

DRAFT
Town of Fitzwilliam
Zoning Board of Adjustment
Meeting Minutes
Oct 9, 2018

Members Present: Steve Filipi, Chairman; Gretchen Wittenborg, Vice Chairman; Members: Chad Beede and Cathy Davis; and Dan Sutton, Alternate seated for Bob Handy.

Members Absent: Bob Handy and Alternates: Sue Wood and Susan Massin and Carmen Yon.

Other's Present: Robin Crowe, Applicant; Kristen Berube, Applicant; a representative from Trinity Baptist Church, abutter to Kristen Berube; and Terry Silverman, Planning Board.

Meeting Called to Order: by Steven Filipi, the Chair, at 7:00 PM.

Public Hearing: Continuance of Robin Crowe Application for Variance(s). At 7:05, the Chair read the notice as follows: This opens the "**7:30 PM. Public Hearing. ZBA Case #18-07, an appeal by Robin Crowe** for Variance(s) to allow the following non-conforming uses of the commercial building on the property currently owned by Ralph and Helen Niemela at 705 NH Route 12 South, Tax Map 8, Lot 46:

Business:

- A. Retail store
- G. Combined business and dwelling
- N. Studio
- P. Commercial recreation
- Q. Commercial and trade school
- W. Antique/Craft Shop

and/or

Zoning Ordinance 127-10, Principle Uses [not permitted in the rural district]

Governmental, Institutional and Public Service:

- B. Educational."

Members reviewed that subdivision plat and discussed the timing of the dwelling and commercial building. There was a question whether the issue of business & dwelling on the same lot in the General Industrial Zone is actually a change as both have been located on the property for years.

The Chair explained that the change from a machine shop to something involving retail is significant. There can be issues with the commercial building regarding contaminants, safety items such as egress,

and the issues might require evaluation and could lead to a requirement for significant improvements. The Vice Chair asked Robin Crowe, the Applicant, whether she understands the concern expressed about the significant change and the need for safety checks. Crowe replied that she does understand.

The Chair brought it back to the question whether the use meets the criteria for a Variance. Davis asked about what items they should consider. The Chair expressed that they can look at some of the safety concerns; but, the Planning Board might go into more depth regarding things like septic systems in their Site Plan Review.

Wittenborg suggested that the Zoning Board could look at the possible uses described in the application and listed in notices and determine whether the proposed uses require a variance. It was agreed that Combined business and dwelling; Commercial Trade School; Public Service Educational; and Commercial recreation, which is commonly used to mean organized sports, could be dropped as they do not apply in this case. The Board will take up the questions of non-conforming uses Retail Shop, Studio, and Antique/Craft Shop.

The Chair stated that he does not see a problem with the uses as planned by the Applicant. Davis asked if they could condition their decision to address concerns. Sutton asked about the Zoning in the area. He stated that he feels that the reason the town zoned certain areas as General Industrial and Residential to reflect the usual uses in those areas He pointed out that Fitzwilliam does currently have retail in the General Industrial Zone.

Terry Silverman, long-time member of the Planning Board and former Chair of that Board, was at the meeting as an abutter to Kristen Berube and in connection to her case. The Chair addressed Silverman and asked for his input on the history of the Zoning Districts in Fitzwilliam. Silverman stated that when the zoning was developed it did reflect what was there at that time. What is there now has changed over time. The Chair asked Silverman what the Planning Board covers in a Site Plan Review. There was a brief discussion. Beede suggested that they consider conditional on inspection. Sutton offered that they make it conditional on Planning Board approval. **Wittenborg offered a motion to grant a variance for change of use to Retail Store/Studio/Antique/Craft Shop as long as use satisfies all the conditions and requirements required by the Planning Board in its Site Plan Review process and be approved by the Planning Board. Sutton seconded the motion.** There was additional discussion about the need for some sort of assurance that the facility is appropriate for the use. Davis suggested that, rather than a list of conditions, the Board keep it simple and Sutton agreed.

Wittenborg offered a motion to grant a variance for change of use to Retail Store/Studio/Antique Store/Craft Shop, Conditional on Satisfying all the conditions and requirements required by the Planning Board in its Site Plan Review process and being approved by the Planning Board.

This closed the public input on Case 18-07, Crowe Application for Variance. The Board took up a discussion of the Criteria to approve as follows:

1. **Not Contrary to Public Interest.** Wittenborg noted that there are other retail uses in close proximity. The building is currently empty and Ms. Crowe has some ideas that are

reasonable. Davis spoke in favor, noting the benefit to the public. Sutton agrees with the other comments.

2. **Is in the Spirit of the Ordinance.** All members agree that allowing a variance for the proposed use is in the Spirit of the Ordinance.
3. **Substantial Justice is done.** Davis expressed that it is a fair use of the property and all Members agreed.
4. **Value of surrounding properties not diminished.** Members agreed that it is an improvement for the neighborhood, especially as a vacant building will no longer be so.
5. **Enforcement Results in Unnecessary Hardship.** Wittenborg expressed that Crowe has a good use for the property and this Variance would permit that use. There is a past history of use as a commercial building and the proposed use is appropriate to the site and the area.

Variance is approved subject to Planning Board approval. This ended the Public Hearing on the Crowe application.

The Chair opened the Public Hearing for the Berube request for Variance, reading: 7:30 PM. or thereafter Public Hearing. Norman & Kristen Berube application for Variance to allow the conversion of their first floor, previous commercial use as a store to use as a primary dwelling on the first floor with a second-floor accessory Dwelling of 1200 square feet in the Village Center Business District on the property at 4 East Lake Road, Tax Map 28, Lot 7, in the General Industrial District, reference Zoning Ordinance 127-9.11 which limits accessory dwelling units to 800 square feet.

Wittenborg asked how long there has been an apartment on the second floor. Berube says that there were two apartments upstairs. And the store down stairs. Wittenborg asked when they purchased the property. Berube replied that they purchased in 1993. Asked about the septic system, Berube explained that it is a pump -up 1500 gallon system that used to serve both store and apartments. The Chair asked about the number of bedrooms. Berube told the Board that there are two bedrooms upstairs and two downstairs. Wittenborg asked if this is an “after-the-fact” Variance. Berube said that it is. Berube added that she did come to Town Hall but misunderstood the instructions. They did get a building permit; but, there was some confusion. Sutton confirmed that they do not need a variance for a two family; rather, they could get a Special Exception. Wittenborg read from RSA. Chair pointed out that this might be better as a Special Exception for a two family as there is a benefit as the house is then set as a two family for the future and the owners do not necessarily have to live there.

This closed the public input on Case 18-08, the Berube Application. The Chair moved that they approve a Special Exception for a two-family dwelling, approval to be Conditional on Fire Department inspection and approval. The motion was seconded and approved unanimously.

The Board then took up a discussion regarding whether the proposed use of the building as a two-family met the necessary criteria for a Special Exception.

Members went over the Mandatory Findings for a Special Exception, that the use:

- 1. Is in harmony with the purpose and intent of this chapter.** Unanimously agreed.
- 2. Will not be detrimental or injurious to the neighborhood in which it is to take place.**
Unanimously agreed.
- 3. Is appropriate for the site in question.** In a brief discussion, it was agreed that a two family requires a 20,000 square-foot lot (10,000 square feet per unit). The lot in question is .6 acres and so the dimensional requirement is met. Members unanimously agreed.
- 4. Complies with all applicable requirements of this chapter.** Members unanimously agreed.
- 5. With respect to dimensional requirements establishes that there exist special conditions that make the meeting of these requirements unduly burdensome.** Members unanimously agreed.

The Mandatory Findings for a Special Exception unanimously agreed to have been met, a Special Exception to allow a two-family dwelling, is approved Conditional on Fire Department inspection and approval. The motion was seconded and approved unanimously.

There being no additional business to conduct, the meeting was adjourned at 8:45 PM.

Respectfully Submitted,

Laurie Hayward
Land Use Administrative Assistant