

Town of Milton
424 White Mtn Highway
Milton NH, 03851



Zoning Board of Adjustment
PO Box 310
(p)603-652-4501
(f)603-652-4120

7/26/20
Meeting Minutes
6:00 PM

Present Members: Stan Nadeau, Sean Skillings, Steve Baker, Larry Brown, Phil Bean, Michael Beaulieu.

Absent Members:

Staff Present: Bruce Woodruff, Town Planner

Members of the Public: Chris Weissville, Dan and Kim Jackson, David Franco

Chairman Nadeau called the meeting to order at 6:01PM

The Board recited the pledge of allegiance.

The board performs a roll call so that those attending by phone may know what members of the board are present at the meeting.

Chris Weissville introduces himself as the attorney that will be representing the applicant Dan Jackson and Kim Jackson. Also attending in the audience is David Franco the realtor for the property representing the Caputo family who are selling the property. The board confirms with Chris Weissville that the Caputo family should be the party that is responsible for getting the variance because the property is currently owned by them. Chris W. notes that since the sale of the property is contingent on this variance, he is going to represent the homeowners as well as the buyers while in front of the board. Town Planner Bruce Woodruff confirms this. Stan Nadeau and Larry Brown both note their concern on this. Phillip Bean explains that a May 5th transaction between Chris Weissville and the property owner that confirmed the representation. Larry Brown confirms this. To ensure the safety of the town, the board calls the current owners of the property to confirm this interaction. David Franco, the owner, confirms.

Notice is hereby given that a public hearing will be held at: 6:00 PM July 23rd at the Milton Town Hall, 424 White Mountain Highway, Milton NH concerning a request by Daniel Jackson for a Variance from Article III of the Milton Zoning Ordinance, relief from Front Setback, relief from Side Setback and Article XIII, relief from Wetlands Buffer Setback for property located at 240 Bolan Rd. Milton (Map 23 Lot 76-3) in the Low Density Residential Zone.

Stan Nadeau explains the rules of the meeting to those in the audience. After this he calls the representative of the homeowner to the podium to present the case of the property. Chris W, resident of Dover, NH, shows the board three variance applications that have been requested. Information for the properties that have been submitted to the board can be found within the packet that was given to the board prior to the meeting and has been held in the townhall. In the sets of plans he notes that it shows the three lots that the Caputo's own and that the family is also in attempting to combine two of these lots into one through the approval of the planning board. Larry Brown questions how the board is supposed to act on something that does not currently exist. Chris W. explains that according to the Zoning Ordinance adopted by the town it allows development on lots of record. He also explains that the plans do exist thus the board can grant a variance pursuant to the planning board approval. After discussing the legal timeframe of the planning board lot line adjustment application, Bruce notes that there are no time restrictions for the application for the planning board. Bruce continues to ask Chris W. if he had gone in front of the selectman to discuss the lots that had been unmerged. Chris W. states that they have not been in front of the Select Board to discuss this separation. Stan N. and Larry B. explain that they have a concern that the represented party has not been in front of the Planning Board and the Select board yet. Chris W. explains that alterations of this style have already happened around the community before and in much smaller lots. Larry Brown notes the revolving conversation and states that none of the planned points are being hit by either the board or the representative.

Chris W. states that one of his earlier comments about the variance being a large factor in the sale of the property is because of substantial justice for the party for receiving the land. The family receiving the land has family down the road and would have a new place to establish a camp to live in. The justice for the town lies in that the three lots are all non-conforming lots and that by making these changes it would further benefit the owner selling and the town. Phil Bean explains that since they are dealing with human beings, he understands the difficulty of the project and he supports what is being done by the representative who is trying to fill in the blanks of the Planning Boards unanimous approval. Sean Skillings asks if there have been any comments from the abutters to the property. Stan N. explains that there will be documents missing because of the empty Land Use Clerk position. Stan continues to voice his concerns about the fact that this three-parcel lot is being conditionally sold as a piece deal if the ZBA approves the application. He opens to the board to see how it feels about the comment that the selling of this lot is conditional to their approval. Larry Brown suggests adding a timeframe to the approval of the application. This would ensure that new owners would have to own the third parcel of land within the timeframe. Chris W. notes that Variance law through the state is two-year limit and asks that the board follows through with this.

Larry Brown Moves that this project does not meet the ten-point criteria for the regional impact. Sean Skillings Seconds this. The vote is unanimous. The motion passes stating that the project does not have a regional impact.

After receiving the application along with map handouts, the board begins to discuss the lot merge post planning board approval. In this approval he notes that you can build a house in the area if you do not build in the setbacks. To start the board begins to review variance A. This reviews the side and back setback along with the wetland buffer setback. The chair explains that

what the board will be reviewing is if the variance given to the property owner will alter the essential character of the lot and will not be contrary to the interest of the community it is within. Chris W. references to the written letter in the application. From this he explains that this alteration will not encroach on any wetlands nor will it encroach on its neighbors. It would also be closer to the roadway thus making it easier for public safety vehicles. A variance is also being requested for the septic system, that will follow state regulations, so that it can be within the side setbacks, but since it is underground it will pose no problem for the community. The well must stay where it is located because of the required 75 feet distance of septic free structures. The board also notes its concern of the wetlands located on this property. Chris W. agrees that they will add language into the agreement stating that he will avoid plans that effect the wetlands. Bruce asks that this letter be drafted and presented to the board before their final approval. Chris W. notes that the variance he is looking for is depicted in the plans. He does not want an overarching variance that lets the homeowner do whatever they feel but defines the exact parameters to allow them to build their house, but still be acceptable to the board.

The chair opens the board to a straw vote on item one.

Larry Brown: Yes

Steve Baker: Yes

Mike Beaulieu: Yes

Sean Skillings: Yes

Stan Nadeau: Yes

The second criteria the board reviews are that the alteration will not affect the spirit of the community. Chris W. explains that the same reasons listed in the first criteria are good examples of the second criteria. He believes these changes do not threaten the public health and the reasonable distance for the septic system allows for safe development. Stan N. explains if the garage is not built on the site, then there will be less impact on the topography. Dan J. approaches the board and explains that if the board removes buildings and shifts them around then there will be much more unanticipated impact on the community then the plan that already has the impacts drawn. Chris W. continues this point by asserting that the garage is in the spirit of the variation and is not different from what other lots in the community already have. Larry Brown questions a piece in the plan that states that the garage is a safe distance from North East pond. Chris W. explains that this distance is not different from those around him and that these non-conforming lots cause challenges that he understands. Stan N. asks if they would be willing to remove the garage variance from the application to further increase the chances of getting the board's approval. He explains that his problem is that if you give a wetland buffer for 15 feet for a garage it defeats the purpose of having the buffer in the first place. Stan N. says that the buffer for the wetlands can be conformed with if they move the house on the lot and remove the garage. Chris W. is unsure this is a possibility with the effects of the land, and he would have to leave the board and come back in the future, something the homeowners do not want to do. Larry B. suggests that the property be pin set so that there is no confusion about where the property is supposed to be placed along with ensuring that all drainage and waste disposal follow the current best practices so to protect the wetlands and the water front. Chris W. agrees that they could agree with this recommendation if it is submitted in the variance approval.

Stan moves the board to the straw vote. He rereads the criteria. In this is states that the Variance is in good spirit with the goals of the ordinance.

Larry Brown: Yes

Steve Baker: Yes

Mike Beaulieu: Yes

Sean Skillings: Yes

Stan Nadeau: No

The third criteria are that the variance would do substantial justice. Chris W. explains that by denying the variance then the owners do not get to sell the lot and that the lot will continue to be empty and not allowing for any tax from the property. On the other end of the scale by allowing the variance it will allow the family to move into the community, pay their fair share of taxes. He notes that this was also mentioned during the first criteria. Larry B. explains that he does not feel that the homeowners have done enough to split the lot and convey it before coming in front of the board. He explains that the issue lies in that the registry of deeds doesn't see these lots as anything other then three unconfirming lots, but have used this opportunity to have two lots and attempting to sell them to serve their best interest. Bruce Woodruff explains that this scenario is very common around the state, and something that he does not think that the board should continue to harp on. Phil Bean states that by changing these non-conforming lots into something conforming is worth the effort of the board.

Stan moves the board to the straw vote. He rereads the criteria for this section. In this he states that this variance would do substantial justice.

Larry Brown: Yes

Steve Baker: Yes

Mike Beaulieu: Yes

Sean Skillings: Yes

Stan Nadeau: yes

The fourth criteria are that the variance will not lower the value of the lots within the area. Chris W. explains that another building in the area will not lower the value of the area. Dave Frank moves to the podium to explain the impact of adding this building on the area. He states that house that they are building is planned to look similar to that of the other buildings so once the building is finished there will be no way to tell that this lot was recently added to the area. He also explains that this meeting is much different then the other meetings that he has been to. He states that most of the time waterfront land is often split into smaller pieces that causes board to worry about the need for variances. In this case the lots are getting larger, something he believes the board should be happy about seeing.

Stan asks that it be noted that this is one of the first times that Larry Brown did not have a question to the speaker. He then moves the board perform a straw vote on the topic. He rereads that the fourth criteria are that the variance will not lower the value of the lots within the area.

Larry Brown: Yes

Steve Baker: Yes

Mike Beaulieu: Yes

Sean Skillings: Yes

Stan Nadeau: yes

The fifth criteria are that without the variance it would result in unnecessary hardship or because it is distinguishable from other properties in the area. Chris W. explains that he has not surveyed the area, but the neighborhood is an old road with a lot of other lots that require special exceptions or are non-confirming lots. Stan N. asks that if the seller of the lot feels that he could sell this lot right away, why is it perceived that there would be any hardships. Larry Brown notes that the ZBA does not have the right to define the specifics of the structure but could control potentially bad structures from being built. Bruce explains that the board needs to ask themselves that if building on this property without the variance would result in unnecessary hardship then they need to vote yes. If not, then they can vote no. After discussion on the how the length that it would take to complete this process Stan N. moves the board to the fifth straw vote.

Larry Brown: Yes

Steve Baker: Yes

Mike Beaulieu: Yes

Sean Skillings: Yes

Stan Nadeau: No

Mike Beaulieu recommends that the board follow the recommendations given to the board by the town planner. The planner suggests that the foundation be done by a NH licensed surveyor and the location and size be submitted to ensure conformity with the variance. The second is that a shoreland permit from NHDES be obtained and submitted to the board. Three, best management practices be maintained for stormwater and other drainage along this property. Four, the area directly adjacent to the shore shall not be planted. Five, natural fertilizers will be used. Six, DES septic approval as shown on the plan be submitted to the board. Seven, the wellhead protective radius easement from the Caputo's shall be transferred to the new owner. Stan N. asks that the shed on the property also be removed. Larry Brown asks that it be noted that the garage shall not be converted into residential use. The chairman moves to taking the final vote on the topic since there was no more recommendations from the board. Stan N. rereads the application. A yes vote will be in favor for the request by Daniel Jackson for a Variance from Article III of the Milton Zoning Ordinance, relief from Front Setback, relief from Side Setback and Article XIII, relief from Wetlands Buffer Setback for property located at 240 Bolan Rd. Milton (Map 23 Lot 76-3) in

the Low Density Residential Zone. Stan N. adds that this decision has been based on the plans that have been submitted to the board.

Larry Brown: Yes

Steve Baker: Yes

Mike Beaulieu: Yes

Sean Skillings: Yes

Stan Nadeau: No

***Larry Brown motions to adjourn, Seconded by Sean Skillings. The vote is approved unanimously. The Motion Passes adjourning the meeting. ***