, ready to make a decision based on the written information presented. L. Brown stated that the Police review comments to the future of parking, Public Works addresses what is currently existing, Fire comments to a Class C sub- classification of mercantile sales on one floor less than 3,000sq ft. and for expansion could need further inspections, for sewer and water the Code Enforcement Officer has made certain recommendations that would be followed in the Planning Board process and last point is that every application should be handled in the standards of the ZBA so if there is a contentious issue does not wind up seeming to show favoritism, recommends doing each criteria.

Vote: 5 in favor, 0 opposed, criteria has been met.

Board discussed accepting the application narrative as written and read into the record. Chairman Tabory opened to the public for input on accepting the application narrative as written and read. If anyone wished to hear all of the criteria read out for them to please speak up. No objections from the public with accepting the written narrative as read into the record.

2. *The use will not be injurious, noxious, offensive or detrimental to the neighborhood:* M. Penta testified the property will be maintained and repaired as needed to be sure it is a very safe environment for our customers. Will be selling antique home furnishings and will not be providing any material or services that may be deemed noxious, offensive nor detrimental to the surrounding community. We will be restoring the building and painting the outside, feels the neighbors will be quite happy with their appearance and presence.

Board Comment: C. Jacobs questioned that they are selling furniture and mention that they would not be providing any services deemed noxious, offensive nor detrimental to surrounding community, but noise, hours of operation and light could be deemed detrimental to neighborhood, questioned the hours of operation. (M. Penta explained they are currently looking to be open four days during the peak season which would be 12-6 Thursday-Friday and 10-2 Saturday-Sunday, closed other days, not late during the evening and not going to do restorations on property of furniture) C. Jacobs questioned if they had any plans for outside projection of noise, outside speakers of any sort. (M. Penta no outside noise, but inside they do play 70's music) L. Brown questioned no plans for furniture re-finishing or operation of an auction house (M. Penta replied that was correct) L. Brown questioned if they would be very specific on lighting cut offs. (M. Penta replied yes)

L. Brown motioned to accept submitted narrative as read into the record. S. Nadeau seconds the motion, all in favor motion carried.

Chairman Tabory opened to the public:

Melissa Brown: will be huge improvement to neighborhood.

Ray Lopez of Liberty Chapel from Acton: questioned that if the on street parking is at a diagonal instead of parallel (Chairman Tabory stated that seems to be what the applicant intends to present to the Planning Board but that is a Planning Board decision if that is appropriate) expressed concern that would take up more space in the street.

D. Crossley stated that PWD worked with an engineer when the Grange Hall was still operating as a Grange Hall with events to accommodate on street parking, is wider near the Grange for the on street parking.

Roy Darling Milton Mills: questioned if the parking has already been decided by the TRC. (Chairman Tabory replied he does not believe it has been finalized, C. Jacobs added there has been some discussion but finalization has not been determined, BOS have ultimate control on parking on Town Roads.)

Chairman Tabory closed public comment.

L. Brown motions the criteria has been met, use will not be injurious, noxious or detrimental to the neighborhood. S. Nadeau seconds the motion.

Vote: 5 in favor, 0- opposed, criteria met.

3. *That there will be no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off street parking:* Applicant testified the building has been used in years past as a function hall and meeting place, will keep all walkways and access points original to the building and there is also ample on street parking on both sides of the building so that the customers won't have to cross the street. Personally will insure that all vehicles will be parked legally and not block any sidewalks or thruways. Loading and unloading of furniture can be done on the side of the building (Church St) with the use of the handicap ramp and eliminating the need to carry down any stairs as well as not interfere with the main access to the building.

Board Comment: **L. Brown motions the submitted criteria as read into the record and accepted as such. S. Nadeau seconds the motion. All in favor motion carried.**

Chairman Tabory opened to the public:

No public comment.

Chairman Tabory closed public comment.

L. Brown motions the criteria has been met there is no undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off street parking. S. Nadeau seconds the motion.

Vote: 5 in favor, 0 opposed, motion carried, criteria has been met.

4. *That adequate and appropriate facilities and utilities will be provided to insure the proper operation of the proposed use and structure so that the use will not be contrary to the public health, safety or welfare:* Applicant testified they will be compliant to all codes pertaining to the occupancy. Will maintain the building to be sure there will be no injury to customers, themselves or the neighboring community. Will also provide all necessary fire safety and first aid kits visible and available to the customers or anyone else that enters the shop. Will not be using paints, cleaners or any toxic chemicals in the building. Will not be using power tools or machinery in the building, will not have a forklift or any other gas powered machinery on site.

Board Comment: **L. Brown moves the submitted narrative for this criteria has been read into the record. S. Nadeau seconds the motion all in favor. Motion carried.**

Chairman Tabory opened to the public:

No public comment.

Chairman Tabory closed public comment:

Discussion: C. Jacobs questioned the status of the water/sewer or plans. (M. Penta explained there is a compost toilet currently there, that was used for functions, will be used for themselves and do not need to provide a public bathroom, has discussed it with the Code Enforcement Officer.) C. Jacobs noted that the lack of public water and sewer will always be a limit on the Milton Mills village until public water/sewer can be provided.

S. Nadeau motions the criteria has been met that adequate and appropriate facilities and utilities will be provided to insure the proper operation of proposed use and structure so that the use will not be contrary to the public health, safety or welfare. L. Brown seconds the motion.

Vote: 5 in favor, 0 opposed motion carried, criteria has been met.

5. *That the proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan:* Applicant testified believe that the proposed changes to the structure will not only meet but will exceed the expectations of the Master Plan. Mission and purpose is to help develop and maintain the town of Milton Mills to be a classic New England Village as set forth in the plan. Will follow all codes and ordinances in place and do their part to keep the small town charm and feel. Why they chose Milton Mills as their home and place to start a business. Building is currently zoned as commercial/residential and with all other Retail Trade that is currently permitted, believe that Retail Sales and Services should also be permitted in the CR Zoning district.

Board Comment: Chairman Tabory motioned the narrative has been read into the record. L. Brown seconds the motion. All in favor, motion carried.

Chairman Tabory opened to the public:

No public comment.

Chairman Tabory closed public comment:

Discussion: L. Brown has heard there is back ground chatter that the ZBA and PB are not responsive to the needs of the community, believes it has been heard in this meeting the necessity for the Police Dept., DPW, Fire Dept. to review the operation of any business in terms of health, safety and welfare, to review in terms of the existing community and the impact on those neighborhoods that exist, the land stays forever. Chairman Tabory expressed this fits perfectly with the Master Plan what was intended in the Master Plan in all discussions is this small community, small business that brings positives while maintaining rural village nature of Milton Mills.

S. Nadeau motions the criteria has been met that the proposed use is consistent with the spirit of this ordinance and the intent of the Master Plan. L. Brown seconds the motion.

Vote: 5 in favor, 0 opposed, motion carried, criteria has been met.

Motion: S. Nadeau motions to approve application as presented.

Discussion: Board discussed if they were approving the entire building or just the first floor being 960 sq. ft. as presented.

Final Motion: **S. Nadeau motions to approve the application as presented with 960sq. ft. of first floor at 1 Jug Hill Rd. Special Exception from Article III Section 3.5 Table of Principal Uses (D) Retail Sales and Services. L. Brown seconds the motion.**

Final Vote: **5 in favor, 0 opposed, motion carried, 1 Jug Hill Rd approved for Special Exception of Article III Section 3.5 (D) to operate Retail Sales and Services in the 960sq. ft. first floor of the existing building, as presented in the application.**

Chairman Tabory explained that anyone can appeal the decision in 30 days.

Public Hearing: Case 2018-4 Request for a Variance from Article VII Section D(2) to allow a pre-constructed utility shed inside the 10' side set back of a .7 acre property located at 340 Bolan Rd. (Map 23 Lot 54) in the Low Density Residential Zone. Applicant proposes to place a pre-constructed utility shed 1'-0" from the side property boundary. Applicant Stephen Palmisano, Trustee of the Palmisano Living Trust

Stephen Palmisano was in attendance to represent the application, explained to the board the property has a two car garage that has been used as a shed, looking to put a utility shed on the property and be able to move all the lawn equipment into and use the garage as its intended use to store vehicles, would like to put the pre-constructed shed 1' from the side boundary line, would be putting in a pre-constructed shed.

Application was accepted as complete, all fees had been paid and notices mailed and posted.

Board Determination of Potential Regional Impact: Reviewed aspects of potential regional impact. **S. Nadeau motions there is not potential for regional impact. L. Brown seconds the motion. All in favor.**

1. *The variance will not be contrary to the public interest because:* S. Palmisano testified the placement of the quality constructed shed would not alter the essential character of the property or surrounding properties. It would not in any way hinder easement of traffic in the area, nor would it detract from the appearance of properties surrounding it.

Board Comment: L. Brown questioned the easement. (S. Palmisano explained there is a public easement that goes across his property for Bolan Rd.) C. Jacobs added that the Town maintained portion of Bolan Rd. only goes so far, it because a right of way. Board discussed with the applicant the aspects of the property and the location of the neighbors septic. L. Brown questioned how large the shed would be (S. Palmisano stated it would be either a 10x12 or 12x12 shed, undecided) L. Brown questioned if it could be located by the garage. (S. Palmisano replied the concern of putting the shed there is he would be introducing a backward runoff toward the garage from the shed roof, would be moving water toward the structure off the shed roof, feels the proposed location is the best location and would be most aesthetically pleasing) L. Brown questioned if gutters were an option. (S. Palmisano replied that gutters would not hold three feet of snow, and the snow would pile up between the garage and shed during winter and he would have to start shoveling there) C. Jacobs questioned why he does not put the shed across the street. (S. Palmisano replied that across the street the grade is severe, 5ft to 2ft grade going up, would have to excavate into the side of the hill to put the shed there.)

Chairman Tabory opened to the public: *Dan Bisson 344 Bolan:* expressed they have no objection of the variance supports it, thinks they are very good neighbors.

Chairman Tabory questioned if they had any comment from the neighbor that would be impacted by this, D. Crossley replied there were no submitted letters in regards to this case.

S. Palmisano stated that in conversation with the abutting neighbor (M23-L55) they had indicated not having an issue with the variance, their barn was constructed under a variance when it was constructed which is probably within 3-4' of the property boundary.

Chairman Tabory closed public comment.

Board Discussion: Chairman Tabory did not see how it would threaten health safety or welfare.

C. Jacobs stated when he first looked at this his first reaction was the re-arrange items on the property, concerned with the slope and increasing impervious surface close to the lake, glad it is 10' from the easement area (Bolan Rd) for clearance to move snow.

S. Nadeau questioned why they can't use half the garage for the lawn care equipment and the other for the car. (S. Palmisano explained they are full time residents here now want to be able to park the cars inside the garage) L. Brown questioned if the applicant has boundary markers for where his property is. (S. Palmisano replied there have been surveyors who have left orange flags, not his boundary markers but poles in the ground, is pretty sure he knows the line) L. Brown will the shed as construction be a sled that can be moved or on a frame. (S. Palmisano replied it will be a permanent structure) L. Brown questioned if the 1ft gives them enough room to do maintenance on the shed. (S. Palmisano replied yes)

L. Brown motions that the criteria has been met the variance will not be contrary to the public interest. C. Jacobs seconds the motion. Discussion: L. Brown clarified that the easement traffic is the Bolan Rd traffic not an easement over the property. Chairman Tabory yes, it is the extension of Bolan Rd.)

Vote: 4 in favor (Chairman Tabory, L. Brown, C. Jacobs, B. McQuade) 1 opposed (S. Nadeau) criteria has been met.

2. *The spirit of the ordinance is observed because:* S. Palmisano testified shed will be used for residential purposes only, for utility to store lawn equipment, not used for any other uses commercial or otherwise and mimic if not enhance the other structures around them on Bolan Rd.

Chairman Tabory opened to the public:

No public comment.

Chairman Tabory closed public comment.

Board comment: Board discussed if the shed was on cement blocks is it a permanent structure. S. Nadeau expressed there were other places the shed could go, it does not have to go where it is being proposed. C. Jacobs noted the slope to the water and the land on the other side of the road is 'billy goat country' inherent in the land not something the applicant has physically created, explained that when looking at the spirit of the ordinance, if the neighboring property has already been granted a variance by other boards for a more intense use, neighbor also has a septic system located in place that prevents the neighbor from building in the area that the shed is going next to. (S. Palmisano replied that the only other place it could go is between the house and garage, but that would mess up the aesthetics of the property, space on the other side of the property but

would also need a variance for that side as well.) Chairman Tabory questioned why it could not go parallel to the side of the garage (S. Palmisano replied it would create run off issues at the garage) B. McQuade stated that for this criteria, looking at the two methods to answer this questions does not believe either is an issue, it does not alter the essential character of the neighborhood and does not threaten health safety or welfare. L. Brown questioned if the shed would be used for residential purposes (S. Palmisano replied absolutely not, it would be used for storage, not as a commercial building or road side stand to sell).

C. Jacobs motioned the spirit of the ordinance is observed and maintained because the shed is equal in use to other variances that have been granted in the immediate vicinity of the parcel. L. Brown seconds the motion.

Vote: 4 in favor (Chairman Tabory, L. Brown, C. Jacobs, B. McQuade) 1 opposed, (S. Nadeau) criteria has been met.

3. *Granting the variance would do substantial justice because:* S. Palmisano testified there is nothing about the placement of the shed that is going to affect the public.

Board comment: C. Jacobs substantial justice would come in because gets to use his property the way other people have used their properties. (S. Palmisano expressed there are many disintegrating properties, this would be maintained in appearance)

Chairman Tabory opened to the public:

No public comment.

Chairman Tabory closed public comment

B. McQuade motions that granting the variance would do substantial justice. L. Brown seconds the motion.

Vote: 4 in favor (Chairman Tabory, L. Brown, C. Jacobs, B. McQuade) 1 opposed, (S. Nadeau) criteria has been met.

4. *The values of surrounding properties are not diminished because:* S. Palmisano testified the shed will mimic use of neighbors existing structures as a storage facility. The location of the shed will not pose any restriction or hardship to use of adjacent land or use of the easement roadway.

Chairman Tabory opened to the public:

No public comment.

Chairman Tabory closed public comment.

Board comment: Chairman Tabory commented looking at the surrounding properties and how close many things are does not think this would have a negative impact to property values and correct if the abutting neighbor cannot build there due to the septic, does not see how it does not have any negative impact to him. S. Nadeau added that was the assumption he does not move his septic. C. Jacobs noted that was likely the only place the septic could go.

C. Jacobs motioned the values of surrounding properties are not diminished because the adjourning parcel is currently used to its maximum potential and no adverse impact was pointed out. L. Brown seconds the motion.

Vote: 4 in favor (Chairman Tabory, L. Brown, C. Jacobs, B. McQuade) 1 opposed, (S. Nadeau) criteria has been met.

5. *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:* S. Palmisano testified the location of existing structures, Northeast Pond and existing easement roadway (un-serviced private road) Additional land on the property is unbuildable due to severe grade.

Chairman Tabory opened to the public.

Dan Bisson: if the shed was closer to the road would object, away from the shoreline, in favor of the location choice.

Chairman Tabory closed public comment.

C. Jacobs motions that literal enforcement of the provision of the ordinance would result in unnecessary hardship because the slope to the water and slope across the street. L. Brown seconds the motion.

Vote: 4 in favor (Chairman Tabory, L. Brown, C. Jacobs, B. McQuade) 1 opposed, (S. Nadeau) criteria has been met.

Final Motion: C. Jacobs motions to approve the variance request as presented. L. Brown seconds the motion.

Vote: 4 in favor (Chairman Tabory, L. Brown, C. Jacobs, B. McQuade) 1 opposed, (S. Nadeau) Variance has been granted to allow a pre-constructed shed 1'-0" from the property boundary as presented.

Chairman Tabory explained the appeal period, D. Crossley added the information on getting the building permit.

Discussion and Approval of Formal Notice of Decision: Board discussed any more additional information to be added to the formal notice of decision. Board looked closely at adding more information to item 24. First draft said 'the board found the decision was premature because it was made without a specific plan'. Board agreed to change to 'the Board found that because the previous denial of Case2017-7 was based in whole or in part due to the reservation of areas planned for campground amenities, without new specific detail to what the amenities actually were, found the administrative decision to be premature'

Chairman Tabory motions to approve as amended, L. Brown seconded the motion. All in favor, motion carried.

S. Nadeau motions for the chairman to sign the decision, L. Brown seconds the motion all in favor motion carried.

Discussion and Approval of Minutes:

- *August 23, 2018 minutes;* S. Nadeau motions to approve as written, B. McQuade seconds the motion, 4 in favor 1 abstained. Motion carried.
- *September 6, 2018 minutes;* S. Nadeau motions to approve L. Brown seconds the motion, all in favor motion carried.

9.27.18 ZBA

Other Business: D. Crossley questioned who will present the ZBA budget to the Selectmen in October. L. Brown or C. Jacobs will present the budget.

B. McQuade motions to adjourn, L. Brown seconds all in favor motion carried meeting adjourned at 8:04pm.

Respectfully Submitted,

Dana Crossley, Land Use Clerk