

**Town of Milton
Planning & Zoning Meeting
Milton Library, 121 Union Street
Tuesday, September 17, 2013
6:30 pm**

**Minutes are not Verbatim
Transcriptionist: Helene Rodgville**

1. Call Meeting to Order – Lynn Ekelund called the meeting to order at 6:30 pm.
2. Roll Call of Members
Lynn Ekelund: Before our roll call, let me just state for the record that we have a new member this evening. She was appointed last night, Virginia Weeks.
Welcome, Ginny.
Virginia Weeks: Thank you.
Lynn Ekelund: Roll call of Members

Virginia Weeks	Present
Tim Nicholson	Present
Linda Edelen	Present
Mark Quigley	Present
Lynn Ekelund	Present
Don Mazzeo	Absent

3. Additions/Corrections to the Agenda
Lynn Ekelund: Do we have any additions or corrections to the Agenda?
4. Approval of agenda
Lynn Ekelund: Can I have a motion for approval of the agenda?
Linda Edelin: So moved.
Tim Nicholson: Second.
Lynn Ekelund: All in favor to accept say aye. Opposed. Motion carried.
5. Minutes of August 20, 2013
Lynn Ekelund: Can I have a motion for approval of the minutes?
Mark Quigley: On Page 18, where it has my name a little more than halfway down, where it says No, I don't think those are important; that was not me. On Page 19, it looks like about a quarter of the way down, where it says I actually mention it to Councilwoman Patterson, that was not me either.
Linda Edelin: So another male voice.
Mark Quigley: I think that was it.
Robin Davis: I'll look into it.
Mark Quigley: Okay.

Lynn Ekelund: Any other changes or corrections?

Lynn Ekelund: Can I have a motion for approval of the minutes?

Linda Edelin: I move that the minutes be approved.

Mark Quigley: Second.

Lynn Ekelund: All in favor say aye. Opposed. Motion carried.

6. Discussion and possible vote on the following item:

a. Off-Street Parking Waiver Policy

A policy establishing conditions by which the Planning & Zoning Commission may grant waivers for off-street parking application. This item was referred to the Commission by Town Council

Lynn Ekelund: Would anyone like to start?

Virginia Weeks: I have a question that is bothering me for a long time. Whenever and wherever I have been, it is always the Board of Adjustment that is empowered with giving waivers or variances to zoning ordinances, and special exceptions, etc. and I could never figure out why in Milton, we have a Board of Adjustment, that is regulated to just the setbacks and height, more or less. I went online and I looked up the Delaware Code and you will see that in it, it will say on Page 3 at the bottom, Determinations of the Boards and so on; it says authorizes specific cases; at the very bottom; such variance from any zoning ordinance code, regulation that will not be contrary and so on and so forth. Herein decides special exceptions to the terms of the ordinance, etc. Also, it states in the Delaware Code that the Board of Adjustment Appeals go to Court, not back to the Town and I would think a waiver for parking constitutes a variance and I'm not sure that this isn't the time, since this issue has come up, to definitively answer with authority from somebody on whether or not the Board of Adjustment should be doing this, or we should be doing it.

Robin Davis: Mrs. Weeks, actually this has been referred to our Solicitor who referred to the Code, which talks about the Planning and Zoning has the authorization to waive parking spots and that's why he felt it should come to Planning and Zoning. I understand your point.

Virginia Weeks: I agree with him, totally, that's how our Code is written; but it's my understanding that Planning and Zoning here, existed before the Board of Adjustment and then the Board of Adjustment was founded.

Robin Davis: That's correct.

Virginia Weeks: And at that point, I think things slipped and maybe it's a good time now to look at it and find out exactly what is the Board of Adjustment supposed to be doing and what is Planning and Zoning supposed to be doing and where the division of powers lie.

Robin Davis: So basically, your thoughts would be that we should probably suspend discussion on this, until it's decided. Again, but if it is decided that

the Board of Adjustment is going to take this over, is it in the Commission's best interest to have a meeting or two meetings to discuss parking waivers that this Commission might not end up being with the authority to waive.

Virginia Weeks: Exactly. I don't know how the State's laws affect our laws. I don't know if we went in and we got a waiver from the State, the State Code; I don't know.

Robin Davis: I don't know. I just know that Seth had said this is where it should go because of our Ordinance.

Virginia Weeks: According to Town Codes. Absolutely. I just don't know if the Town Code is actually correct.

Robin Davis: I understand.

Virginia Weeks: And as we develop more and more and the questions get more and more complicated and it's not just people talking to their neighbors and everybody knows what's going on and you have new developments coming in or old developments with problems, I think that it behooves us to be sure that we're putting powers where the State says they belong. That's all. Now you can take and do nothing with that. It's just my quandary. Thank you.

Robin Davis: If that's what the Commission felt that we were just going to be... I don't want to say "wasting" time. I don't want to say that in a wrong way; but it's something that eventually might have to go to the Board of Adjustment anyway; or if it's decided to go to the Board of Adjustment, that this Commission's made a...

Virginia Weeks: It might be time for the Town to look and see if it's written properly in our Codes and does this division of power exist. Planning and Zoning was always about putting the stuff on the land and taking care of the zoning ordinance and the Board of Adjustment was always a quasi-judicial board that would be granting waivers and special exemptions and Conditional Uses and so on and according to Delaware State Law, although I'm not a lawyer, it reads as I'm familiar with it, but I don't know what impact that has on our Town Code, if any. Welcome back, Ginny.

Tim Nicholson: Welcome back, Ginny. I think it's a good point.

Linda Edelin: I'm not sure that I understand exactly your line of thinking.

Tim Nicholson: I think what she's saying and correct me if I'm wrong, is Milton is subservient to the State, in terms of...

Linda Edelin: But this is an appeal board, so you would have to be challenging the...

Virginia Weeks: What is an appeal board?

Linda Edelin: Board of Adjustment.

Virginia Weeks: The Board of Adjustment is not an appeal... It's an appeal board to the zoning ordinance. It's where you go to get a waiver or a variance, as it's know, or a special exception; where you want to do something that the Zoning Ordinance doesn't allow you to do.

Linda Edelin: That the Zoning does not allow you to do?

Virginia Weeks: Exactly.

Linda Edelin: And it is also a board of appeals with respect to determinations made by the Town.

Virginia Weeks: It's a board of appeals for the Code Enforcer. If a person in Town, something is told to him by the Code Enforcer that he must do something, his appeal to that is to the Board of Adjustment, not to the Council.

Linda Edelin: You're suggesting that there's a possibility that the Code, our Zoning Code, which provides for an opportunity for a waiver, may not be in compliance with the Board of Adjustment.

Virginia Weeks: What I'm saying is that the Zoning Code... you can apply for a waiver to anything in the Zoning Code, but the place to apply for that waiver is the Board of Adjustment, in most places and not in Milton.

Linda Edelin: Your point is either way we codified a waiver, that we don't have the right to codify.

Virginia Weeks: I'm not saying... I'm saying we may have codified a waiver that we don't have the...

Linda Edelin: Right.

Virginia Weeks: And I would like to know that before we go on.

Tim Nicholson: I like that. It makes sense.

Linda Edelin: You're suggesting no discussion at all?

Virginia Weeks: Absolutely. Aren't we discussing?

Tim Nicholson: Yeah, I actually am then, yeah, because why speculate and if we're not following administrative procedure, which is if it needs to be going to the Board of Adjustments first, before us, why speculate on something that may not even apply to us?

Virginia Weeks: Wherever I have been on boards before, when you sat on the Planning Board, when the Plans came to you, you didn't get involved in parking or anything... All that had been decided before it came to you and you're simply looking at the alleyways, and the streets, and making sure that everything is according to sub-division code, etc. But waivers and so on, Planning and Zoning didn't get involved in.

Tim Nicholson: And yet Robin, you keep saying that Seth kept coming back to the fact that this is where this belongs? Is that what you're...?

Robin Davis: Yes. Yes, because I think it was discussed briefly, if I'm not mistaken.

Lynn Ekelund: I think Seth said, and it's at page 3 of the minutes, that the Council was reviewing this issue and asked for Planning and Zoning's input on this, since the way the current Code reads, any sort of waiver for the off-street parking would come to Planning and Zoning anyway. They'd, referring back to Council, would like to have a better defined policy. The only code language currently applicable is that basically, the Planning and Zoning Commission could waive off-street parking requirements if there's adequate public off-street parking within 400'.

Virginia Weeks: And everywhere I have ever lived, that's a Zoning Board of Adjustment issue.

Lynn Ekelund: But what I'm saying Ginny is when I just was reviewing minutes and that's the only thing that I could find in the minutes where Seth was commenting on Planning and Zoning and granting a waiver and where it would go.

Tim Nicholson: Where he says that, yes.

Virginia Weeks: And I agree with him. I agree with him. I just don't know if our Code, when it was done along time ago, the division was improperly done and I just want to know.

Robin Davis: I think with our solicitor having knowledge of our Code, when this came up, I don't know if he would have run the red flag up and said, wait a minute. We need to stop and change our Code, or is it okay to come here. I don't think our Solicitor would have let it come this far, if he didn't think this Commission had some sort of say in it, because of what's written. He has said at a Board of Adjustment Meeting, that when you talk about special exceptions that normally it's Board of Adjustment, but our Code says and he's let it go.

Virginia Weeks: Right.

Robin Davis: As such, because that's how it's written. Not that our Code... I don't think he would have let it happen, even the special exceptions, because we've reviewed those before; if he felt that it was against Delaware Code and we were doing something not correct.

Virginia Weeks: I'm not saying we're doing something illegal, but is there a more concise, uniform way to do it? Because looking down the road sometime, if we make a decision on parking, somebody can say, it wasn't your decision. I'm going to take you to Court. And we get to Court and they say what the heck. Why was Planning and Zoning making these decisions?

Mark Quigley: You know, Robin, maybe the thing to do would be to send him some sort of communication, say that this came up at this meeting and could he offer an opinion on this before we go any further at all?

Virginia Weeks: That's all I'm asking.

Robin Davis: Yes, that's fine.

Virginia Weeks: If we get a legal opinion that our Code is fine...

Mark Quigley: If he says... Yes.

Virginia Weeks: That's terrific. I just have a question.

Robin Davis: Understand. Yes.

Lynn Ekelund: Can I get a motion to that effect?

Tim Nicholson: So moved.

Virginia Weeks: Second.

Lynn Ekelund: Any discussion? We'll have a roll call vote:

Virginia Weeks	Present
Tim Nicholson	Present

Linda Edelen	Present
Mark Quigley	Present
Lynn Ekelund	Present

Virginia Weeks: Thank you. Sorry.

Tim Nicholson: Good point.

Virginia Weeks: Well if we are doing something wrong, then we should fix it.

b. Procedures and Policy Review

Potential changes and/or updates pertaining to code, procedure/policy and administration/practice related items

Lynn Ekelund: We still have more to go.

Robin Davis: I just left this on here from last month, because I know it was a follow-up and I know...

Mark Quigley: I think we have an update pertaining to Code; it's something we just discussed.

Robin Davis: Yes.

Lynn Ekelund: I agree.

7. Adjournment

Lynn Ekelund: Seeing that and nothing else on the agenda, can I hear a motion to adjourn?

Mark Quigley: So moved.

Tim Nicholson: Second.

Lynn Ekelund: All in favor say aye. So moved. Meeting adjourned at 6:42 p.m.