

**ZONING BOARD OF ADJUSTMENT
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MILTON, NH 03851
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**Meeting Minutes
August 22, 2013**

Members in attendance: Chairman Michael Tabory, Lue Snyder, Mike Beaulieu, Stan Nadeau and Kimberly Ladisheff, Land Use Clerk.

Public in attendance: Janice Brown, applicant, Paul Allard, Nancy Wing and Holly Heriot.

Chairman Tabory called the meeting to order at 6:03 pm.

The Board needed to adopt the By-Laws and Rules for procedure in order to hold their meeting.

MOTION: Stan motioned to accept the bylaws as written. Seconded by Mike Beaulieu. Motion passed 4-0.

Stan Nadeau withdrew his motion. Mike Beaulieu withdrew his second to the motion.

REMOTION: Stan motioned to accept the bylaws (strike as written). Mike B. seconded. Motion passed 4-0.

Chairman Tabory wanted to make an amendment to 6.J of the By-Laws to say that they pass straw votes on each criterion for the applicant to understand where the concerns may be in case they wish to appeal and then vote on the entire application as a whole to pass or fail. Stan asked if Mike wanted to add that as a subchapter or change it totally. Mike T. stated he wanted to change it because he doesn't want J to be misinterpreted by something they've done previously.

MOTION: Stan motioned to accept the amendment to the By-Laws. Lue Snyder seconded. Motion passed 4-0.

Case #3013-3: Janice Brown, Map 49 Lot 9. Application is for a Special Exception from Article III Section 3.5 of the Milton Zoning Ordinance to allow retail sales at property located in the Commercial / Residential Zone. Property is located at 61 Old Wakefield Road; owner Paul Allard.

Chairman Tabory explained to Janice Brown that they did not have a full board and she had the option to not have it heard and could continue the hearing at another time. Ms. Brown decided to go through with the hearing. The Chairman then stated that in accordance with the Zoning Ordinance there are 5 criteria to pass to be granted a Special Exception. He further explained

that the Board will do a nonbinding straw poll at the end of each explanation and then the Board will make an overall vote of the entire application at the end, which is binding.

MOTION: Stan Nadeau motioned for discussion of the application. Mike Beaulieu seconded. Motion passed 4-0.

Stan's concern was we had the property listed as Commercial/Residential zone but the application stated it was Commercial/Industrial.

Ms. Brown stated that is why she doesn't believe she should even have to go through a special exception due to it being primarily manufacturing but also wholesale/retail for many years and that there was a question as to what zone the property was in. She gave a brief history of the property. She stated if a property is used for a certain purpose it should be grandfathered. She is having a hard time understanding why she even needs to go through all of this. She is not changing anything, she is not adding anything. She has spoken with the Chief of Police about his concerns. She also had Robin Weeks from the Fire Department do a walkthrough and discussed liability. Ms. Brown stated she is already working on bringing things up to code.

Mr. Allard spoke and stated that he was always told the property was commercial industrial so why all of a sudden has it changed.

Mike T. stated there was no zoning in this town prior to 1989. He then stated the zoning map is what they have to go by now and unless there is a variance on the books they need to treat it that way. He explained anything that existed before that time would be allowed to stay as it was.

Kim Ladisheff stated that retail sales were allowed in the commercial/residential zone until 2010 when changes were made to the zoning and now a special exception is required for retail sales.

Stan Nadeau said lets assume it is in the commercial/residential zone. He asked what the Town's ordinance was about this type of business and if it was allowed or not. Kim stated it is allowed it just requires a special exception. Stan stated that no matter which way this falls it won't put an end to her business. Mike Tabory stated it would if they were to deny the special exception.

Stan Nadeau thought that the Board shouldn't meet until Ms. Brown goes to the Planning Board because then she would have no recourse if she were denied. Mike T. didn't agree with that. He stated Ms. Brown has to meet with them and if they grant her the special exception then she goes for a site plan.

MOTION: Stan Nadeau motioned to accept the application with the correction that it is in the commercial/residential zone. Mike Beaulieu seconded. Motion passed 4-0.

Ms. Brown gave a brief overview of what she wants to do at the location. She would like to have it be a social flea market open to rental space for folks to come in with second hand goods,

homemade goods, and arts and crafts. She would also display items for consignment. She will rent out tables and it will be like an organized yard sale. She would like to be open 7 days a week with no employees, only herself and Nancy Wing who will be the manager. Nancy will work for her space to sell her candles. Janice Brown mentioned auctions and stated if that was problematic she would take that off the table and maybe come back later for that.

Stan's concern was the hours Ms. Brown would be operating being in the residential area. Janice stated on her application she would be open until 9 pm. He stated he is not opposed but would like to see hours change. Mike Tabory stated he didn't feel the Board had that authority but Planning Board does. Ms. Brown stated she is closed until further notice because Robin Weeks told her certain things need to be taken care of before she can operate.

Lue Snyder stated she has a problem with the auction part of it because of the parking and they could end up with a lot more cars then Janice thinks. Janice stated she is taking the auction right off the table.

1. That the specific site is an appropriate location for the proposed use or structure. Ms. Brown stated it is the perfect location because of the nature of what's been there for so long. It has a wide open space for people to get around. It has plenty of off road parking.

Public Comment Session was opened. There being no comments it was then close.

2. That the use will not be injurious, noxious, offensive, or detrimental to the neighborhood. Janice stated everyone who has come so far is very excited about it and she has spoken with the neighbors and no one seems to have a problem with it.

Public Comment Session was opened.

Holly Heriot who lives at 225 White Mountain Highway spoke in favor of the flea market. Holly said sometimes when people think of a flea market they might think of the one in Rochester and it being stinky and smelly. She said if this was the case she might be concerned but these ladies have done a great job. Holly stated it is nicely decorated and also the outside of the building looks nice.

Public Comment Session was closed.

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. Janice said it is in a residential neighborhood. The parking area is large and well lit. There is a place for overflow parking. Janice stated that vendors are not required to be there all day, they rent the space and can leave their items.

Public Comment Session was opened. There being no comments it was then closed.

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. Ms. Brown stated it is wide open already with ample exits. There is plenty of lighting and also has loading docks for people who want to bring big items in. It also has handicap accessibility in the back with a ramp. It is a little of the beaten path and no one is directly being affected.

Public Comment Session was opened. There being no comments it was then closed.

5. That the proposed use or structure is consistent with the spirit of the ordinance and the intent of the Master Plan. Janice stated it is a welcoming type of business and not one that would cause any problems or issues in the area.

Public Comment Session was opened. There being no comments it was then closed.

The following straw pole votes are based on the items in bold script above.

- 1) 4-0 yes/passed
- 2) 4-0 yes/passed
- 3) 4-0 yes/passed
- 4) 4-0 yes/passed
- 5) 4-0 yes/passed

MOTION: Chairman Tabory moved to approve the application. Stan seconded. Motion passed 4-0.

Mike T. asked that we record the straw votes in the minutes for the future.

The Board decided to table the minutes of the previous meeting until Kim gets definition of language from Wendy.

There was a brief discussion on the budget. Mike T. mentioned having a meeting next month even if there are no applications to get through the budget piece. The Board decided they have enough time to not have a meeting strictly for the budget. Few line items to put in the budget are the RSA books, training for the Board, and supplies.

Stan then discussed an issue with the Board being in violation of its own ordinance. He read from the shoreland ordinance Article XVII that no person shall commence the construction, alteration, reconstruction or expansion of any building or structure within the protected shoreland, or change or expand any existing nonconforming use within the protected shoreland,

without first obtaining a shoreland permit from the Planning Board. He stated the Planning Board is not doing that and this Board is not insisting on it.

Mike Tabory stated he doesn't see that's ZBA. ZBA grants whether or not the use is possible, it is up to the Planning Board to enforce that they have done all the other pieces. Stan then stated people come before them before they go to the Planning Board and Planning runs on the fact that ZBA is telling the people it is ok. Stan said the way he reads the ordinance nothing should be done by any Board until the Shoreland Permit form is done. Mike T. then stated if that is the case Planning/Code is not following through with their obligation and in order to protect the Zoning Board they should make it a condition of the approval.

Stan stated he thinks it would be good practice that anything to do with Shoreland that the Board put the language in their decisions that their decision is null and void without the proper permitting. Mike T. asked Kim to check with Wendy about a list that was started with standard conditions to put on all approvals.

Stan stated it is in the best interest of the Board to make sure the letter of the law is followed.

MOTION: Mike Tabory motioned to adjourn. Seconded by Stan Nadeau. Motion carried 4-0.

Meeting adjourned at 8:00 pm.

Respectfully submitted,

Kimberly Ladisheff
Land Use Clerk