



ZONING BOARD OF ADJUSTMENT  
PO BOX 310  
MILTON NH 03851

June 24, 2010  
Meeting Minutes

Chairman Johnson called the meeting to order at 6:02 PM

Present were Board Members: Nancy Johnson-Chair, Bob Srnec-Vice Chair, Mike Tabory, John Gilman and James Smith.

Public present: Nita Myler, Lisa Marquis, Arlene Marquis, David Marquis and Diane Larder.

Chairman Johnson explained that the meeting this evening is hearing two cases which had been continued from the meeting of May 27, 2010.

**1.:** CONTINUED from the ZBA meeting of May 27, 2010: A Variance request from Article VII, Section C.3 of the Milton Zoning Ordinance to allow construction of an 8'x10' shed which will not meet setbacks. Property is located at 108 St. James Ave, Map 33, Lot 43. Parcel is a .14 acre lot.

Chairman Johnson explained the rules and regulations of the ZBA to the applicant.

Nita Myler stated that she is requesting that the application fee either be waived or delayed until at least July 8th when she gets back to work so that payments can be made. Ms. Myler explained the layout of the property in regards to the setbacks and other features of the property which in limit where she would be able to place a shed. She explained that the setbacks in the front of the house have a 50' set back to meet the Shoreland Protection Act rules and that there is only 13' between the house and the side boundary lines. The front (street side) of the property has septic and parking.

Chairman Johnson asked what triggered her to come before the ZBA. Nita Myler explained that she came in to fill out a building permit for the shed. She stated Code Enforcement Officer (CEO) Brian Boyers came over to measure and had to send her to the ZBA because it does not meet setbacks as required per the ordinance. She explained that the shed is already in place because she did not know originally that she needed a permit, and that she and her neighbors discussed where on the property the shed would look best.

Chairman Johnson asked the applicant to work through the variance application and explain in detail why the ZBA should consider approval of the request.

**1. The Variance will not be contrary to the public interest because: (*In responding to this question, please address: (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.*)**

The variance will not be contrary because it would not alter the characteristics of the locality or be dangerous.

**2. The spirit of the ordinance is observed because;**

The granting of the ordinance would not be contrary to spirit of ordinance because the properties are all pretty similar.

**3. Granting the variance would do substantial justice because:**

Granting variance would do substantial justice because it would help to keep the yard neat and safe. Nita Myler explained that she has bicycles, a generator, lawn tools and items which contain gasoline in them that she would rather not store in her basement and create a hazardous situation.

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

Surrounding properties would not be diminished because it looks similar to the house and is tucked onto the property as well as can be.

**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:**

Unnecessary hardship would be that there is not really any other area to place the shed on the property.

**(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:**

Denial would mean she has not storage area except for the cellar and would have to carry items in and out and stated again that she would rather not have items using gasoline in the house for safety reasons.

Chairman Johnson inquired if there was anything else we needed to know. Nita Myler stated that she believes that she has covered everything.

Chairman Johnson opened the public hearing. She introduced the letters from the abutters, Kevin Kelly and Joan and Dorothy Goodrich. Chairman Johnson read the letters into record (see attached).

Chairman Johnson inquired if anyone else would like to speak on the application. No-one spoke therefore the public session was closed.

**MOTION:** Bob Srnec moved to accept the application. Seconded by John Gilman. Motion carried 5-0.

James Smith asked Ms. Myler if her property is the one that always floods in the front.

Ms. Myler stated that yes, it is her property which floods.

Mike Tabor inquired what type of construction (wood/metal) the shed is and verified that there would not be a foundation to the structure.

Ms. Myler stated that the shed is a wood frame structure and that it does not have a permanent foundation (slab).

Nancy Johnson stated that she has questioned the term "structure" and was left more confused than before she asked. Bob Srnec stated he has had the same questions.

Chairman Johnson inquired if there were any additional question from the Board. There being none, she proceeded to inquire of the Board Members their responses to the criteria of the variance.

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

- 1)5-0 passed
- 2)5-0 passed
- 3)5-0 passed
- 4)5-0 passed
- 5)5-0 passed
- 5A) i 5-0 passed
- 5A ii 5-0 passed.

**MOTION:** Chairman Johnson moved to approve the application with the condition that fees are paid. Seconded by Bob Srnec. Motion carried 5-0.

**2. CONTINUED** from the ZBA meeting of May 27, 2010 A Variance request from Article VII, Section A of the Milton Zoning Ordinance to allow construction of a Single Family Dwelling on a lot where the previous structure was destroyed by fire. Property is located at Map 38, Lot 18. Parcel is .120 acres and located on an island in Milton Pond, Milton, NH. The application will be considered for acceptance at the meeting.

Chairman Johnson stated that she found it off that the applicant would apply for a septic design before applying for the variance.

Lisa Marquis stated that she was at DES to ask some questions and was urged to apply then and got the design approved.

Nancy Johnson inquired if the fees had been paid for the application. Wendy Keane stated that yes, they have been.

**MOTION:** Bob Srnec moved to accept the application. Seconded by James Smith. Motion carried 5-0.

Lisa Marquis spoke on behalf of the application.

Chairman Johnson asked Mr. Marquis what triggered her to come before the ZBA for a variance.

Lisa Marquis stated that she and her husband bought Avery Island in 2002 and wanted to rebuild. It was after purchasing it and applying for a building permit that they were made aware that after a structure burned they only have one year to rebuild. Upon hearing that they did not think they had the option to rebuild until the past year when a family member, who is an environmental scientist, urged them to appeal to the ZBA. In going through the process she found out more info about the ZBA. She has a few questions and what the difference is between a Special Exception and a Variance. She inquired why it was not a special exception. Nancy Johnson stated that there has never really been an application for a special exception. Chairman Johnson explained that there is a chart within the Zoning Ordinance that shows an area that a property would have to fall into for uses of a property or need a Special Exception or a Variance, and this item falls into a variance.

Lisa Marquis stated that one state law says when they meet the criteria for a septic design, it makes the property buildable. The other thing she found was that the original structure was built on, and that the Milton Zoning Ordinance was created in 1989, she inquired if that made the property a grandfathered lot.

She stated that when she bought the island in 2002 (it had burned in 2000), the owner passed away and his brother who was also elderly was in charge of settling probate. She stated that by the time they got it in 2002 the year had passed and they were told they could not build. She further stated that it was recently that she was made aware that she could apply for a variance.

She made the Board aware that it would not be a year round residence; the intended use is just a place to let family go camp with.

Chairman Johnson stated she appreciates hearing about the intent but also knows that people's intent sometimes changes over time.

Lisa Marquis stated that the septic type was created by a man in New Hampshire and is used around Lake Winnepesaukee often.

**1. The Variance will not be contrary to the public interest because: (*In responding to this question, please address: (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.*)**

Applicant read from the application.

**2. The spirit of the ordinance is observed because;** It would provide a reasonable use for the property and clean up the mess that is currently there.

**3. Granting the variance would do substantial justice because:**

Lisa Marquis stated that she often hears people ask what are they going to do with the island and that people would like to see a house there again.

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

Lisa Marquis and her husband feel that there would not be any negative impact to the other properties on the lake and would actually enhance the view of the lake from the road.

**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:**

It is the only island in Milton that can house a cottage. The house was there prior to the 1900's.

**(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:**

The septic was designed by Cleanwater Solutions, based on a building size of 944 sf , The system is on an impervious surface because there is a cement pad and two cement staircases that were taken into consideration as well as the chimney. Mrs. Marquis further stated that their plans are for a less than 944 sf dwelling that will only be approximately 800 sf and have a dock at waters edge.

Chairman Johnson opened the public session: Wendy Keane stated that the only issue that the police have is access and that the owners cannot cross the property over the railroad tracks as done in the past. She further stated that the Fire Department would like the applicants to be aware that they do not have the apparatus to put a fire out on the island if something should happen.

Chairman Johnson inquired how far back the deeds went. Lisa Marquis stated that she researched as far back in the Registry of Deeds online as she could, and that the deeds she has reference as far back as 1965.

Chairman Johnson closed the public hearing.

Chairman Johnson stated that she finds this odd to be here frankly because she finds that this is a non conforming vacant lot because the property was deeded prior to zoning.

Mike Tabory stated that he feels this is more for the setbacks. The Board discussed the issue and Wendy Keane pointed out that setbacks were not the reason the building application was denied by the Code Enforcement Officer.

James asked if this was going to be a year round property. Lisa stated it will be a true cottage but the outside will be completed and they only plan to have it be "crude" on the inside. Mike asked if it will replicate the original building. Lisa Marquis showed the Board pictures of the house planned to be built. Mike Tabory asked if it was going to be stick built. Lisa Marquis stated it will be stick built. James Smith asked what they planned to do with the chimney. Lisa Marquis stated they are going to take it down.

**MOTION:** Nancy Johnson moved to close the public hearing. Seconded by Bob Srnec. Motion carried 5-0.

Chairman Johnson asked the Board if there is any discussion to be held. She reminded the Board that they are here to only discuss the one year issue and not setbacks.

James Smith inquired exactly what the spirit of the ordinance is because one year does not seem long enough to rebuild. He stated it seems that the spirit seems contrary to what it is actually looking for.

Nancy Johnson stated there were clearly circumstances surrounding this property which made it so that rebuilding within a year would have been impossible because it was in probate.

Chairman Johnson inquired if the Board had any more questions. There being none, she called each question for a vote. The following votes are based on the items in bold script above.

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

3)5-0 yes/passed

4)5-0 yes/passed

5) 4-1 yes/passed:

Chairman Johnson did not agree with the applicants reasoning to the question, but feels that literal provision of the ordinance does not allow them to use their property in a meaningful way. She further stated that the applicants are not seeking to put gas pumps or a convenience store out there, she is asking because of the special condition of the property and Chairman Johnson feels that she is asking for a reasonable use.

James Smith did not agree because he feels that in this case it is almost a case of buyer beware, and the only reason he disagrees is because this existed prior to the house burning down. Mike Tabory argued that the special condition is that there has always been a house there.

Ai 5-0 yes/passed Chairman Johnson stated she does not agree with the applicants reasoning and goes back to her prior arguments.

ii 5-0 yes/passed.

**MOTION:** Bob Srnec moved to approve the application with the conditions as noted in the Dept of Environmental Services Shoreland Impact permit # 2010-00210 (see attached). Seconded by James Smith, motion carried 5-0.

Chairman Johnson reminded the applicant that there is a 30 day appeal period and that a substantial amount of work would need to be done within one year for the variance to stay. Bob Srnec explained that before June 24th of next year they will have to pull a building permit for the property to stay within variance regulations.

#### OTHER BUSINESS:

Chairman Johnson stated that there are two sets of minutes to be approved.

**MOTION:** Chairman Johnson moved to accept the minutes from March 25th as written Seconded by John Gilman. **Motion carried 4-0.** Bob Srnec abstained as he was not present at that meeting.

**MOTION:** Chairman Johnson moved to approve the minutes of 5/27/10 minutes with the correction of James Smith's name. Seconded by Bob Srnec. **Motion carried 4-0.** James Smith abstained as he was not present at the 5/27/10 meeting.

Chairman Johnson brought up the fee changes that were made by the Planning Board on the ZBA applications. She believes we agreed to change the fees back to what they were

prior. The Board discussed the fees and James Smith noted that per previous minutes from 2008 they did have a meeting and discussed the fees.

Chairman Johnson discussed items from the Office of Energy and Planning conference she went to in May. She stated to the Board that the By-laws must be re-written to include Rules of Procedure. She further stated that she will work with the information Wendy Keane provided for a rough draft for the next meeting.

**MOTION:** Bob Srnec moved to adjourn the meeting at 8:00 pm. Seconded by John Gilman. Motion carried 5-0.

Respectfully submitted,

Wendy L. Keane  
Land Use Clerk  
Recording Clerk

Zoning Board of Adjustment  
Nancy Johnson Chair