

TOWN OF WEBSTER, NEW HAMPSHIRE

Zoning Board

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Zoning Board of Adjustment Minutes April 13, 2010

Case No.: 10-01

David Witham and Georgette Gagne

362 Tyler Rd., Map 8 Lot 8-2

Present: Chairman Martin Bender, Members Dave Barnes, Don Koberski, Robert Drown, Jr., Barbara Corliss, Alternates Shawn Smith, Jaye Bowe, Dee Blake, Guy Larochele

7:00 pm Chairman Bender opened the meeting with the election of officers. Member Koberski nominated Martin Bender as Chairman, seconded by Member Barnes and approved unanimously. Member Drown nominated Member Corliss as Secretary, seconded by Member Koberski. Member Corliss turned down the nomination feeling she was too new to the proceedings. The nomination of secretary was tabled until the next meeting. PB/ZBA Secretary Mary Smith will act as Board secretary for this meeting.

7:05pm Chairman Bender opened the first hearing. Ms Smith took attendance and read the application. Chairman Bender explained the procedure to the applicants and then invited them to make their presentation. Mr. Witham stated that they wish to enlarge the area Ms. Gagnon uses for her quilting machine. This does not require an exception, since there are no setback issues; however, Ms. Gagnon wishes to operate a long-arm quilting business in their home. Ms. Gagnon delivers most of the quilts to her customers or meets with them in local quilt shops; she does not sell fabric. There may be a small number of customers who will drop off material at the home.

Member Drown asked what the hours of operation would be. Ms. Gagne responded that it would mostly be by appointment only. So far in 2010, only 3 customers have come to her home. Member Blake questioned the applicants regarding signage. They do not wish to have a sign at the road advertising the business. They will, however, position a sign to show the shop entrance, which is separate from entrance to the home. Member Larochele asked if there would be any other employees. The applicants responded in the negative. If Ms. Gagne were to employ anyone for hand stitching, it would be done in his or her own homes.

Chairman Bender asked if anyone would like to speak in favor of the proposal. Mr. Ed Piper said he was in favor of what appeared to be a clean, quiet business. Ms. Douglas, Mr. Witham's daughter who lives next to them, also spoke in favor. She said Ms. Gagne is selling a service, she is not a "store"; she actually travels a lot to meet with her customers.

No one spoke in opposition.

7:15 pm Chairman Bender closed the testimony and the Board discussion began. The Plan presented by the applicants was reviewed. The operation will occupy less than 25% of the gross floor area in the dwelling. Member Drown proposed that the issue was cut and dried. The residents are in a good location for this type of business; there is not much traffic on Tyler Road. Member Koberski stated that the business would not affect neighboring real estate values.

Member Barnes made a motion to approve the application with the following conditions:

1. No employees other than homeowners

2. Hours of operation will be 11 am to 7 pm, 7 days a week or by appointment only
3. Any potential sign must be no larger than 3'x4'
4. ?Site Plan

Motion was seconded by Member Corliss, and passed unanimously.

7:25 pm Hearing adjourned

Case No.: 10-02
Jeleta Shinskey
Guide Board Hill Rd., Map 2-17

7:29pm Chairman Bender opened the second hearing. Acting Secretary Smith took attendance and read the application. He again explained the procedure to the applicant and invited her to proceed. Attorney Patrick McNicholas represented Ms. Shinskey and spoke on her behalf.

Attorney McNicholas began his presentation stating that there are two issues to address. One is RSA674:41 which states that building on a class VI highway is not permitted. However, he believes that in his opinion exception (e) applies: unless it "is an existing street constructed prior to the effective date of this subparagraph and is shown on a subdivision plat that was approved by the local governing body or zoning board of adjustment before the municipality authorized the planning board to approve or disapprove subdivision plats in accordance with RSA 674:35, if one or more buildings have been erected on other lots on the same street." He stated his belief that this is a unique situation. The street is less than ½ mile long before the Flood Control Project begins and is one of the better Class VI roads Attorney McNicholas has seen. There is a maximum of only 5 lots and 3 houses are on the street already. The entrance to this lot is not even as far down as one of the abutters' lots. One house has been there for 20 years. Two houses have been constructed since 674:41 and those homeowners were required to file a certificate with the Registry of Deeds noting that the Town neither assumes responsibility for maintenance of said class VI highway nor liability for any damages resulting from the use thereof. Ms. Shinskey's lot was created in 1940 when land was taken by the US Government for its flood control project. They left just enough of road frontage for 130 feet of access.

A request is also being made for a variance from Article IV sections 2 (minimum frontage of 250') and 3 (150' wide 200 ft to the rear of lot).

Attorney McNicholas presented the following arguments to meet the variance conditions:

1. **No diminution in value of surround properties would be suffered** - The request is to build a single family home, which is in keeping with the surrounding area.
2. **Granting the permit would be of benefit to the public interest** – There would be no future subdivision of the land. The area already has pre-existing single family homes so the applicant's intent is in keeping with the current neighborhood. The land has been taxed for 70 years and the current owners would now like to utilize it.
3. **Denial of the permit would result in unnecessary hardship to the owner seeking it** – There is nothing else to be done with this lot. This road will have no more sub-division. This lot is unique since the US Government created it. A hardship exists if the conditions restrict the use. A variance is

necessary to enable a reasonable use of the property. Anything less than residential is unreasonable use for a residential area.

4. **By granting the permit substantial justice would be done** – When the applicant purchased the land in 1989 it appears a building permit could have been issued since two others were issued on the same road in 1987 and 1989. Since the applicant wasn't ready to retire to NH at that time, it would be unjust to penalize them now.
5. **The use may not be contrary to the spirit of the ordinance** – The Town's Zoning Regulations list 13 purposes for the regulations e.g. retain, protect and enhance the beauty and rural atmosphere of the town, protect property values, facilitate the appropriate use of the land, etc. Property values would be protected, as the proposed building of a single-family home will be the same use as the surrounding lots. This is the only productive use of the land. There will be no over-crowding or over-development.

Attorney McNicholas stressed his opinion of the uniqueness of this lot. The road already has 3 houses on it and one more won't change the surrounding area and there is no room for any further building.

8:05 pm Chairman Bender asked the Board if they had any questions. Member Drown asked how far the lot line is from the river. Would there be any Shoreline Protection issues? The response was that the house would be well outside of the limits.

Concerning the fire to Potter's house in 1995, Member Barnes asked if the road conditions were icy which may have hampered the fire trucks from getting to the fire. No one could answer that question. However, Mr. Potter did admit that under certain conditions the road was difficult to pass.

Chairman Bender asked if anyone wished to speak in favor of the application. Ms. Shinsky said that when she bought the land in 1989 she was told she could build and that the frontage was not an issue; it was grandfathered. She presented a letter received from the BOS attesting to that fact.

8:15 pm Chairman Bender closed the testimony and opened the Board discussion. Member Drown said that it did not matter which class VI road was being discussed all are treated the same. Member Corliss wished to discuss the frontage issue, but Chairman Bender said that the main issue was building on a class VI road and should be decided first.

Member Koberski asked how the new hardship changes in place January 1 affected the case. Chairman Bender said he spoke with Town Counsel Bart Mayer who said it cleaned it up and gave it some definition but that it didn't really change it. The question of the recorded waivers was discussed. The Supreme Court agreed that the Town would have no liability issues where the homeowner was concerned but that third parties may have claims against the Town. Member Koberski pointed out that each additional home causes a road to deteriorate a little bit more. Member Blake asked if other surrounding Towns approved building permits on Class VI roads. The answer was only by variance and few and far between.

Member Koberski made a motion to vote on the issue, seconded by Member Drown. The application was unanimously denied.

Respectfully Submitted,

Mary Smith
Acting Zoning Board Secretary