



**ZONING BOARD OF ADJUSTMENT
424 WHITE MOUNTAIN HIGHWAY
MILTON, NH 03851**

**Meeting Minutes
August 28, 2014**

Members in attendance: Mike Beaulieu, Stan Nadeau, Lue Snyder, Michael Tabory and Larry Brown

Public in attendance: Troy and Roxane Dillow, Robbie Parsons, Sally Riefenstahl, Eric Knapp, Larish Kane and Gail Myrick.

Chairman Tabory called the meeting to order at 6:01pm.

Public Comments

None

Case 2014-3: Troy and Roxanne Dillow (Property owners: Troy and Roxanne Dillow) are requesting a variance from Article III, Section 3.5(D) of the Zoning Ordinance; to allow a sit down restaurant in the LDR District; where sit down restaurants are not permitted. Property located at Map 33 Lot 160, 5 St. James Avenue, Milton, NH in the Low Density Residential District.

Troy Dillow stated they would like to open a seasonal restaurant 6-8 months a year. They will start with serving lunch and deli take out style then slowly transition into dinner and eventually a little outdoor seating. They plan on making foods in house. When they transfer to serving dinner and a sit down restaurant they will be applying for a liquor license. They will not have a bar and will not have bands but want to serve beer and liquor. They have no interest in doing a convenience store.

S. Nadeau asked if there was an existing variance for this property. Troy stated no, it had been grandfathered because it has been a commercial property before zoning. There is also a tenant in the upstairs apartment that came with the property. Her lease is up in March.

L. Brown asked about a layout for seating. M. Tabory stated that is irrelevant and for the Planning Board.

1) The variance will not be contrary to the public interest because: (1) Whether granting the variance would alter the essential character of the locality, and (2) Whether granting the variance would threaten public health, safety or welfare.

Troy stated the property has been used commercially for 25 plus years. They are not changing the essence of the property, not expanding the parking lot but they are going to beautify it. The property has been dormant for at least a year. As far as safety they will work with the town so everything is up to code.

L. Brown discussed what the public interest was and since the commercial rights expired is the public interest not having alcohol in a residential zone. S. Nadeau stated as far as alcoholic beverages, they don't even know if he will be granted that and that is a different board that will determine that. Troy said there will not be a still, their desire is to serve alcohol but will be a family restaurant and low key.

Public Comment

Sally Riefenstahl asked if they had determined what their limitations were for parking. Troy answered no they are only in the preliminary stages but there are currently 20 parking spaces with the old striping that has become faded. He isn't sure it is even up to code. This is also for the Planning Board to decide. Robbie Parsons stated right now it sounds like it is going to make use of an otherwise vacant property and doesn't sound like it will be any worse than when it was a convenience store which did sell beer and wine.

L. Brown wanted to make sure the variance for a sit down restaurant will not in any way reactivate the convenience store. Chairman Tabory stated it was his interpretation that would require its own variance.

Close public comment

Straw pole vote was 5 – yes; 0 – no

2) The spirit of the ordinance is observed because:

Troy stated the approval of this variance will not alter the character of the neighborhood in any negative way. They are taking a vacant property and making it better.

Public Comment

Gail Myrick of 42 Lakeside Drive commented she thinks it's wonderful, but what's troubling to her is the level of trash in that area. She's concerned because there will be take out and is worried about bottles, can, wrappers, etc. She mentioned forming some kind of alliance with people that want these food sites to help our town stay clean and to have some understanding that we can start to develop with all these wonderful owners that are bringing all these great services to our town to help manage that level of trash. Chairman Tabory stated he thinks that is a wonderful idea and is glad people are worried about that. He then explained the Economic Development Committee is who she could talk to about this. Robbie Parsons, member of the EDC stated there is something like that already in place. The Public Works Dept. had initiated a roadside cleanup of town roads that has been very successful.

Close public comment

Straw pole vote was 5 – yes; 0 – no

3) Granting the variance would do substantial justice because:

Troy stated no harm would be done to the public as this property has always been used commercially. He feels it would benefit the community as it has been sitting empty for over a year.

Public Comment

Eric Knapp stated there are too many vacant door fronts already and if we can change that it would be great. Sally Riefenstahl agreed.

8.28.14 ZBA

Close public comment

Straw pole vote was 5 – yes; 0 – no

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

Troy stated opening a family friendly neighborhood establishment will only help the neighborhood and add value.

Public Comment

None – Close public comment

L. Snyder feels this is a really good thing for that neighborhood. M. Beaulieu also feels it would be a good place for gathering of community residents. M. Tabory stated he agrees that the building being vacant is lowering values and bringing activity will help values in that area.

Straw pole 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:

Troy stated literal enforcement would leave the property unusable in its current state. The large parking area and entire building is designed for commercial use.

Public comment

None – close public comment

Straw pole vote was 5 – yes; 0 – no

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:

Troy stated the property was purchased with the intention of opening a restaurant on the first floor and keeping the apartment on the second floor.

Public Comment

None – close public comment

Straw pole vote was 5 – yes; 0 – no

(ii) the proposed use is a reasonable one because:

Troy stated the property has always been used commercially therefore the use is reasonable.

Public Comment

None – close public comment

Straw pole vote was 5 – yes; 0 – no

Chairman Tabory noted the Land Use Review forms from Police, Fire and Public Works. Public Works had no concerns. Fire Dept. had no concerns but stated a code review will be required if project moves forward. Police Dept. had no issues for traffic.

Motion by S. Nadeau to approve the application. Motion seconded by L. Brown. There was a brief discussion on conditions. M. Tabory motioned if this does not go forward in 1 year the variance would be null and void. Stan seconded the motion. There was more discussion on giving the applicants enough time to get started as unknown issues could arise. The motion was rescinded.

S. Nadeau motioned to approve the application with condition of it being null and void if substantial efforts have not been made to go forward in 18 months. Motion seconded by L. Brown. Motion carried.

Other Business

Larish Kane of 595 White Mountain Highway asked about the project going on with the old Ray's Marina property and asked what recourse he has as a homeowner as far as light, noise, shrubs, etc. M. Tabory stated the Planning Board is who he would need to talk with. It had come to light that the ZBA did not have to hear the case because the use was allowed for that property but the Planning Board is the one who can put conditions on such as lighting, signage, noise, traffic, etc.

Approval of Minutes

S. Nadeau motioned to table the minutes until next month at the next meeting. Motion seconded by M. Tabory. Motion carried.

Discussion on budget

Brief discussion on a proposed budget for the Zoning Board. It was discussed that without knowing exactly what is spent out of each line strictly for the Zoning Board it is hard to come up with numbers. M. Beaulieu wanted it on record he was there as an elected Zoning Board member not a Selectman regarding discussing the budget. The estimates proposed were \$250 for training; \$1. for professional services; \$1 for membership dues; \$300 for printing; \$100 for supplies and \$35 for postage. The members will look the numbers over and discuss again at the next meeting.

S. Nadeau motioned to adjourn. Motion seconded by L. Snyder. Motion carried. Meeting adjourned at 7:15 pm.

Respectfully submitted,

Kimberly Ladisheff
Land Use Clerk