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Zoning Board of Adjustment

Minutes of May 12, 2021

7:00 PM via Zoom

1. The Chair opened the ZBA meeting via Zoom on May 12, 2021 at 7:02 pm.

A. Zoom Meeting Preamble

Chair referred to the preamble: as Chair of the Zoning Board of Adjustment I am declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of Town of Warner government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

At this time, I also welcome members of the public accessing this meeting remotely. Even though this meeting is being conducted in a unique manner under unusual circumstances, the usual rules of conduct and decorum apply. Any person found to be disrupting this meeting will be asked to cease the disruption. Should the disruptive behavior continue thereafter, that person will be removed from this meeting.

Please note that all votes that are taken during this meeting shall be done by roll call vote.

B. ROLL CALL

Present: Barbara Marty (Chair), Howard Kirchner (Vice-Chair), Beverley Howe, Harry Seidel, Sam Bower (arrived at 7:12pm)

Also: Janice Loz, Land Use Secretary

Absent: Elizabeth Labbe

2. Approval of Minutes: April 14, 2021

Howard said under approval of minutes, Elizabeth Labbe wasn't listed. She should have been counted in the vote. Janice said she would check with Elizabeth as she couldn't remember if she had actually voted or had abstained. Howard said either way, they had a quorum and the vote was OK.

Janice noted that the year was listed as 2020; she would change that to 2021.

**Barb Marty made a motion to approve the minutes of April 14, 2021 as amended.
Seconded by Harry Seidel.**

Roll Call vote: Bev Howe – yes, Howard Kirchner – yes, Harry Seidel – yes, Barb Marty – Yes. **Motion Passed – 4 to 0.**

3. Case Number: 2021 – 01

Applicant: Tyler Lawn Care

Agent: Tyler McIver

Address: Bagley Hill Road and NH Route 103

Map/Lot: Map 16, Lot 61

District: R-2

Description: Special Exception to the terms of Article VI.B. Table 1. USE Regulations: Retail and Services Section 13. Professional and Business Offices and Services, of the Warner Zoning Ordinance.

Chair Marty asked if there was any issue with the abutter's notices showing the wrong map and lot number. Janice said that they could clear up the confusion that night at the meeting and it should be OK. The address was correct, she had inadvertently transposed a couple of numbers in the lot number and apologized. She added that all the information that went out online was accurate.

Chair Marty said she would like to vote on the applications individually but group the hearings together.

Janice confirmed that all fees had been paid and all notices went out. Chair Marty asked if the State of NH had anything to say about the abutting highway. Janice said that she wasn't sure and that Tim and Steve would know more.

Sam Bower arrived at 7:12pm.

Howard and Sam agreed that the application for the building looked complete. Harry asked if someone from the Town of Bradford wanted to represent the town with regards to the road. They are an affected abutter as the road is in Bradford, although maintained by the Town of Warner. Janice said she had sent information to the Town of Bradford via the Town Administrator. She believed they were aware of it. Chair Marty said this brings up the issue of possible regional impact. Bradford was made aware as a precaution. Steve Hall is the Road Agent for Bradford and was present.

**Howard Kirchner made a motion to accept the application for the building as complete.
Harry Seidel seconded the motion.**

A roll call vote was taken: Sam Bower: Yes, Beverley Howe: Yes, Howard Kirchner: Yes, Harry Seidel: Yes, Barb Marty: Yes. **The motion passed 5:0**

4. Case Number: 2021 – 02

Applicant: Tyler Lawn Care

Agent: Tyler McIver

Address: Bagley Hill Road and NH Route 103

Map/Lot: Map 16, Lot 61

District: R-2

Description: Special Exception to the terms of Article VI.B. Table 1. USE Regulations: Wholesale and Industrial Section 6. Open Storage, of the Warner Zoning Ordinance.

Harry and Howard thought the application was complete.

Howard Kirchner made a motion to accept the application for the open storage of raw materials as complete. Harry Seidel seconded the motion.

A roll call vote was taken: Sam Bower: Yes, Beverley Howe: Yes, Howard Kirchner: Yes, Harry Seidel: Yes, Barb Marty: Yes. **The motion passed 5:0**

Chair Marty invited the applicant or his representation to speak on behalf of the applications.

Maria Dolder, attorney, was there to represent Tyler Lawn Care. She gave an overview of his plans for the business. They need two special exceptions; one is for the office building and one is to allow outside storage of landscaping materials kept on site for the business. This is not a retail use; they will not have customers coming to the property on a regular basis. The work that Mr. McIver does is off-site. He anticipates having about 10 employees and his hours to be 7:30am -5pm Monday through Friday and maybe some Saturdays. The materials they would like to store outside would be things like bark mulch, rocks, and loam. He won't have any pesticides or fertilizers on site. The plans are basic to give the board the layout of the property. The building design may change a bit. They still have to go through the Planning Board with site plan review, and they will comply with the zoning setbacks, etc.

Maria said that in 1994 the Town of Bradford and the Town of Warner entered a road boundary agreement. They agreed that Bagley Hill Road lies within the Town of Warner. This is on the Town of Bradford's website, and since that time, this class V road has been maintained by the Town of Warner.

Maria went through the criteria for special exceptions. The proposed uses are identified as permitted by special exception in the Warner Zoning Ordinance. The business use is permitted in all three of the residential districts, not just the R-2. The use for open storage is only permitted within two zoning districts, the R-2 zone is one of them. The criteria asks if it is essential to public convenience or welfare. She thought this was more of a question that towns include in criteria for a variance. She said this location was a desired area because there are three other businesses close by in this zoning district; it is consistent.

In terms of not impairing the integrity of the area, the district permits this use. It is a busy road (103), and there are other businesses along that street. Allowing a business like this, which is not retail, but is a business office, would allow the applicant to conduct his business within the town and within a manner that is consistent in the town of Warner. The only thing requested outside will be the storage of the landscaping materials mentioned earlier. There will not be retail customers coming in and out on a regular basis to purchase items.

Chair Marty asked what materials will be stored outside. Maria said bark mulch, rocks, stones, loam, possibly salt and sand. Tyler confirmed this to be true. Barb asked if these materials would be delivered by tractor trailer. Tyler said yes, occasionally. 3-4 times in the spring and once or twice in the winter. Barb asked how many employees they have currently. Tyler said

10. Barb asked how many trucks they have currently. Tyler said 9, of different sizes, but nothing larger than a one-ton dump truck. They will be stored inside during the evening and on weekends.

Harry wondered if the materials stored would be covered. He was concerned with the salt and sand and the possibility of runoff. Tyler said currently he keeps his salt and mulch covered to keep it dry. They are talking about an enclosed bin that is sloped towards the bank to handle the runoff into a tank. He doesn't want to put up a big plastic dome; whatever they can do to try to make it look nice.

Chair Marty asked if customers would come to the office for consultation. Tyler said sometimes other landscapers will meet but he tends to do his consultation on-site with customers.

Maria said Tyler got emails from three of his abutters that day. They expressed support from Preston Star, Nate Kimball, and Chris Mott. Two are in Bradford, one is in Warner. She would email them to Janice for the file.

Sam asked if the applicant had an idea what the size of the building would be. Maria said they anticipate it being about 80'x80'.

Howard Kirchner made a motion to close the board hearing and open the public hearing. The motion was seconded by Sam Bower. There were no board members against this motion. **The motion passed.**

Mr. Holmes said that he is an owner of Bagley Hill Road; it is not a public road and is not designed for public vehicles. Neither the Town of Bradford or Warner own the road; he does. He said that the lot is wet and the road frontage is 103, not Bagley Hill Road. Mr. Holmes said that there were no permits obtained for the work that has already been done on the property. He said that drainage from the site is going very close to the Warner River. Mr. Holmes was concerned that there were wetlands surrounding this property and he just wants things done the right way.

Mr. Holmes said he is a builder and is concerned with the drainage on the property; three sides of the property drain into the Warner River. He really wanted someone to take a look at the property to make sure this is going to work. He doesn't want any entry from his land from Bagley Hill Road. He owns to the town line and added that this is a historical area that should be taken care of.

Chair Marty said the Planning Board will do a site plan review which includes the drainage, wetlands, etc. If they get the Special Exception from the town, that will be their next step. She asked Tim Allen and Steve Hall about the road and who owns it.

Tim Allen, Road Agent in Warner, said that Warner has a maintenance agreement with the Town of Bradford, not a boundary agreement. Bagley Hill and Bible Hill are both Warner and Bradford roads. As he understands it, Warner would maintain Bagley Hill and Bible Hill Road. Steve agreed with Tim. Tim said that the Town of Warner has repaired the road in the past and has been maintaining it for many years. He hasn't found a specific piece of paper saying it is a right of way. He believes it is a class V road, maintained by the Town of Warner. He also said that there are more files he can look through to find more details; he was only asked about the road a couple days prior.

Mr. Holmes said he is currently paying taxes for that road. He has a deed to it. Maria said that once the town decides to maintain a road it becomes a public highway and abutters cannot prevent people from using it. This has been maintained by the town since 1994. If the road

was a private road, Mr. Holmes would have been responsible for maintaining it. It is considered a class V road. Also, Tyler has obtained the necessary permits for what he has done on the land. The issues Mr. Holmes is bringing up will be addressed by the Planning Board. This is the proper order of how the permits are obtained.

Bev said she didn't know how they could approve something before knowing the side effects of their decision. If the Planning Board won't allow all of those things, what is the use? Maria said the Planning Board requires Zoning Board approval before moving forward with the application.

Janice Loz said that Tyler Lawn Care came before the Planning Board and they referred him to the Zoning Board.

Mr. Holmes asked if this business was allowed to have an entrance/exit on route 103. Mr. Allen said they have to get a permit to do so. Steve said that if someone goes for a permit from the state there are criteria that have to be followed, including line of sight. For that reason, they may be rejected. He has no issues with what is trying to take place. He feels that Tyler Lawn Care should be able to go into this area. The road has been maintained by the town and it is in Bradford and is classified as a Class V road.

Chair Marty said that Mr. Holmes should address his issue about ownership and the road with his attorney and/or the town. The rest of the issues regarding drainage, etc., will be taken up with the Planning Board. Mr. Holmes said he is concerned with the river and he doesn't want anyone going on his land or touching his stone wall. He doesn't feel the road can withstand heavy machinery and the traffic that will come because of this business.

Chris Kerr said each of those tractor trailers carry hazardous material; fuel. Anything over 10 gallons is classified as hazardous material and a spill could be detrimental.

Sharon Holmes said that landscapers have to have a paved lot to store materials on it. Mr. Holmes said the Town told him there were no permits. They also didn't provide him with the map or plot plans. Janice said they don't have the means to copy this large format of a map at the town. That afternoon she took a picture of it with her camera. She offered to send it to Mr. Holmes. Chair Marty said usually when meeting in person, they would have the map up for all to see.

Janice said that it seems to her that Tyler, being in the lawn care business, and it being in a highly visible spot on 103, this would be an advertising billboard for his company. There would be some motivation for him to keep it looking nice. They have to ask themselves why have the voters made it available to allow commercial entities in a residential area by special exception. There are some businesses that can fit in a residential area. She doesn't feel that there would be a lot of traffic with people coming in and out; he goes to the customer's property to do their work. She has had experience with Tyler's business in the past, when trucks were stored at his parent's home (her neighbors) and it was always kept neat and aesthetically pleasing. There were never any issues with traffic or noise, etc.

Chair Marty said with regards to noise, what is the noise level? Tyler said that he doesn't produce any noise different than a truck going by on the main road or someone starting up a lawnmower nearby. They don't work on the weekends. Chair Marty asked if they will wash their vehicles on the property. Tyler said they plan to wash the trucks inside the building. There will be a drain there that will lead to a holding tank for the water. If the water tests fine to be released, it will be released. If not, it will be treated and then released.

Chair Marty asked if Tyler plans to do oil changes and other maintenance to his equipment on site. Tyler said just the basic stuff. Anything major will be shipped off and done elsewhere. He said if this was an issue, he could do his regular maintenance off-site.

Chair Marty moved to close the public portion of the meeting and open the board discussion. The motion was seconded by Howard.

Via a voice vote, everyone was in favor. **The motion passed.**

Howard said he drove by the site that day for the first time. He said a landscape business on that site is going to be a major upgrade to the appearance and tax valuation to the Town. He thinks what will be there will be very appropriate and elegant. He thinks it is a good idea. Across that Class V road in Bradford, this building would be approved automatically and they wouldn't need a special exception.

Harry said that the application is presented completely and finds the criteria they use for a special exception different than what he has always read in other towns. "Essential or desirable" is a hard one. He thinks that this use is desirable for the location; it is right off the highway and isn't going through residential areas. He knows Tyler, and knows that the area will be kept neat as a pin. He didn't think the character of the area would be changed that much. The other businesses on that road will make more traffic than Tyler's business will. He agreed with Janice that this is an opportunity for Tyler to showcase his abilities.

Sam Bower said it sounds like there are a lot of things on Tyler's side to be figured out before the project will go through, but that will be done at the Planning Board level. As far as businesses that could create a little noise or traffic, this is a beautiful spot for his business.

It was moved by Sam Bower and seconded by Howard Kirchner to approve Tyler Lawn Care's request for a Special Exception to Article VI.B., Table 1: Professional and Business Offices on Map 16 lot 61 for the construction of a commercial building.

A roll call vote was taken: Sam Bower – yes, Bev Howe – yes, Howard Kirchner – yes, Harry Seidel – yes, Barb Marty – yes. **Motion Passed – 5 to 0.**

It was moved by Sam Bower and seconded by Harry Seidel to approve Tyler Lawn Care's request for a Special Exception to Article VI.B., Table 1: Open Storage of raw materials as described in the application, for Map 16, Lot 61.

A roll call vote was taken: Sam Bower – yes, Bev Howe – yes, Howard Kirchner – yes, Harry Seidel – yes, Barb Marty – yes. **Motion Passed – 5 to 0.**

Chair Marty said any aggrieved party has 30 days to appeal this decision by this board.

4. New Business:

Chair Loz said they might be getting an application next month. More details TBA.

Harry said that it is easy to reduce the size of a map digitally so that abutters can get a copy. Janice said that they will usually need to do this by going to Concord. She would provide the photo version of the map to Mr. Holmes and to anyone else who would like to see it.

5. Old Business:

Sam said they were looking for alternate ZBA members. He thinks he has found a person who would be a good choice. Christine Frost, Ben Frost's wife, is interested. Now that the Agriculture Commission was voted through by the Town, there is an online application for people to sign up for it. He said that blank applications would be put up at the post office. Sam

thought they should also put the applications out for the ZBA at the same time. Howard said that the applications are blank and people fill in the board or commission they would like to be considered for.

Harry said he spoke to a couple that owns a chimney sweep business. He thought there was some interest from the wife to join the ZBA.

There was discussion about a quorum and how many it should be. Howard said that if an applicant doesn't want to continue with their hearing when there are four members present, they can continue it another time. Ideally, an odd number of members is the best to avoid a tie vote.

6. Adjournment

Motion to adjourn made by Chair Marty and seconded by Sam Bower.

Roll Call vote to adjourn the meeting: Barb Marty – yes, Sam Bower – yes, Bev Howe – yes, Howard Kirchner – yes, Harry Seidel – yes. **Motion Passed – 5 to 0.**

The meeting was adjourned at 8:56pm.

Respectfully submitted,
Kristy Heath, Recording Secretary
Town of Warner