

**Town of Milton**  
424 White Mtn Highway  
Milton NH, 03851



**Zoning Board of Adj.**  
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**Meeting Minutes**  
**November 17, 2016**  
**6:00 PM**

Members in Attendance: Lue Snyder, Larry Brown, Michael Tabory, Stan Nadeau, Sean Skillings, Also in attendance, Dana Crossley Land Use Clerk  
Absent Members: Bruce Woodruff

Public Attendance: Charles Therriault, Daniel Reed, Eric Ohlenbusch, Nancy Ohlenbusch, Kelly Eaves, Andy Rawson, Gary Wilson, Mary Perkins, Marie Finch, Stan Finch, Wayne Blair

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

Chairman Tabory assigned Alt. S. Skillings as a full member of the board for the meeting for absent member B. Woodruff.

Public Comment: None

**Continuation 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 commented that after the last meeting he intended to get in contact with the Town Attorney to get his input on if the board should be hearing the case and if it was in the boards purview, he did have the opportunity to speak with him. Chairman Tabory continued that the board has also received another letter from the applicants agent adjusting what the applicant is asking for down in scope to *contractor office/yard/storage yard and accessory structure*. The attorney was made aware of the most recent letter from the applicant and agent, the advice of the attorney is that where this has changed so much to different scales that it is no longer the application that was submitted and should be re-submitted as a new application that clearly defines what they are doing and they will reargue from that point. Chairman Tabory continued additionally where this property is only accessible through Town owned land and there was a meeting back in September 2015 with the Selectmen about the granting of an easement the Attorney advised that the board should not be hearing such a case without the easement being granted or a letter from the Selectmen stating that the granting of that easement is in process and will be achieved and that the board should not be hearing the case if the persons cannot get to the property. This presents two options, the applicant can withdraw the application without prejudice and reapply or the board would have to vote on it and ultimately deny it based on those conditions that is the advice received from the attorney. Chairman Tabory asked if the applicant or agent had any questions.

Chris Berry (agent) questioned when the chairman received this advice from the attorney and if there was a reason they were not informed. Chairman Tabory replied that he asked the attorney if he should notify in advance, and was told that he should not for the public turn out as it had been an announced meeting and the meeting should be held. Chuck Therriault (applicant) commented that they had a letter from the Selectmen saying they would grant the easement once the design is done. Chairman Tabory replied that the attorney was aware that discussions and conditions were placed. C. Therriault reiterated that they had a letter stating the approval of the easement. Chairman Tabory continued that it was not his understanding when he spoke to the attorney that day. Andrew Rawson (resident) asked the chairman for permission to speak as a resident, he commented that he cannot speak for the Selectmen, he is a Selectman but speaking as a resident, he stated that C. Therriault was given five stipulations, (which are in the September 9, 2015 BOS minutes) he talked to the attorney today and none of the stipulations have been fulfilled. C. Therriault responded that the stipulations were to have the design and that's what they have been working on. Chairman Tabory said that may be, but the attorney was clear that if those conditions are in place for them to grant the easement and those conditions have not been met, unless he had a letter in front of him today from the Selectmen saying 'this easement has been granted or every stipulation has been met and we are going to be grant it.' C. Therriault replied that it was conditional on the Planning Board approval of the site plan. L. Brown commented that would like to see the letter from the Selectmen that the access is approved, he would like to see a second letter from the attorney saying that for the defense of the town's interest that the letter and conditions are approved. Chairman Tabory agreed that the board needs to see the letter that says the easement has been approved and conditions have been met, and that is based off of the attorney's advice and input, it would not be prudent to ignore his advice. He continued letter aside the attorney said that basically the application has changed enough that it would need to be a new application anyway, if they have the letter then they need to reapply and include it in the application.

C. Berry commented that it is the same application but with a reduction in scope. Chairman Tabory replied that it has changed now three times and the attorney feels that it is a different application. S. Nadeau commented that it is his understanding that the NH Constitution states that no tax payer money, and that property they are asking for an easement on is tax payer money because it is supported by the town, is to be used by one individual, in other words if it was open for the public that would be one thing but if it's for just one individual it is against the law, that is his understanding. Chairman Tabory replied that would ultimately be for the Town Attorney and Selectmen to find out the terms of what can and cannot be done, it is not the Zoning Board's authority to decide that.

A. Rawson commented that the Selectmen had given the applicant 45 days to show who owns the clear title of the property, and it has now been six months without a response, the town does not know if they even own the property. C. Berry commented that he felt it was getting off topic of why they were there, he said he does not know the terms created by the Selectmen for the easement, but if the town has owned the property for a certain amount of time then they own clear title to it, and that was the premise that they were moving forward with. Chairman Tabory reiterated that if there is a letter in place that says that the board needs to see it, but it is an issue that needs to be resolved with the applicant, the Selectmen and the Town's attorney, to determine if the terms have been met and an easement can be granted.

L. Brown brought forward a hypothetical, not making a motion, but for discussion the motion would be if made that I move given the advice of council on a structural basis and without

prejudice to the applicant that the application be denied until determination of the facts of the easement.

**C. Berry stated for clarity, it is clear the board is going to be unwilling to make a decision on this this evening, so on behalf of his applicant he would like to withdraw the application without prejudice until they can clear things up with the Selectmen.** They will reapply as the attorney has suggested and work with the Selectmen on the five criteria to have them clearly defined before they come back to this board.

Discussion and Approval of Minutes: October 27, 2016 meeting minutes, S. Nadeau motions to accept as written, L. Brown seconds the motion. (L. Snyder abstained) All in favor, minutes passed.

Other Business: D. Crossley asked who would be presenting the budget. It was agreed that either S. Nadeau or L. Synder would be able to defend it during the meetings.

S. Nadeau motions to adjourn L. Brown seconds the motion. All in favor, meeting adjourned at 6:20pm.

Respectfully Submitted,

Dana Crossley, Land Use Clerk