

TOWN OF WEBSTER, NEW HAMPSHIRE

Zoning Board

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Case No.: 10-02

Jeleta Shinskey

Guide Board Hill Rd., Map 2-17

July 13, 2010

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

7:02 pm Chairman Bender opened the meeting and attendance was taken. The application was not read as this is a rehearing. Chairman Bender invited Attorney McNicholas to begin.

Attorney McNicholas thanked the Board for allowing the rehearing; he is aware that this is not frequently done. Since this was not addressed in the Board's denial letter of April 16, 2010, his motion is based on RSA674:41 exception e "unless the street giving access.... 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 again presented exhibits A and B, Plan 6634 recorded 4/29/1981, (the "Cross subdivision") and the Merrimack Valley Flood Control Blackwater Reservoir and River Plan from 9/27/1940, to support his argument.

Chairman Bender responded that nothing on the plans shows approval by the local governing body (BOS), and that the empty lot on the Cross Plan is for agricultural purposes only. Also, Ms. Shinskey's lot is not shown on the Cross Plat.

Attorney McNicholas does not think that these facts defeat their petition.

With no further questions for the attorney, Chairman Bender asked if anyone in the audience wished to speak in favor of the petition. Ms. Shinskey presented her copy of a letter from the Board of Selectmen dated August 28, 1989, which agreed that the lot is "grandfathered as to road frontage". However, since the frontage issue was never considered this has no bearing on this hearing.

Prior history shows that before 1983 the Board of Selectmen approved permits to build on CLASS VI roads with the signing of a waiver of liability to the Town. In 1989 when the

potential purchaser of a property volunteered the information that they would have a large truck traveling on the Class VI road in question (Gerrish Rd.), the ZBA started rethinking their position. That case went to Superior Court and the Town prevailed. In 2002, the Board of Selectmen accepted the Planning Board's recommendation that building permits be issued only for construction on properties abutting roads that are Class V or better. Mr. David Potter, one of Ms. Shinsky's abutters, reported that when Mr. Cross was building in 1983 his research showed that Guide Board Hill was a Class VI road back to 1940.

Member Corliss stated that her research shows that appraisal values are down on lots on Class VI roads because almost every town in the State is refusing to allow building permits for these lots. There also had been a case in Canterbury where there had been a fire and despite having signed the customary waiver, the owners sued the Town and won.

Member Bourque asked whether there were any issues in addition to the Class VI road that would prevent issuance of a building permit. There are two issues – road frontage and lot width, but these would not even be addressed unless the Board votes to reverse its original decision.

With no further questions, Member Corliss made a motion to approve Ms. Shinsky's request for a Variance under Article IV Section 2 of the Webster Zoning Ordinance to build a single family home on a Class VI road. The motion was seconded by Don Koberski. The motion was unanimously denied by the Board. Chairman Bender will forward a formal denial of the request to the applicant.

7:45 pm Hearing is closed.

ZBA/PB Secretary Mary Smith reported that Attorney Fillmore from LGC responded to the inquiry as to whether or not the ZBA Secretary could be an alternate (Response attached). She states that the law is less clear on the office of secretary than that of chairperson, but that it appears an alternate might serve in certain offices. Alternate Member Bowe then agreed to accept the nomination of Secretary. Member Corliss made a motion to elect Jaye Bowe as Secretary, seconded by Member Koberski and passed unanimously.

Member Drown made a motion to approve the minutes from April 13 (with one change – Dave Barnes seconded the nomination of Marty Bender as Chairman) and June 1. Motion was seconded by Dee Blake and passed unanimously.

Discussion ensued on any updates on the Campground. At this time it appears all the talk is between the principles and their attorneys.

8:05 pm Member Bourque made a motion to adjourn, seconded by Barbara Corliss, passed unanimously.

Respectfully Submitted,

Jaye Bowe
ZBA Secretary

