

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
December 22, 2016
6:00 PM

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

Excused Members: Lue Snyder

Public Attendance: Leo Howe, Kelly Eaves, Eric Ohlenbusch, Nancy Ohlenbusch, Stan Finch, Nancy Finch, Wayne Blair, Roberta Blair

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

Chairman Tabory, appointed S. Skillings as an active voting member.

B. Woodruff has stepped down from the zoning board for this case, as if it is approved he will be advising the Planning Board on the case.

Public Comment: None.

Case 2016-4: Request for a Variance from Article III, Section 3.5 to allow the following uses not otherwise permitted within the LDR zone: contractor office/yard/storage yard and accessory structure. Site located at Map 45 Lot 23, Off Rt. 75, Milton NH in the Low Density Residential Zone. Christopher Berry of Berry Surveyor and Engineering is representing the applicant/land owner. Chairman Tabory commented that this request is a smaller request than requested before, which had been withdrawn, and they have now resubmitted the applicant. He continued that one of the questions had been about access to the property, there had been previous discussion of access across town owned property and the obtaining written notification from the Selectmen that it was forthcoming and conditions have been met, he asked the applicant if they were still considering access through the same point.

C. Berry provided a letter to the board that addressed the issue at hand, he continued that they felt that the access to the property is essentially a non-issue to the Zoning Board of Adjustments where they are asking for a Use Variance, if it were approved they would need to go to the Planning Board who would discuss the merits of access itself, for the boards consideration they do not think that the access is germane. He also read to the board the letter from the Selectmen that state the conditions to gain access for the easement through Town Owned land. He noted that as one of the conditions is to get Planning Board approval, cannot be taken care of until they have gone through the Zoning Board.

Chairman Tabory has heard from the attorney this week who stated that conditions have not been met, any timeframe to do so has expired, and with no access what is the point of hearing. He continued that he does not have an opinion one way or the other, if they are talking of use of land itself regardless of whether access is there, it makes sense they should hear the case to see if it makes sense to use the land with the purpose they are asking and let them figure out the access

issue, but he will leave it to the board to decide. C. Berry asked if he is discussing with the Attorney these actions. Chairman Tabory replied they have discussed whether or not the board can legally hear it based on if there is no access. C. Berry replied that he has correspondence with the previous Town Administrator discussing the fact that the applicant has paid the town for the Attorney to review whether or not the Town can grant an easement over this a year ago, which is out of their control and out of their hands. Chairman Tabory replied that this is all new information to the board, and can understand how the applicant is asking how they can meet the stipulations when they need to go through this board first, which is why he would like the board to discuss what the next step is here. S. Nadeau commented that one of the key interests in this entire thing is how it affects neighboring properties values. Chairman Tabory replied that would come up if they hear the case. L. Brown commented that the hypothetical access to the property is the same as the hypothetical access to the railroad mentioned in the application, no different than the hypothetical access to the water lines, or the hypothetical sewer and none of them exist. Chairman Tabory questioned if L. Brown is saying it should be heard then, because like the sewer and water none of them exist yet, regardless if they know about hypothetical access or not. L. Brown replied that he does not believe that it is immaterial if access is an issue, but is perfectly happy to consider and vote on each of the topics for the criteria here, he would be more content if they had a definitive answer from the town attorney.

S. Nadeau asked if B. Woodruff had any input on the topic. B. Woodruff will be advising the Planning Board if this project makes it that far, if he comments or not he has already commented on the review sheet that has been provided to the board already which is based of his experience with zoning. At this point when the Zoning Board looks for a legal opinion they look to the town attorney, unless otherwise decided by the Board of Selectmen.

C. Berry commented that the applicant came to them for assistance on ways to develop the land in 2015 it was noted that he did not have access to the property, by the end of the year the applicant had gone to the Selectmen and worked with them to obtain access, they were given a list of conditions that they feel they have met, 4 of the 5 conditions cannot be met until going through the Zoning Board, the 1st condition they felt they met because they were told to deliver a check to the town and they would do the research, they have done that. He continued that if they consider this hypothetical access that may be so, they consider hypothetical water and sewer lines, but without knowing they have the use that they need for the property they are not going to spend thousands upon thousands of dollars to design water and sewer to the property. C. Berry added that it is not like the property is outside the water and sewer zone it is very logical that they can get an easement from the Railroad and get sewer access to the property, the water on 125 would be accessible from a right of way they have on 125.

Chairman Tabory replied that he does hear what they are saying and can't say that he disagrees, it is all hypothetical until the money is spent to put it in and no one is going to spend the money without knowing they have permission.

B. Woodruff commented that what they lack is a written opinion from legal counsel and he believes that that is important.

L. Brown moves to table without prejudice to the applicant with all fees continuing as fully paid pending written opinion from town attorney to be transmitted to applicant as soon as possible and continue the public hearing to January 26, 2017 at the regular meeting time.

S. Skillings seconds the motion. All in favor. The next meeting will be January 26, 2017.

Chairman Tabory will contact the Attorney to get his written opinion.

Discussion and Approval of Minutes: November 17, 2016 meeting minutes, S. Nadeau motions to table the minutes. L. Brown seconds the motion. All in favor.

Other Business: None

S. Nadeau motions to adjourn, L. Brown seconds the motion. All in favor, meeting adjourned at 6:33pm.

Respectfully Submitted,

Dana Crossley, Land Use Clerk