



ZONING BOARD OF ADJUSTMENT

PO BOX 310

MILTON NH 03851

PHONE (603) 652-4129x5

FAX (603) 652-4120

MEETING MINUTES

February 25, 2010

Members Present: Chair-Nancy Johnson, Vice Chair-Robert Srnec, Michael Tambory, James Smith and Tom Gray (Alternate)

Members Not Present: John Gilman (excused).

Others Present: David Paey, Deborah Glidden, Jane Murphy, Larry Brown, Eric Knapp, and Maureen Fleming.

The Chair called the meeting to order at 6:00 PM.

1. Approval of November 19th, 2009 Minutes — The minutes were tabled for approval until the next regularly scheduled meeting.

2. Public Hearing/Application: An Area Variance for William & Jane Murphy (Tax Map #13, Lot #1) located on Allen Hastings Way, Milton NH (Low Density Residential Zone). The Area Variance is being requested from Article XI Section 1B of the Milton Zoning Ordinance to permit the continuing use of a Body Shop and Auto Sales.

The application will be considered for acceptance at the meeting. If the application is accepted and time permits, a Public Hearing will then follow. A copy of the application and related materials are available at the Milton Land Use Office.

Chairman Nancy Johnson stated to the audience that she was opening the public hearing because abutters were in attendance, however due to law change in variances on January 1, 2010, which omitted the differences between use and area variances, the application which the Murphy's were provided was an incorrect application. Due to the potential for lawsuit, she will not proceed with the hearing on acceptance of the application until a new application has been furnished to the Murphy's. She will open the public hearing and continue the case to a date specific time for review.

Eric Knapp, abutter, stated that he had assumed the property was properly zoned and licensed when he purchased his property abutting it. He now has property value and EPA (environmental) concerns. Because he assumed the property was properly licensed he further assumed that it was overseen by a governing body for proper

operation. He inquired if there has ever been an investigation for environmental impact based on concerns for runoff and hazardous materials.

Chairman Johnson stated that the town does not oversee licensing or inspections of that type on properties and that it would be a Department of Environmental Services or Environmental Protection Agencies issue.

Eric Knapp inquired if there was a fee for having tests done to the property soils or other inspections.

Vice-Chairman Bob Srnec stated that once a complaint is made to the state it then becomes a state issue and there is no cost to the person bringing forth the complaint.

Eric Knapp reiterated that he was under the impression that the property use was in fact a legal one and inquired of the Murphys if there has ever been an environmental study or check on the property.

Mrs. Murphy stated no.

Maureen Fleming made the Board aware that their concern is the groundwater and other environmental issues. There is a small shared water way on both properties which affects both lands and eventually the river way which it enters.

Chairman Johnson stated that because the application is not being accepted this evening she would suggest that the concerned parties come back on the next meeting.

David Paey made note that the property is zoned residential/commercial however the tax cards states that it is low density residential. He inquired if the zoning had changed.

Chairman Johnson stated that although the tax card reads that it is located in the low density residential zone, what the Board goes by in determination of a properties zoning is the official tax map. The map reads that the property is located in the Residential/Commercial zone.

Mr. Paey then spoke in regards to the proposed change to the zoning articles.

Chairman Johnson stated that the Zoning Board is not behind the proposed change and that he should speak with the Planning Board Chair.

Mr. Paey inquired if he should have been notified about any proposed change.

Chairman Johnson stated that the proposed articles were noticed in several locations and individual property owners would not have to have been notified.

Larry Brown, concerned resident of the town of Milton, opened with the comment that zoning issues (and the power that municipalities have over them) date back to 1912 based on a Massachusetts Supreme Court case. He stated that the application speaks specifically to the individual property rights superior to the Constitution. If the property is low density residential the applicants would need a variance, however, if the property is zoned industrial then they would not require one. There is, as far as he knows, nothing on file for a business for the property. If this is a request for continuation of a business

then there has to be sales of vehicles, specifically 5 in a 12 month period and he further believes a surety bond would also have to be in place as a used car dealer. He looked at the property and counted 8-10 unregistered campers, visible from the road, tractor trailers, 15 vehicles (could not determine if they were registered or in working condition), 2, possibly 3 tow trucks, three piles of used tires, one pile of unknown materials and a mud brook that he could not tell from the afternoon lighting if there was an oil sheen on it or not. He continued to state that if this is not selling serviceable and workable vehicles then it is in fact a junk yard. If the property were to be properly maintained then he believes it would enhance business opportunities. He inquired if Northcoast Railroad was an abutter. Wendy Keane stated no. He further inquired if each abutter had to be noticed for each individual parcel they own which abuts the property. Chairman Johnson stated that if an abutter owns multiple properties which abut the property being discussed they would only have to be noticed once.

Chairman Johnson reiterated that there was a law change on January 1, 2010, which omitted the differentiation between use and area variances. Because a new application had not been prepared in relation to the law change, the application that the Murphy's were issued and returned is in fact not valid. The hearing will be continued to a time specific date and the Murphy's will be furnished with a proper application.

Deborah Glidden inquired how long a variance lasts.

Chairman Johnson stated that a variance, once granted, follows the land and does not have an expiration as long as it is acted upon within two years of the granting by the Zoning Board of Adjustment.

Vice Chairman Bob Srnec further stated that a variance can be granted with conditions.

Chairman Johnson asked if there were any further questions from the public. There being none, she recessed the public hearing.

3. Other Business:

Tom Gray stated that he will raise the issue of granting an extension on action of the cease and desist order for the Murphy's with the other Selectmen.

The Board discussed and decided that a reasonable meeting date would be March 11, 2010 to continue the hearing.

Deborah Glidden inquired if they would be able to speak and answer any questions regarding concerns to the Murphy application at that time.

Chairman Johnson affirmed that they would be able to at the next meeting on March 11, 2010.

MOTION: Vice Chairman Srnec moved to continue the meeting to March 11, 2010 and to waive any fees associated with a new application. Seconded by James Smith.

Motion carried 5-0

The Board reviewed and discussed two application drafts which will comply with the

new law change to RSA 674:33, I (b).

MOTION: Vice Chairman Srnec moved to accept the draft as written by Wendy Keane with a correction that it includes a change of information added regarding question 5 to include:

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:

(B) If the criteria in subparagraph (A) above are not established, explain why the property cannot be used in strict conformance with the ordinance and why a variance is therefore necessary to enable a reasonable use of it:

Motion seconded by James Smith. **Motion carried 5-0**

MOTION: Vice Chairman Srnec moved to adjourn. Seconded by James Smith. **Motion carried 5-0.**

4. Adjournment:

MOTION: Vice Chairman Srnec moved to adjourn. Seconded by James Smith. **Motion carried 5-0.**

Meeting adjourned at 6:31 PM

Respectfully submitted,

Wendy L. Keane
Land Use Clerk