

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
November 13, 2018

Present:

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

Public in attendance: Joan Weinstein (Applicant), Madison Cheever, Dora Collins, David Collins and Jen Carleton, abutter.

ZBA Case No. 18-03 Variance:

Petition from Joan Weinstein for property located at Clothespin Bridge Road wherein a variance from Article IV, Section 2 is requested to permit building one single family dwelling. Said property is shown on tax map 6 as lot 93 and lies within the Residential/Agricultural zoning district.

7:00 pm Chairman Bender opened the meeting by having Jaye Bowe, ZBA Secretary take attendance. Chairman Bender informed the Board that he was the Weinstein's lawyer back in the 1980's and remains a very good friend to Ms. Weinstein today. He stated he would recuse himself and appointed Guy LaRochelle as a voting member in his place.

Before starting the hearing, Chairman Bender stated that his thought of the process was that there really shouldn't be anything because he believed the lot in question was grandfathered in. Chairman Bender referred the Board to the Zoning Ordinance page 13, **Article VI Non-conforming Building, Land or Uses**. He stated, "First of all... I won't vote on anything; I just want to point out to you that is my interpretation of this." He continued, "Those are things to look at if you determine that it is grandfathered or that it's under page 13 then I would say there's really nothing to do. If you are going to go ahead with the variance, and I was going to suggest then to Ms. Weinstein that she get an attorney, because this is complicated. So, but I think that's all I should say and I should now step down."

Before Chairman Bender stepped down, Member Corliss asked, "Is there a road frontage requirement prior to '78 or 2007 when the law changed?" Chairman Bender stated that he did some research on the deed and went as far back as 1948, which clearly predates zoning. He stated, "So basically this lot was created as it is, the 85 acres with the narrow frontage; this has been there for probably at least 75 years; clearly well before the zoning. I did a lot of reading about grandfathered and it can be an issue. That's all I can say." At this time Chairman Bender handed over the two copies of deeds from the 2000's and 1940's to the Board members to review. Chairman Bender officially stepped down as Chairman.

Member Blake stated she had moved to Webster in 1970 and there was no zoning at all. Member Drown stated it was a pre-existing lot to zoning to which Chairman Bender agreed.

At this time Member Drown was appointed as Acting Chairman. He stated the following: "This is a meeting of the Town of Webster Board of Adjustment, November 13, 2018. The secretary has already taken attendance. This hearing is being recorded." Member Secretary Bowe read the application as

proposed and that it had been posted November 2, 2018 in the Concord Monitor, at Town Hall and on the Town's website.

Acting Chairman Drown continued, "We will begin by hearing first from the applicant, who will present exactly what it is that they wish to do. The Board will interrupt at any time with questions for the applicant. We will then hear from anyone wishing to speak in favor of the applicant. We will then hear from anyone opposed to the application. There will be a chance for rebuttal by those opposed. Then the Board will deliberate in open session and a decision will be issued tonight. Anybody aggrieved by the decision has 30 days in which to apply to the Board for a re-hearing, stating the errors of law or errors of fact that were made; and from the Board's decision on the re-hearing, 30 days in which to appeal to the Superior Court."

At this time, Mr. Bender stated that now before the Board even considers opening up a public hearing as to a variance, they should discuss whether or not it is grandfathered or under page 13, the non-conforming lots. He stated, "That's what you should decide first. If you don't believe that it's grandfathered or the non-conforming lot, then you should go ahead with the variance or, like I just said, you ask her if she wants an attorney. That's my recommendation."

Acting Chairman Drown stated that based on the deeds Mr. Bender provided; the lot is a pre-existing lot. He added, "I believe in my own mind, and if I'm wrong someone correct me, that pre-existing lots in the past that are grandfathered we have allowed."

Member Corliss then addressed Ms. Weinstein. She asked, "The land is in your name?" to which Ms. Weinstein answered, "Yes." After a brief discussion, Ms. Weinstein informed the Board she currently had a buyer who wants to build a single family home provided the Board's decision is favorable.

Member Blake stated, "If it's already in existence/pre-existing, you have the right to do what you want. At least you're not going to put a big road in there and build 45 houses. So, that's the way I understand it all these years."

Acting Chairman Drown asked Mr. Bender, "Can we restrict the fact that she can only put one house in there?" Mr. Bender stated, "Clearly if you agree that it is grandfathered in, that's all she can do with it."

Acting Member LaRochelle asked about the minimum setback for a house. Mrs. Larson, Land Use Coordinator, stated 100' from the road for lots 5 acres and more and 50' for lots less than 5 acres.

Member Corliss stated, "From what I can see, this lot has not changed in square footage since 1940 – something. Was there a road frontage requirement prior to 2007 when it was changed to 5 acres?" Mrs. Larson stated, "When zoning came into existence in 1974, the minimum acre to build a house was 1 acre, 150 feet of frontage. So it has gone to 2 acres, 250 feet of frontage and now it's 5 acres, 250 frontage."

At this time the Board recognized Mr. David Collins of the Pillsbury Lake District. He inquired about the small lots in the Pillsbury Lake District. Mr. Bender stated those were separate. Member Corliss stated those were treated separately under zoning.

At this time the Board recognized Ms. Jen Carleton of 192 Clothespin Bridge Road. She stated, "I would love to see a house built on there. I'm a neighbor to it. Because right now we see a lot of people going out there and doing less than favorable activity and driving and a lot of beer cans. I would love to see a neighbor versus an open space that's not used properly. As long as it's a single home."

Member Corliss stated, "My question would be are we setting a precedent?"

Acting Chairman Drown answered, "No. We are not setting a precedent because it is a pre-existing lot. If it was not a pre-existing lot, and this was a subdivision, and she came in here with 30 feet and we said 'yes you can build on this with 30 feet of frontage, then we're setting a precedent.'"

Member Corliss stated, "I am reading this to mean that if you are trying to get a building permit after 2007 then you need 250 feet. And I don't read grandfathered into that."

Mr. Bender then stated, "What I was looking for in that deed was to see if there was any restriction written in the deed." Mr. Bender went on to explain about a certain deed that was written after zoning sometime in the 1980's about a lot that had only a 60 foot right of way and it was restricted in the deed the land would only be used as a cornfield; there will never be any building on that lot. He stated Ms. Weinstein's situation was different. He stated one could go back to at least 1944 and there was no restriction. He added that was even before they even thought about frontage or the lot size.

Member Corliss stated, "Personally, the way I am reading this, it pre-exists zoning; it has not been changed since zoning and it's pretty clear in Article VI that it is a vacant lot that existed prior to the enactment of zoning in Webster. But the only thing that I'm wondering is, are we setting up a precedent for something else?"

Acting Chairman Drown stated, "I don't see how we can. It pre-existed before we existed."

Acting Member LaRochelle stated, "Well, if we agree to this then anyone who owns a lot that's non-conforming, that was pre-existing zoning can do exactly what she's going to do."

Member Corliss agreed. Acting Member Drown added the Board allowed that before.

Member Corliss stated, "Guy, I think what you're saying is, because it existed prior to zoning and nothing has changed with it you consider grandfathered."

Acting Member LaRochelle stated, "I think it falls right into what the Article VI is saying."

A brief discussion ensued.

Acting Member LaRochelle quoted Article VI: "Non-conforming, vacant lots lawfully in existence prior to the enactment of this ordinance..."

Member Bowe asked Ms. Weinstein if the buyers want to subdivide. Ms. Weinstein stated they only want to put a single family home there. Acting Chairman Drown stated they would not be allowed to subdivide. He stated, "It's automatic that they cannot do anything other than build a single family home."

Acting Chairman Drown had a concern about the 30 foot width entrance with regards to the driveway regulations. It was pointed out that those regulations come under the purview of the Planning Board, not the ZBA. Mrs. Larson informed the Board the current regulations require a minimum width of 12 feet with 10 foot setbacks on either side from property lines.

Mr. Bender stated, "My feeling is since it's grandfathered, it's in, regardless of the size of the driveway. That's only my guess." A brief discussion followed about driveway regulations being strictly under the purview of the Planning Board.

Acting Chairman Drown asked if anyone wished to speak in favor – there was no response. He asked if anyone wished to speak against – there was no response.

Member Blake made a motion, “That it’s a non-conforming, pre-existing lot. How do we limit it to one house?”

Acting Chairman Drown stated, “It doesn’t matter; they can’t have more than one house on there.”

Member Blake continued her motion to accept the lot as pre-existing, non-conforming which does not require a variance.

Member Corliss seconded the motion. The motion passed unanimously: Acting Chairman Drown – in favor; Member Corliss – in favor; Member Bowe – in favor; Member Blake – in favor and Acting Member LaRochelle – in favor.

After a brief discussion, Chairman Bender resumed his Chairmanship and made a motion to accept the minutes from September 11, 2018 as written; seconded by Member Bowe and approved with one abstention – Member Drown was in attendance at that meeting.

7:38 pm Meeting adjourned.

These minutes were approved as written at the Zoning Board of Adjustment meeting on February 19, 2019.

Respectfully,

Jaye T. Bowe, ZBA Secretary

Approved as Written