

**Webster Zoning Board of Appeals
Meeting Minutes – January 11, 2021**

A meeting of the Webster Zoning Board of Appeals was held on January 11, 2021 via remote participation Zoom meeting in accordance with the Emergency Acts of 2020.

Present: Chairman Jason Piader, Clerk Chris Daggett, Members Dan Fales and Mark Mason.

Also Present: Ann Morgan, Director of Planning & Economic Development; Ted Tetreault, Building Commissioner / Zoning Enforcement Officer; Jason Talerman, Special Town Counsel for Webster; Kelly Lyman, Clerk

Absent: Vice Chairman Daniel Cournoyer

1. Call to Order: Chairman Piader called the meeting to order at 6:05 p.m. The Chairman read the meeting notice from the agenda regarding the Governor's order about remote participation and the number of people who can convene at the public meeting at one time. Meeting protocols were reviewed. The Chairman directed staff to take attendance of the Board by roll call vote: Daggett - Present; Fales - Present; Mason - Present; Piader - Present.

2. Action Items

a. Approval of Meeting Minutes - January 5, 2021

Ms. Morgan advised the Board that the draft minutes from the January 5, 2021 meeting were not ready for review yet. This item was tabled to the next meeting.

3. Workshop with Town Counsel Jay Talerman of Mead, Talerman & Costa, LLC. – This is an educational workshop to review variances, to determine which permit application is appropriate for a project, and to discuss the 25% expansion rule. The purpose of this workshop was to provide current information to help the Board members make informed decisions. Attorney Talerman encouraged questions from the attendees.

The cases of Deardrick vs. Zoning Board of Appeals of Chatham, 85 Mass. App. Ct. 539, and Gale vs. Zoning Board of Appeals of Gloucester, 80 Mass. App. Ct. 331, were referenced during the workshop.

Variances should be granted sparingly and according to the Town's bylaws. Mr. Talerman referred to the recent ZBA decisions in the hearings for Robinson Street and Loveland Road. It is important for the Board to look for uniqueness in the area of the projects. The topography and shape of the lots should be looked at closely. Other contiguous lots should be reviewed for reference. Mr. Daggett noted that most lots in the Town of Webster Lake Residential district are non-conforming. The Lake Residential Zone is unique to the Town. Mr. Talerman also noted that use variances are not allowed at all in the Webster Zoning By-law.

Hardship was discussed. Self-created hardship is not considered hardship. A number of factors need to be considered when an applicant claims hardship. A recent case involved a lot that was recently carved from a larger lot. The applicant's requested a variance to build a new house claiming hardship but that hardship was self-inflicted when the property owner carved three lots out of one large lot. Mr. Daggett mentioned that widened roads increased a taking in a recent case and asked if that would be grounds for hardship. Mr. Talerman agreed that would be an example of a hardship since the taking was not the applicant's fault. Mr. Tetreault stated that he was aware of that particular self-inflicted hardship bit wasn't sure if it was his role to inform the Board of such. Mr. Talerman noted that the Board should ask questions

during the hearing to get the backstory on the application. Some examples of questions the Board could ask are “what is the history of the lot”, “when did the applicant purchase the lot and for how much”, and “what was their intention for the lot at the time of purchase”. Town staff can also provide some background on the lot, if known. There may also be more information attached to the title at the Registry of Deeds which should be provided by the applicant. The Board members are volunteers and it is the applicant’s responsibility to provide proof of hardship. Ms. Morgan asked if variances run with the land or the property owner, and if the Board can condition that. Dimensional variances run with the property. Use variances may run with the person but Webster’s Zoning By-law doesn’t provide for use variances. Conditions can be issued, such as maintenance over time, and all variance decisions must be recorded at the Registry of Deeds.

Most of the houses on the Lake are preexisting, non-conforming. According to *Gale vs. Gloucester ZBA* applicants seeking to expand a pre-existing, non-conforming one or two family structure requires a special permit, not a variance. This does not apply to detached structures such as garages. However, the courts created an exception to this rule in the *Deadrick* case. It was ruled that rebuilding a pre-existing non-conforming structure previously in violation of one of the setback requirements could expand further into the area of violation with a special permit. Any expansion beyond the original footprint which newly violates the requirements would require a variance. Mr. Talerman also stated that the Board can deny a special permit without a specific reason.

The Building Commissioner has the right to say that a small alteration is permissible and not increasing the non-conformity. Any objection to that determination would be referred to the Zoning Board for a special permit.

Mr. Piader asked about incorrect filings where an applicant has applied for the wrong type of relief (special permit vs. variance) or if they have applied for too little relief meaning they would need both a special permit and a variance. Can the Board take up the matter noting the change in at the public hearing? Mr. Talerman noted that the application must be withdrawn and the correct application(s) resubmitted. This is important considering that they are two different types of applications and that the hearing notice must be correct when notifying abutters.

The intent of Section 650-28 - Existing Buildings of the Webster Zoning By-law was discussed. This provision allows an up to 25% expansion of a pre-existing, non-conforming use or structure that hasn’t been abandoned (2 years). Anything beyond that threshold requires a special permit from the Zoning Board of Appeals Mr. Talerman reviewed the *Gale* and *Deadrick* cases which speak specifically to single and two family structures with any attached non-living space such as garages. These cases set the parameters for evaluating expansion into a setback. If the pre-existing, non-conforming structure already violates the setback requirements than further expansion into the same only requires a special permit and not a variance. If the proposed expansion creates a new violation then a variance would be required. This same rule does not apply to any other structures or uses and does not apply to detached structures such a detached garages. When evaluating such cases the Board need to be specific about whether they are evaluating the whole structure or a portion thereof. Mr. Talerman further reviewed the *Bjorklund vs. Norwell* and *Bjorklund vs. Scituate* cases which address the issue of variances for minimum lot size and the extent of which the 25% expansion allowance would be considered extreme. He further reviewed the *Bransford vs. Edgartown* case which addresses similar issues.

Mr. Piader stated that it can difficult to use the Town’s Zoning By-law when reviewing special permits. He usually refers to Chapter 40A which contains a lot of criteria. He would like standards that are more

relevant to the Town of Webster. Mr. Talerman suggested a set of omnibus requirements. Ms. Morgan asked if the ZBA can establish special permit granting criteria. Mr. Talerman stated that it can be useful as a tool but that the Board had wide discretion when considering all the facts and making a decision. When making a decision the Board does not need to review every item listed under the By-law Purpose and Interpretation section which are not special permit criteria. These are the general guiding principles of the By-law along with the criteria and standards set out in Chapter 40A. The Board should refer back to any of these when considering special permits and recite the rationale in the decision.

Several questions arose about the language of Section 650-28 in the Town's By-law as it relates to the language in Section 40A. Mr. Talerman noted that the current Town language does not mirror the language in the State statute which could create a source of confusion when interpreting specific scenarios. The Town could consider modifying that language to tighten it up and reflect the State statute or make adjustments to the existing language to better clarify and provide for clearer interpretation in the future. Another option would be to strike it from the By-law altogether and follow the requirements laid out by the State statute.

Mr. Talerman noted that additional questions can be forwarded to him through the Chair and staff.

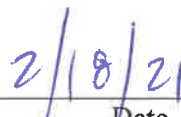
4. **Next Meeting Date** – The next meeting will be held on Wednesday, February 17, 2021 at 6:00 p.m.

5. **Adjournment**

Motion to adjourn the meeting made by Mr. Mason, seconded by Mr. Daggett. The motion passed unanimously 4-0 by roll call vote: Fales - AYE; Mason - AYE; Daggett - AYE; Piader - AYE. The meeting was adjourned at 7:54 p.m.



Chris Daggett, Clerk



Date

EXHIBITS

- None.