

**ZONING BOARD OF ADJUSTMENT  
PO BOX 310  
MILTON, NH 03851  
Meeting Minutes  
June 26, 2014**

Members in attendance: Michael Tabory, Michael Beaulieu, Larry Brown, Lue Snyder and Stan Nadeau. Also in attendance was Kimberly Ladisheff Land Use Clerk.

Public in attendance: Michael and Joanne Dubois.

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

MOTION: Lue Snyder moved to appoint Michael Tabory as Chairman of the Zoning Board of Adjustment. Seconded by Larry Brown. Michael Tabory abstained. Motion carried.

MOTION: Stan Nadeau moved to appoint Lue Snyder for Vice Chairman of the Zoning Board of Adjustment. Seconded by Larry Brown. Lue Snyder abstained. Motion carried.

Chairman Tabory opened the meeting for public comments. There being none he closed the public session.

**Case #2014-1:** Request by Michael Dubois for a variance from Article VII, Section D (2); Side Yard Setback. Property located at Map 23 Lot 18, 199 Northeast Pond Road, Milton, NH in the Low Density Residential District.

Chairman Tabory explained the process to Mr. & Mrs. Dubois. He stated the Board will review each of the five criteria, ask them to explain their justification for each as to why the Board should grant their variance, there will be a discussion and the board will take a straw poll for each criteria. The straw poll is not binding. At the end the board will take one vote as to whether or not the variance will be granted.

Michael Dubois gave a brief overview. He stated the lot in question is 50' wide and 230' deep. He bought the lot with an existing mobile home on it and would like to build a garage for one car plus storage of bicycles, lawnmower, snow blower, etc. and needs a structure at least 14' wide. He needs to be 10' from his lot line but can't meet that setback. The proposed garage would be 8.1' from the lot line in the rear and 7.7' in the front.

Chairman Tabory then read into the record a letter received on 5/27/14 from abutters Andre and Lynn Mercier who were unable to attend the meeting as they were out of the country. The Mercier's strongly object to the erection of a garage on the Dubois' property. It was stated in the letter this lot was originally a right of way and never meant to be a house lot.

Stan Nadeau questioned whether this right of way was ever exhausted. Mr. Dubois stated when he had the survey done by Mr. Pohopek there was nothing referenced in the deed or at the registry to this being a right of way. The surveyor went as far back as 1954.

Lue Snyder asked why the garage couldn't be built behind the mobile home. Mr. Dubois stated there is a steep slope down to the river and the septic is also there. Larry Brown asked about the other houses in the neighborhood and how many have garages. Mr. Dubois stated there are many in the neighborhood and his will be attached to the home.

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

Michael Dubois stated the garage will be built 40 ft. off Northeast Pond Road and because of the location of the garage it will be difficult to even be seen from the road. The character of the locality is rural and will remain that way. Also the lot is tree lined which will not alter the essential character of the locality. The dwelling on the adjacent lot is located at least 120' away fronting Branch River Rd. It doesn't threaten public health, safety or welfare because the proposed garage is 45' from the adjacent lot's septic and 40' from Northeast Pond Rd. The garage will be attached and built in the same style as the manufactured home.

Stan mentioned there are a lot of places, especially downtown, where the buildings are right up against each other so he doesn't know if you can honestly say public safety would be affected by anyone doing something like this.

Michael T. explained to the board a straw poll vote of yes would be saying all conditions have been met for criteria number one and in favor of the variance.

Straw poll vote was 2 – yes; 2 – no.; 1 – abstention.

2. The spirit of the ordinance is observed because:

Mr. Dubois stated he doesn't see how what he is doing changes the spirit of the ordinance. He is not cutting any trees and changing the setback requirement from 10 ft. to 7.5 ft. does not affect the rural nature or density as it's not a dwelling it's just a storage unit.

Stan N. stated he disagrees it's not a dwelling. His understanding is once it's attached to the home it becomes a dwelling. Michael T. stated he agrees with Stan that once you attach it, it's part of the same structure. Michael then stated a variance goes with the property forever and someone someday in the future could tear down that garage and an addition could be put in that footprint. Lue S. then stated when looking at the plans she sees two rooms in the back of the garage and asked if the garage was 2 ft. narrower would those rooms still be there for storage. Mr. Dubois stated yes.

Straw poll vote was 0 – yes; 5 – no.

3. Granting the variance would do substantial justice because:

Mr. Dubois stated the subdivision was done before any zoning laws were put into place. The town allowed this lot and allowed a building to be put on the lot. By allowing this variance it would allow them to have adequate storage for the necessities of life in that garage along with the car. He then stated that the town, by allowing a 50 ft. lot and not having the foresight to see what that meant has caused an injustice to them.

Stan stated they may have convinced him of that if they had been the original owner when that subdivision was done, but as a recent purchaser they should have done their due diligence and known what they were buying and found out what the restrictions were.

Mrs. Dubois stated they did do their due diligence when purchasing the property and talked to the realtor and also talked to the previous owner who told them where the boundaries were and such so they thought they would have had enough room to build. Also after having the survey done, because of the layout of the land, they found where the Mercier's have the ground mounded and have great big shrubs it looks like it's on their land, but in fact the shrubs are on the applicants property.

Michael T. stated his thought was they bought the property, believing the property line was in a certain place, go to do a project and find out they were misinformed. Because these property lines weren't clear and had to be found through a survey, he's thinking granting this variance would do substantial justice. He asked the Dubois' if they planned this project before they had the property surveyed. Mr. Dubois stated yes.

Stan N. stated he doesn't agree. If the variance were denied it does not totally eliminate having a garage he would just have to downsize but could still have one.

Larry Brown asked if the mobile home could be moved to allow the garage to meet the setbacks. Mr. Dubois stated it would take a lot of site work and would be a substantial cost to do that.

Straw poll vote was 2 – yes; 3 – no.

4. The values of surrounding properties are not diminished because:

Mr. Dubois stated it will be architecturally compatible with surrounding structures. The area adjacent to the garage on Lot 17 cannot have another structure built because of the location of its septic system. The 40 ft. setback of the garage and the surrounding front cover limit its visibility from the road and adjacent dwellings.

Mike B. stated he agrees it would not diminish the value of surrounding properties, if anything it would be an improvement. Michael T. stated personally he thinks it will increase the value of the home.

Straw poll vote was 5 – yes; 0 – no.

5. 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:

(A) Denial of the variance would result in unnecessary hardship because:

- (i) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:
- (ii) The proposed use is a reasonable one because:

Mr. Dubois stated Lot 18 is a parallelogram 50 ft. x 230 ft. This makes the width of the lot +- 48 ft. Adjacent lots have frontage from 90'. The back half of the lot is a steep slope not suitable for a structure. Newly zoned lots have 200' of frontage or more.

Stan stated it is not the total elimination of a garage if the variance isn't granted. It may not be ideal or what they want but they can go smaller and meet the setbacks. Michael T. asked the question because this property is unique, does that cause a hardship. Larry B. felt that the narrower garage could be built without a variance so it is not a hardship.

There was some confusion as to the explanations of criteria 5 (i) & (ii). Chairman Tabory called a recess at 7:25 pm and called the meeting back to order at 7:30 pm.

There was a lengthy discussion on the explanations of criteria 5 (i) & (ii). Chairman Tabory explained the applicant must establish that, because of the special conditions of the property, the restriction as applied to the property does not serve that purpose in a "fair and substantial" way and the applicant must establish that the special conditions of the property cause the proposed use to be reasonable and the use must not alter the essential character of the neighborhood.

Mr. Dubois stated the proposed use is a reasonable one because it does not alter the look or use of adjacent properties and will provide adequate storage for their personal belongings. It will not stop the person on lot 17 from putting a house on the lot or meeting their setbacks, or cause a visual blight, and won't affect house values.

Lue stated she feels it is a want versus a need. The need is reasonable but the want is excessive. Larry agreed with Lue and pointed out if the criteria in subparagraph (A) are not established, explain why the property cannot at least be used in strict conformance with the ordinance, but it can at least be used.

Straw poll vote was 0 – yes; 5 – no.

Michael T. stated all of the straw poll votes were nonbinding and now the board has to vote on the whole. Michael asked all in favor of granting the variance say aye. There were no ayes. He then asked all opposed to granting the variance say no. There were 5 votes for no. Anyone abstained, no. The variance was denied.

#### Approval of Minutes

Stan motioned to approve the August 22, 2013 minutes as written. Motion seconded by Larry. Michael T. stated he would like to amend page 5, fifth sentence and add "if that is the case" before "Planning/Code is not following through with their obligation". Stan motioned to approve the minutes with the amendment. Motion seconded by Lue. Motion carried.

Lue motioned to approve the April 25, 2013 minutes as written. Motion seconded by Larry. Michael T. wanted to amend the motion made on page 3 regarding the application for Special Exception to clarify that if the Special Exception be approved, if the project has not been moved on within 2 years then the approval becomes null and void and re-application will be necessary. Mike B. motioned to accept the minutes as amended. Motion seconded by Larry. Stan abstained as he was not present for that meeting. Motion carried.

6.26.14 ZBA

Other Business

Michael T. mentioned posting on the Our Home Milton Facebook page. His personal suggestion was that they as members of the ZBA should abstain from voicing any opinions.

Mike B. motioned to adjourn at 8:10pm. Motion seconded by Stan. Motion carried.

Respectfully submitted,

Kimberly Ladisheff  
Land Use Clerk