

Town of Milton
424 White Mtn Highway
Milton NH, 03851



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

Meeting Minutes
October 27, 2016
6:00 PM

Members in Attendance: Larry Brown, Michael Tabory, Stan Nadeau, Sean Skillings Alt. Also in attendance, Dana Crossley Land Use Clerk
Excused Members: Bruce Woodruff, Lue Snyder
Public Attendance: Mary Perkins, Chris Berry, Gary Wilson, Kelly Eaves, Stan Finch, Marie Finch, Eric Ohlenbusch, Nancy Ohlenbusch, Wayne Blair, Roberta Blair, Dawn Clough, Robert Taatjes, Patrick Perkins, Charles Therriault III, Brielle Jordan

Chairman Tabory called the meeting to order at 6:00pm.

Public Comment: None.

Case 2016-3: Request for a Variance from Article III, Section 3.5 to permit the table of dimensional uses enjoyed by the Industrial Commercial Zone to be applied to this parcel, and allow a use not defined in the table (contractor storage/yard) to allow a construction company to operate on the property. Site located at Map 45 Lot 23, Off Rt. 75, Milton NH in Low Density Residential Zone: Chairman Tabory read into the record a letter from the Berry Surveying and Engineering which stated: *At the time of the application the applicant requested relief to allow every use otherwise allowed within the Industrial Commercial Zone. After discussions with the Consulting Planner, it was determined that the request for specific uses to be allowed within the Low Density Residential Zone (LDR) be requested. The following uses are requested as a Use Variance within the LDR Zone:*

- Contractor Office/Yard/Storage Yard
- Manufacturing Fabrication, of Goods
- Materials recycling, processing
- Warehouse & Storage
- Wholesale Sales
- Accessory Structure

It is our opinion that the merits of the original request and justification remains, as this modification is a reduction in the overall impact of the original request.

Chairman Tabory stated that it is his understanding that it is a smaller scope to the application not a larger scope and based on that he does not believe they would need to re-announce, but if it was a larger scope it would have needed to be re-posted. He continued that the board received responses from the Land Use review forms from the Public Works Department: *no concerns*, Fire Department, Police Department: *travel and visibility issue when leaving town lot 45-70. Has DOT given permission for use of 75 to access property?* Sewer Attendant: *have reviewed narrative and have no problems with variance request* and Town Planner: *...there is a problem*

of law with the way the request is worded by the applicant. They are asking that “the table of dimensional uses enjoyed by the industrial commercial zone be applied to this particular parcel..” The Zoning Board should not grant nor even hear this request that essentially asks for a (large) parcel to be rezoned in total, because that is by statute under the sole authority of the legislative body (voters). Simply put, the ZBA cannot usurp the authority of the Planning Board to review and recommend and the voters to decide zoning amendments on tracts of land in Town. As you all know, an owner can request a use variance on a parcel to allow a specific, defined use that is not allowed in that zoning district by presenting facts supporting the specific request that satisfy the five criteria. Therefore, I advise that the applicant should change that language requesting relief from the ordinance to ask simply for a use variance from the Table of Dimensional Uses allowed in the Low Density Residential Zone to allow a Contractor Storage/Yard for a construction company to operate on the property. The owner retains the right to return to the ZBA in future if he desires another use needing relief from the ordinance. This change in language may (to be decided by the Board) necessitate re-noticing abutters and the public, however, the core of what is being requested does not change. It should be noted that I spoke with the owner’s representative early in the application process, explained the issue and advised that a memo using the “fix” stated above be submitted as soon as possible for members’ packets.”

Chairman Tabory commented that as they did receive a letter from Berry Surveying bringing the scope down, but not necessarily as far down as Town Planner Bruce Woodruff had recommended. He questioned the board if they should hear this case, he thinks before they have a full discussion they need to have a motion to hear or reject the motion. (Chairman Tabory commented that Alternate Sean Skillings has been brought to the board as a full voting member in place of Bruce Woodruff.)

L. Brown motions that this is not in our purview and should be rejected. No second, motion fails.

L. Brown motions it should be heard as within our purview. S. Skillings seconds the motion. Board discussion: S. Nadeau commented that he would feel more comfortable if they had guidance from the Town Attorney. Chairman Tabory replied that he could not reach the Town Attorney, but did talk to Steven Buckley from NHMA on the topic. Chairman Tabory continued that Steven Buckley shared that it is his opinion is that the definition of large is not defined so where do you draw the line at what the board can hear or not hear, the Zoning Board has an authority and responsibility on individual cases to look at changes of use based on unique circumstances within the property, it was questioned and discussed if it was spot zoning when you have a property that abuts or is close to abutting another zone, some creep outside does sometime occur and this case might not fall into spot zoning where it abuts industrial commercial. Chairman Tabory added that in his opinion they lowered the scale and are far more specific on what they wanted to do, and does think the board does have a responsibility to hear the case and let it be presented like any other without flatly refusing to hear the case. S. Nadeau does not want the board to over step their authority. Chairman Tabory replied that he was told there was not a way for this to be said it is not the board’s authority, he has high respect for the Town Planner’s knowledge and looks to him for advice on how to proceed with items with his advice if there had been no follow up on limiting the scope he would feel differently, but they have limited the scope down some, but again it is a board decision on if the case should be heard. L. Brown commented that on the same issue raised by the Town Planner, he thinks that compared to the full list of permitted uses in the Industrial Commercial Zone the request is a substantial inclusion of those rights for one parcel and that comes close to a rezone which is a

legislative purview. He continued that what bothers him is what basis does the board have to approve an unknown use, the attributes of a contractors office and a storage yard are not defined, the attributes of the construction company referenced in the applicants materials which is operating in Middleton includes from his personal observation of the site, loam stripping and sale and that is what is being offered by the inferred statement of the applicants own letter presented by the agent, the last thing would come later in the discussion but this is essentially a full re-zoned property and the point that creep exists, creep should exist bi-directionally, argument could be made that LDR could also increase. Chairman Tabory replied that he agrees that creep could happen either way. **Chairman Tabory called a recess at 6:12. Chairman Tabory called the hearing back in session at 6:16pm.**

Chairman Tabory commented in response to L. Brown's comment on the unknowns and if they can legally even look at them, he thinks it is the nature of the cases that come before the board because they do not know the specifics of what they are trying to accomplish, they give a board 'I'm looking for relief under...' and it is the case they hear with the criteria to make judgement on. L. Brown replied that in the past the cases have asked for a specific relief such as a dimensional variance, or asked for a kennel which needed a special exception, and in no case did they create a use that does not exist in the zoning and that is a legislative decision. S. Nadeau commented that just the fact that it states manufacturing, fabrication of goods what is that, is it a concrete plant. Chairman Tabory replied that in a meeting is where they would explain that, but if there is a use being asked for that is not included in zoning at all, there is no variance to be given because it needs to be an allowable use first in some zone before the use can be applied otherwise the board would be creating zoning, which is not the boards job. The board held discussion on if contactor storage/yard was part of the zoning ordinance. Chairman Tabory commented that if it is not a defined use, the board cannot create it as it is not the purview of the zoning board and would have to reject piece if not the entire piece.

L. Brown withdraws the motion. S. Skillings withdraws his second.

L. Brown moves to table the application to November 17th 2016, without prejudice to the applicant or agent and without the necessity of re-noticing abutters to obtain the opinion of the town attorney as to definitions and ZBA purview on the issue. S. Nadeau seconds the motion. Vote: All in favor (4-0). Motion passed.

The board's next meeting will be on November 17th 2016 at 6pm, as the usual meeting date falls on Thanksgiving, the public hearing and review of the case will be table until that meeting.

Discussion and Approval of Minutes: September 22, 2016 Meeting Minutes, L. Brown moves to approve as written, S. Skillings seconds the motion. All in favor, (S. Nadeau abstained) minutes approved.

Other Business: None

S. Nadeau motions to adjourn, L. Brown seconds the motion, meeting adjourned at 6:28pm.
Respectfully submitted,

Dana Crossley, Land Use Clerk