

TOWN OF WEBSTER, NEW HAMPSHIRE
Zoning Board of Adjustment
945 Battle Street/Rte. 127
Webster, NH 03303
Tel. (603) 648-2272
PUBLIC HEARING
Zoning Board of Adjustment
September 10, 2019

Present:

ZBA Members and Alternates: Chairman Martin Bender, Barbara Corliss, Jaye Bowe, Dee Blake and Alternate Member Guy LaRochelle.

Public in attendance: W. Spencer Blish - Applicant

ZBA Case No. 19-03 Special Exception:

Petition for a Special Exception to Article V. Section 8. (A) Setbacks of the Zoning Ordinance. Applicant, William Spencer Blish, 5 Detour Road, Webster, NH, proposes to build a garage/barn no closer than 25 feet from Detour Road. The property is located on tax map 6 lot 89 in the Residential/Agricultural Zone.

7:10 pm Chairman Bender opened the meeting by having Member/Secretary Jaye Bowe take attendance. Member Blake recused herself because she was an abutter to the applicant. Due to her recusal, Alternate Member LaRochelle became a temporary voting member for this public hearing only.

The next order of business was review of the draft minutes from March 19, 2019. Member Corliss made a motion to approve the minutes as written; seconded by Member Bowe and approved unanimously.

At this time Member Bowe read the application.

7:12 pm Chairman Bender opened the hearing by explaining the ZBA public hearing procedure after which he invited Mr. Blish to make his presentation to the Board. Chairman Bender explained to the applicant that because one ZBA member was absent he would need three out of four to be in favor of his application in order for his petition to be approved. Or, he could come back to the ZBA when there was a full board of five members. Mr. Blish wanted the Board to proceed. Mr. Blish stated he would like to build a garage/barn approximately 30 feet from the road. It would be used to store things and his cars. He explained that due to the topography of his property, he did not have a lot of space. He stated it was fairly hilly with wet areas and he abuts the Blackwater River. He stated there was only one place he could put the garage to the left side of his driveway. Mr. Blish stated that if the Board approves his special exception application, then he will have to do a new DES Shoreland Plan because it would be within 250 feet of the river. During Mr. Blish's presentation, Board members were reviewing their copies of his application and plats.

Acting Member LaRochelle asked if Mr. Blish was going to have any animals in the garage/barn. Mr. Blish stated, "No, sir." Acting Member LaRochelle asked if there was absolutely no other place Mr. Blish could put the barn? Mr. Blish stated no.

At this time Acting Member LaRochelle and Mr. Blish discussed a different location on the property. Mr. Blish stated there was ledge and it was within 50 feet of the river with some pretty big trees. Acting Member LaRochelle asked about the land on the other side of the driveway. Mr. Blish stated it was low and soft and wet

where an old house used to be. Mr. Blish added that if he had to move the barn further back from the road at that location, he would have to cut a lot of trees. He also stated there was a pond in the back. Acting Member LaRochelle asked if Mr. Blish could rotate the proposed barn where he would gain another ten feet from the road. Mr. Blish stated it would be an awkward entrance and the construction would get closer to the leach field, but he was willing to look into it. After a brief discussion, Acting Member LaRochelle inquired about a retaining wall, which Mr. Blish acknowledged he would be constructing to benefit the sloping leach field. During the discussion, the Board was made aware that the floor of the proposed barn would be concrete.

Member Corliss asked how far the structure would be from the river. Mr. Blish explained that there are three buffer zones: 50 feet from the river, which cannot be disturbed; 150 feet has limited impacts and 250 feet where there are less limiting impacts. He stated the entire building will be within the 150 foot limited impact area which is required to have a shoreland impact area developed. Mr. Blish stated he did not want to spend money on applying for a Shoreland Impact Plan until he got through this step with the ZBA. A brief discussion ensued.

Acting Member LaRochelle suggested Mr. Blish spend money on rugged fill instead of on a retaining wall and put the proposed barn on the other side of his driveway. Mr. Blish stated he had a power pole there which would have to be moved and a number of trees would have to be cut. Mr. LaRochelle stated that Mr. Blish was affecting the river, the setbacks to the river and the setbacks to the street. Mr. LaRochelle stated his recommendation would be to put the barn on the other side of the driveway.

After a brief discussion, Mr. Blish reiterated that the building would not be too close the river as it would be entirely within the 150 foot buffer zone which is allowable. Chairman Bender stated that would obviously be up to DES. Mr. Blish stated that would be correct. He added that there was an old woods road all along that area which is nicely packed and solid. Mr. Blish stated that on the other side of the driveway it was just a lot of pine needles, fallen leaves, wet – not very solid ground.

Mr. Blish asked for a reading from Article V Section 8 of the Zoning Ordinance. Member Corliss read the following:

“A. Any non-commercial building or new addition thereto, may as a special exception, be approved to within twenty-five (25) feet of a property line upon finding no detriment to the neighborhood.

B. Accessory structures such as storage sheds and gazebos, but excluding automobile garages may be approved to within twenty (20) feet of a river, brook, lake or pond provided:

- 1. The location and construction of the structure is consistent with the intent of the State requirement to maintain a vegetated buffer;*
- 2. The structure is required as a shelter for humans, equipment, or firewood;*
- 3. The structure is usually customary and incidental to a legally authorized use within the shoreline district.”*

Member Corliss was concerned that if Detour Road was ever widened, then Mr. Blish's barn would be much closer to the road. Chairman Bender recognized Mrs. Larson, recording secretary for the ZBA. She stated that trying to predict the future had nothing to do with this application; consideration must be based on the **current** conditions and **current** special exception regulations of the Zoning Ordinance.

Acting Member LaRochelle stated that he was concerned about the wetlands; the proximity of river and the proximity to the street. And he added he was concerned about Mr. Blish excavating in the bank of the leach field. Mr. Blish responded that if any of those concerns end up getting flagged by DES for which he goes for the full shoreland plan then it won't happen. Mr. Blish stated that without a full study and a full Shoreland Permit, he won't be able to do this anyway. Acting Member LaRochelle stated that if Mr. Blish put the barn on the other side of the driveway, he would not need a permit from DES. Mr. Blish corrected him and stated he would still

need a permit because he would be within the 250 foot buffer zone. Mr. Blish stated he could not even put a gazebo on his property without filing with DES. Chairman Bender asked Mr. Blish if he needed a permit from DES to build his house. Mr. Blish stated yes; one of the plans with his special exception application was the DES plan for his house. He explained that that was the initial shoreland plan that was approved and now because of the proposed garage/barn, he is required to submit another shoreland application to DES. He does not want to go into all that expense until this matter is settled.

7:39 pm Chairperson Bender asked is anyone wished to speak in favor or in opposition of the application. Recused Member Blake stated she would remain neutral and she added that Mr. Blish was a good neighbor. There were no other abutters or members of the public present.

7:40 pm Chairperson Bender closed the testimony and opened up the hearing to the Board for discussion and deliberation. Member Corliss stated she was interested in Chairman Bender's legal take. Chairman Bender stated Mr. Blish should be allowed to build there if DES says it's OK and DES already, obviously, said the house was OK. In addition, if Mr. Blish were to build in the area where Acting Member LaRochelle was saying, then he would need to cut trees and relocate his powerline. Chairman Bender stated let him do it, assuming if he can with DES. Member Corliss stated she reread the code and could not find a legal reason to say no. Chairman Bender stated that the ZBA turned down only one special exception in 35 years. He stated that unless there was a really demanding reason to say no to a special exception, the ZBA generally says yes. Acting Member LaRochelle stated he felt Mr. Blish had another option for location that would affect a lot less. Chairman Bender stated that DES would make the decisions regarding Acting Member LaRochelle's concerns. Those decisions are not the purview of the ZBA. After a brief discussion, Member Bowe stated she felt he should be able to put it where he wants, and DES will make the final decision as to whether or not he can do it at all.

7:47 pm Acting Member LaRochelle made a motion to put this to a vote; seconded by Member Bowe and approved unanimously. Roll Call: Marty Bender – in favor; Barbara Corliss – in favor; Jaye Bowe – in favor; Guy LaRochelle – against; motion passes with majority of 3 in favor, 1 against. Mr. Blish's special exception application was approved.

7:49 pm meeting adjourned.

These minutes were approved as written at the ZBA hearing of October 8, 2019.

Respectfully,

Jaye Bowe, ZBA Secretary