

Town of Milton
424 White Mtn Highway
Milton NH, 03851



Zoning Board of Adjustment
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March 25, 2021
Meeting Minutes
6:00PM

Present Members: Stan Nadeau, Sean Skillings, Steve Baker, Larry Brown, Mike Beaulieu

Absent Members: Phil Bean

Staff Present: Julius Peel, Land Use Clerk, Bruce Woodruff Town Planner (on telephone).
Joel D. Runnals Norway Plains Associate and Tammy Smith. Tax/ Map 6/21/2

I. Pledge of Allegiance:

II. Chairman/ Vice Chairman Appointment:

L. Brown nominated S. Nadeau as Chairman of the ZBA, Seconded by S. Skillings. No other nominees. S. Nadeau is voted as chairman of the ZBA unanimously.

S. Nadeau nominated S. Skillings as Vice-Chairman of the ZBA, Seconded by M. Beaulieu. No other nominees. S. Skillings is voted as chairman of the ZBA unanimously.

III. By-Laws:

***L. Brown motions to accept as written with the idea that they will review and make potential during the next meeting, Seconded by S. Skillings. The vote is approved unanimously. The Motion Passes. ***

IV. Equitable Waiver Tammy Smith:

The ZBA reviewed the documents in front of them and accepted the application as complete. Discussion on the Equitable Waiver begins.

34 Chairman S. Nadeau asked the board if they want to determine the regional impact
35 before or after hearing the opening statement from the applicant. The Board
36 discussed this matter and decided that they would make it procedure to hear the
37 applicant before deciding on the Regional Impact. Julius Peel, Land Use Clerk,
38 noted this.

39 ***Larry motions to accept as written with the idea that they will review and make potential during
the next meeting, Seconded by S. Skillings. The vote is approved unanimously. The Motion Passes.

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41 Joel reads his opening statement to the public. It is listed below:

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43 “Good evening Board. My name is Joel Runnals, and I am here to assist the
44 applicants, Tammy, and Harry Smith in their request for an Equitable Waiver.
45 Their property is located at 17 Brieley Farm Road on Tax Map 6, Lot 21-2. It is
46 very unfair of the septic system designer to be able to show inaccurate property
47 lines and place the proposed building within a foot of the required setback and then
48 have a statement on his plan that he assumes no responsibility for property lines
49 and that they should be verified by someone else. Kind of like a mechanic working
50 on your car and adding a statement that you mostly likely would not be aware of
51 telling you to hire another mechanic to check his work because his services he just
52 charged you for might not be done correctly. The liability is very much on the
53 Town and the State for accepting and approving plans that involve property lines
54 and not requiring them to be shown by qualified professionals that are licensed and
55 trained in the measurement of land. Mostly in allowing and approving plans with
56 statements that the property lines are not accurate when it is crucial that the
57 property lines are accurate. Thank you.”

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59 S. Baker noted that he could not find the property on google. He explained that
60 there were two different spellings of the property. Owner of the property Tammy
61 Smith explained that the proper spelling is Brieley Farm Road rather than Briley
62 Farm Road and is often misspelled.

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64 Mike asked how they determined the property lines on the correct map versus the
65 septic system designer. Joel explained that the designer did not utilize the pins that
66 were placed on the property during the first subdivision application.

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68 S. Nadeau explained to the board that they need to focus on the four criteria
69 described in the application.
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***S. Nadeau begins the straw poll to review criteria as required in the application. He asked the board to review if the project would result in a regional impact. The board voted five to zero (5/0) in favor of the application.**

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S. Nadeau asked if there were any surveyors for the property when the foundation was put in. Joel explained that the community and the state do not require this survey for new foundations and so other than the previous surveys for the subdivision nothing was done for the building other than the septic designer.

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L. Brown noted a concern that the homeowner might want to consider a civil suit against the septic designer.

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S. Nadeau noted that they have lived in the house for close to three months now and can tell they want to live on the road as soon as possible. He also explained that because some of the members of the board were not sure of the location of the property it would be important to visit the location to understand the full impact.

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***S. Nadeau motions for a site walk, Seconded by S. Skillings. Discussion begins on the topic.**

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M. Beaulieu stated that he believes that members of the board should have already gone to the property to review it prior to this meeting. He also mentions that the homeowners have already lived in this house for over 3 months now and they already have a CO. This is not the fault of the homeowners it is the fault of the designer. He feels this is something to think about when determining.

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L. Brown asked what the town's interest in a lot line on a private road would be. Larry is concerned that this would not constitute a compelling interest for the community.

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The board votes on the motion for a site walk. The motion fails with a two to three (2-3) vote with L. Brown, S. Baker, and M. Beaulieu opposing.

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L. Brown asked who the co-owner of the side property is and would there be a concern from them. Tammy Smith explained that the abutter is Patrick Smith. L. Brown asked that the Co-Owner be notified of the changes that could be determined here.

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S. Nadeau referenced B. Woodruff who had joined the meeting by phone. The call had disconnected so they called Bruce back on their cell phones. Stan asked Bruce what his thoughts on the project were and if there were any concerns.

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103 B. Woodruff said that he was disconnected early on in the discussion and that he
104 was not sure where they were at. He did explain that if the board wants to do a site
105 walk, they will need to balance the needs of the applicant with that of the board.

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107 S. Nadeau reiterated to the board that the requirement that the applicant needs to
108 fulfill is as follows:

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110 “That the violation was not noticed or discovered by any owner, former owner,
111 owner's agent or representative, or municipal official, until after a structure in
112 violation had been substantially completed, or until after a lot or other division of
113 land in violation had been subdivided by conveyance to a bona fide purchaser for
114 value.”

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116 Stan explained that the applicant did not have their property staked out and
117 reviewed by a licensed surveyor and that is why the applicant had to come in front
118 of the board. Stan asked how the homeowner found the issue with the property.
119 Joel explained that the Smith's only found the issue when the bank asked for a
120 Mortgage plot plan and the bank set a surveyor to the property.

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122 M. Beaulieu asked why the septic designer was not here to speak on behalf of the
123 project. Mike expressed his concern in that there is another side of the story that is
124 not being explained. Joel said that there are a few reasons why he might not be
125 here but did not want to speak for him.

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127 S. Nadeau asked B. Woodruff who was still on of the phone what is the town's
128 responsibility with a new structure is. B. Woodruff explained that the
129 responsibility lies with the homeowner to determine discrepancies like the one
130 required in this equitable waiver application.

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132 M. Beaulieu explained that the town is protected because of the clause in the
133 building permit that states that the applicant is required to understand setback
134 requirements stated in the regulations.

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136 S. Nadeau expressed concern in this system of not holding new constructions
137 accountable. He asked the board what they thought about sending a letter to the
138 Planning board to review these requirements. Bruce explains that something like
139 this would require working with the Board of Selectman and the Code
140 Enforcement office.

***S. Nadeau motions to send a letter to the BOS and Code Enforcement office asking them to include surveys for the construction of new houses, Seconded by S. Skillings. The vote is approved unanimously. The Motion Passes. ***

***L. Brown motions to accept section 1 of Equitable Waiver of Dimensional Requirements, Seconded by M. Beaulieu. The vote is approved unanimously. The Motion Passes. ***

The board read the requirements of section #2 of Equitable Waiver of Dimensional Requirements.

“That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;”

***S. Nadeau motions to accept section 2 of Equitable Waiver of Dimensional Requirements, Seconded by S. Skillings. The vote is approved unanimously. The Motion Passes. ***

The board read the requirements of section #3 of Equitable Waiver of Dimensional Requirements.

“That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;”

Joel Runnels Read the statement attached to the application explaining their answer to #3 as required.

“As shown on the attached plans the new home does not prohibit the use and maintenance of Brieley Farm Road. The Smiths are also co-owners of the abutting property and these owners have no objection to the present location of the new home.”

L. Brown asks if there are any easements in place for the maintenance of the road. The applicant answers that there are none that they know of. Mike explains that this road must meet class 5 requirements for the number of individuals living on the roadway.

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***M. Beaulieu motions to accept section 3 of Equitable Waiver of Dimensional Requirements, Seconded by L. Brown. The vote is approved unanimously. The Motion Passes. ***

The board read the requirements of section #4 of Equitable Waiver of Dimensional Requirements.

“That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.”

Norway Plains associate reviews #4 of the document.

“That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.”

***M. Beaulieu motions to accept section #4 of Equitable Waiver of Dimensional Requirements, Seconded by L. Brown. The vote is approved unanimously. The Motion Passes. ***

***Larry motions to approve the request for an Equitable Waiver from Article III of the Milton Zoning Ordinance, relief from Front Setback, for the property located at 17 Briley Farm Road, Milton (Map 6 Lot 21-2) in the Low-Density Residential Zone, Seconded by M. Beaulieu. The vote is approved unanimously. The Motion Passes. ***

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V. Review/Approval of Minutes: August 24th, 2020.

***S. Skillings motions to approve the minutes of August 24th, 2020, Seconded by S. Baker. The vote is approved unanimously. The Motion Passes. ***

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VI. ZBA Scheduled Meeting Dates.

***M. Beaulieu motions to move the meeting date for November to the 18th and for December to the 16th, Seconded by S. Baker. The vote is approved unanimously. The Motion Passes. ***

194 **VII. Other Business:**

195 The board mentioned that the next upcoming meeting can be to go over the By-Laws
196 mentioned at the beginning of the meeting.
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198 **VIII. Adjournment:**

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

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201 **Chairman of the Zoning Board of Adjustment**
