



ZONING BOARD OF ADJUSTMENT PO BOX 310

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MEETING MINUTES March 11, 2010

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

Members Not Present: John Gilman (excused), James Smith (excused).

Others Present: Deborah Glidden, Jane Murphy, Audrey Vachon, Terry Vachon, April Siraco, Eric Knapp, and Maureen Fleming.

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

Tom Gray was appointed a full voting member due to the absences of John Gilman and James Smith.

1. Approval of November 19th, 2009 and February 25, 2010 meeting minutes. This agenda item was addressed at the conclusion of the meeting.

2. Continued: Public Hearing/Application: A Variance for William & Jane Murphy (Tax Map #13, Lot #1) located on Allen Hastings Way, Milton NH (Low Density Residential Zone). The 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 Johnson gave an overview of what had preceded this continued meeting (see minutes from Feb.25, 2010):“We met two weeks ago and as a result of change in state law dealing with variances we needed to update our application. We opened public hearing and let the abutters speak as they were here. We did not accept application as it was not structured right. Instead of closing pubic hearing we continued it to tonight. As a first order of business, Chairman Johnson appointed Tom gray as a full voting member in place of John Gilman who could not make it this evening.”

Chairman Johnson inquired if there was a motion to accept the application.

MOTION: Tom Gray moved to accept the application as complete. Seconded by Bob Srnec. Motion carried 4-0.

Chairman Johnson re-opened the public hearing.

Eric Knapp and Maureen Flemming offered written testimony. Letter was read into the record (see attached).

Eric Knapp apologized for the length of the letter. He stated he wanted to put the letter into record as he was not sure he would be in town for the meeting. He reiterated that it is not the operation of the business they are opposed to, but if a variance is approved it could, in generations to come, turn into a Walmart or other business. April Sorraco, 18 Allen Hastings Way, stated that she is here for moral support of Mr. Knapp and Ms. Flemming and has nothing against the Murphy's, but the area is very unattractive and messy. She further stated that the area does need to be cleaned up.

Chairman Johnson wanted to remind the Board members that we are the zoning board of appeal and not DES and though there are certain things we can do, there may be things the health officer needs to address and not the ZBA. Chairman Johnson stated that she would also caution the board that if there are any civil issues that they are not of the boards concern. We have a variance process that we have to adhere to and she knows it is tempting to go other places on this. She continued to state that this is probably the most complicated before the Board in a long time and she just wanted to remind the board of what their job is. She appreciates people coming and their comments and they are taken seriously.

Chairman Johnson asked the Murphy's to go through their application step by step and to give their reasoning as to why the application should be accepted.

Deborah Glidden stated that the place is a mess, with tires and stuff piled up and she does not blame the neighbors for being upset. The cease and desist is in order and the site is presently being cleaned up. Her father has some cars he would like to sell and vehicles do not sell quickly. She stated she did not see half buried oil drums or oil sheen as had been mentioned earlier. She further stated that her father just wants to get rid of what is there.

Chairman Johnson inquired if he (Mr. Murphy) actually wanted to do this (auto Body repairs and sales as indicated by the application).

Deborah Glidden stated it is more like a hobby shop to restore antique cars of his own. D. Glidden stated that aside from selling a few cars they are going to clean the yard.

Tom Gray stated that he noticed on the application that the auto sales part has been crossed out.

Deborah Glidden stated that auto body should have been crossed out instead. She continued to say that when her dad was in the hospital and recuperating her brother

brought a lot of the things onto the property. She acknowledged that her father (Mr. Murphy) needs to move the vehicles he has now and that will be slow. He has mortgaged his house to purchase what he has.

Chairman Johnson stated that under the states definition their property is a junkyard and they should have applied as one.

Michael Tabory stated that a person can sell a personal vehicle from their property.

Deborah Glidden said a lot of the vehicles are registered and inspected.

Chairman Johnson stated that if a variance is granted for something that may be a temporary situation, the variance still goes on forever, and someone moving there later on could use it in the same way.

Tom Gray, inquired what kind of time frame they are looking for to clean up. D. Glidden had asked until June 4 to complete clean up. There has been a lot started already.

Chairman Johnson stated that the cease and desist would stay in effect and even if the variance were to be granted to ensure that the property is cleaned up.

Deborah Glidden stated that her father would maybe buy a car work on it and sell it once in a while as a person to person transaction and not as a business.

Tom Gray thought he was going for a salvage business because of the number of vehicles.

Michael Tabory stated that even if they went for a sales variance they could have the vehicles there. However, if they went for the salvage yard they would fall under state rulings and it would not be good for them. M. Tabory asked if it came under sales could he have the 13 cars there.

Maureen Flemming inquired if they would they be able to sell multiple vehicles if they were registered. She feels it would be most advantageous to register the vehicles.

Deborah Glidden stated that about 11 or 12 of the 13 vehicles are registered. The tractor trailers, at least three on the property would have to be registered.

Olive Murphy stated that they would like to keep one of the tractors in order to move things around the yard.

Bob Srnec said that when he visited the property, 4 trailers and 3 tractors were seen. He stated that he is concerned what may be in the trailers.

There was discussion among the public members and the Board as to the water on the property and where it leads to.

Chairman Johnson said that there are a few issues before the Board this evening in regards to the property. First being the cease and desist because of unlicensed junk yard, concern for water and runoff, and the intended use of the property.

Eric Knapp said they were told that they should get DES involved with their concerns, however did not want to inflict fines upon them (The Murphy's).

Deborah Glidden stated she does not think there is any contamination.

Chairman Johnson stated that her concern with any property is what may potentially run into the water off of the land.

Maureen Flemming stated that she would like to add that contamination is not necessarily large amounts dumped on the ground but can be from small amounts of continuous carcinogens leaching into the land from the tires and other parts of car.

Chairman Johnson said we have a DES issue, cease and desist issue and that the applicants do not want to do auto body as a business but more as a hobby and only sell the vehicles he has on the property now.

Bob Srnec stated that once we grant a variance it is there forever and they can do as they please and that a variance follows the land and not the homeowner.

Bob Srnec entered into the record photos that he had taken of the property.

Olive Murphy asked if there could just be some more time to get the property cleaned up.

Chairman Johnson asked if it is their intent to remove the stuff of the property.

Deborah Glidden stated that her brother let another resident in Milton store some things there and that their intent is to clean up the property.

Bob Srnec stated that Roger Libby has a licensed junkyard. He may not pay them for anything on the property, it but he may help get rid of it. He (R. Libby) is a certified green junkyard.

Chairman Johnson stated that could help them clean up the property quickly. She stated that she hears that he (Mr. Murphy) does not want an auto salvage yard or an auto sales place, just to be able to sell the cars he has now and never have more than 5 or a time. If they are registered this solves the problem now.

Deborah Glidden stated that the old school bus is also planned to be moved out of the yard.

Bob Srnec stated that there are two different issues and he would not accept a motion for

variance on it. He noted that there is an old oil tank leaning against a trailer and if water gets into it then it turns into what they neighbors are speaking about.

Chairman Johnson stated to the Johnsons that the ZBA does not want to see them in a position where the cease and desist does not go away and fines commence. The ZBA members are trying to find a solution for them and their neighbors. She feels the neighbors did a good thing by doing their research.

Eric Knapp said it was never their intent to harm the Murphy's in any way.

Chairman Johnson inquired what they (all parties) could agree to in order make everyone happy.

Olive Murphy reiterated that they just need time to clean up the property.

Bob Srnec stated that he mistrusts everyone equally and he would be leery of granting any kind of variance but maybe they could urge the Selectmen to extend the cease and desist for a period of time to get it (the property) cleaned out. After that he may be more apt to consider a variance for a small private auto sales business.

Michael Tabory asked if for clarification if the ordinance says that if there were more than 2 unregistered if it were a junk yard?

Tom Gray stated that what they were looking for is to do what any one of us does in their own garage. If the cars were registered then they do not need any sort of variance.

Chairman Johnson stated that she hears them saying they do not want an auto body shop, nor do they want a salvage yard.

Tom Gray stated that what he would like to see is a time line:. Tires gone by "x" date, iron gone by "x" date, etc.

Olive Murphy inquired on the zoning of the property.

Chairman Johnson stated that it is in the commercial/residential zone by the official tax map, and after reading through definitions, once cars are brought into it the use changes. She knows they have referred to it as a home occupation; however once you are outside of your residence is outside the home unless auto body work would be done in a garage. There are a lot of definition issues. If the selectmen were given a time table as Tom Gray suggested, and the applicants were to speak to Mr. Libby, she feels the Board could get this fixed. Tom Gray stated that he thinks Mr. Libby would take almost everything. He hauls for free and makes some profit.

Chairman Johnson asked if that seemed like a reasonable solution.

Olive Murphy stated that would work for them and they realize it is a mess out there.

Chairman Johnson stated that if they agree to this and it does not happen then they could be accumulating some serious fines.

Tom Gray stated that the next Selectmen's meeting is full, but they could possibly speak briefly of extending the cease and desist. He stated that he would assume that the Selectmen would inspect the property.

Bob Srnec urged that the Murphy's come in with realistic times because when the date ends, they (the Selectmen) will be up there looking at it and if it is not clean then the fines could begin.

Olive Murphy asked if a property owner could have storage trailers.

Bob Srnec believes that one is allowed.

Bob Srnec stated that they (the ZBA) would find out how many storage trailers are allowed on a property. He further noted that they would have to be properly placed and not all over the property.

Bob Srnec asked if excavator on the property worked. D. Glidden stated it does. Bob Srnec said they could use that to help clean up the yard.

Maureen Flemming stated that she believes they are working toward a reasonable solution. She does not want them to use the excuse of registering vehicles as an excuse to just let vehicles sit there.

Chairman Johnson stated they cannot infringe on wetlands and that they (the trailers) should be moved.

Eric Knapp stated if there is a clear plan to clean it up then this is a good thing. His concern was the possibility of a permanent variance.

Chairman Johnson inquired if the Murphy's had a copy of the letter. W Keane provided them with a copy of the letter.

Chairman Johnson stated that what she hears is that at the minimum they will move the trailers, present a timeline of clean up to the selectmen, and talk to Libby or other person to haul away some stuff.

MOTION: Tom Gray moved to rescind the motion to approve application, Bob Srnec seconded. Motion carried 4-0.

Chairman Johnson asked if they formally withdraw the application, the applicant Mrs. Murphy nodded her head.

Deborah Glidden inquired when they should come to the Selectmen's meeting. Tom Gray stated that they would have to provide something to them by the 5th of April.

Maureen Flemming stated an urging for things to be removed from the wet areas. She inquired if there a method where they will be noticed of what is supposed to be happening.

Michael Tabory would like to suggest that when they go through the whole process of cleaning up and if they decide to apply for a same variance, that they be waived the actual application fee (not notices and abutters fees) .

Motion: Michael Tabory moved to waive the application fees if the Murphy's should come back only for what was on the original application and that it expire within 1 year from this date. Bob Srnec seconded. Motion carried 4-0.

3. Other Business:

Chairman Johnson stated that the board needs to approve the minutes from November 19th, 2009 and February 25th, 2010.

Michael Tabory stated that he has to abstain from the Nov 19th meeting minutes as he was an abutter to the subject property.

Motion: Bob Srnec moved to accept the November 19, 2009 minutes. Seconded by Tom Gray. Motion carried 3-0.

Motion: Bob Srnec moved to approve the February 25th, 2010 minutes. Seconded by Tom Gray. Motion carried 4-0.

Chairman Johnson asked that a review of the bylaws and the election of officials be added to the next agenda..

Tom Gray stated that he will have to resign because Bob Srnec has been elected as a Selectman.

Wendy Keane reminded everyone that she would not be present for the March 25th, 2010 meeting and that Michelle Beauchamp will be taking the minutes.

Chairman Johnson asked Wendy Keane to email the ZBA bylaws to the board. .

Chairman Johnson stated that we really need alternates. She asked that everyone please speak with friends, neighbors, etc. to attract people. She also mentioned that a notice was put out about the OEP conference and she encourages people to attend.

Tom Gray tendered his resignation effective upon adjournment.

Chairman Johnson regrettably accepted the resignation from Tom Gray.

4. Adjournment

Motion: Bob Srnec moved to adjourn. Seconded by Tom Gray. Motion carried 4-0.

Meeting adjourned at 8:25 pm.

Respectfully submitted,

Wendy L. Keane
Land Use Clerk

These minutes are not considered approved until they are voted upon by the Board.