

# TOWN OF WEBSTER

## ZONING BOARD OF ADJUSTMENTS

### MEETING MINUTES TUESDAY APRIL 11, 2023

The Zoning Board of Adjustments (ZBA) held a meeting on April 11, 2023. The meeting was held at Webster Town Hall; 945 Battle Street, Webster NH 03303 in the Grange Hall.

**ZBA Members present:** Chairperson Marty Bender, Normandie Blake, Robert Drown, Guy Larochelle and Barbra Corliss.

**Also, present:** Land Use Coordinator Russell Tatro, Joseph Fournier, John Fournier, Braco Djulabic, Michal Scofield and Carol Cannon.

Chairperson Bender opened the meeting at 7:05pm and Acting Secretary Barbra Corliss took attendance. Members Susan Roberts and Member Jay-Tarrazano Bowe were not in attendance. Chairperson Bender informed the Board that he wanted to re-arrange the schedule of the hearing to allow the Special Exemption hearing submitted by Joseph Fournier to go first because it was expected to be shorter. The Board agreed with Chairperson Bender.

Chairperson Bender opened the hearing for ZBA Case 23-02 by going over the procedures and rules of the hearing. He also informed Mr. Fournier of his right if he was denied to request a re-hearing within 30 days of the Board's decision. He then asked Mr. Fournier to present his application.

Mr. Fournier informed the Board that he had bought the property in 2017 to flip the house and during his research learned that he would need additional approvals from the Town to add an addition. The lot was about 6.5 acres. The House was built in the 1970's prior to zoning regulations and if the house had been built 75 feet further back there would have been no need for the special exemption. His lot had a strange shape and the house had been built in the narrow section of the lot. He had 280 feet from the front of his house to the road but minimal space on the sides. If he built the addition, he planned it would be about 26ft from the side lines extending out from the front of the house. He could not build up because the ceiling was bolted, and he could not build out back because the terrain was hilly/rock terrain. Mr. Fournier went over the proposed plans that he had submitted to the Board.

Chairperson Bender commented that he thought the house had been unoccupied for many years. Mr. Fournier confirmed that he was correct and that it had been unoccupied before his sister, the realtor, had purchased the house. Member Larochelle asked if there would be a foundation under the addition. Mr. Fournier responded that he would not be adding to the foundation but would be utilizing frost walls. Member Larochelle asked how much foliage was between the house and the abutting properties. Mr. Fournier responded that it was densely forested. Member Larochelle asked how close the nearest house was. Mr. Fournier responded that the Lux's were the closest house, and it was several hundred yards away. Member Larochelle asked if there were any other neighbors near that were near the house. Mr. Fournier responded that many of the abutting lots were unoccupied and due to the terrain, it would be unlikely for a home to be built near his property line. Coordinator Tatro provided a section of the Town's Tax Map, and the Board reviewed the abutter lots with Mr. Fournier.

Member Larochelle asked if there were no setbacks when the house was constructed. Chairperson Bender responded that he was correct, and the home had been built prior to zoning. Member Corliss asked what the distance from the house to rear line was. Mr. Fournier responded that it was about 245 feet. Member Bender asked for Clarification on whether he was asking for a variance or special exemption. Mr. Fournier responded that he wasn't sure, and he had filled out both parts of the application. The Board discussed the request and determined that Mr. Fournier needed a special exemption to build using the 25ft setback instead of the 50ft setback. Member Larochelle asked what the timeframe would be for construction. Mr. Fournier responded that it would all be determined by the price of materials.

1 Chairperson Bender informed Mr. Fournier that if the special exemption was granted, he would have two  
2 years to act, or the exemption would go away. Mr. Fournier responded that he planned to make it happen  
3 within two years.  
4

5 Chairperson Bender then opened the meeting to public comment. Coordinator Tatro stated that he had  
6 received a phone call from the Embly's that abutted the property, and they were not against the request.  
7 John Fournier, Mr. Fournier's father, commented that the unbuilt lot next to the property had a steep slope  
8 and at the bottom were wetlands. This would make it very unlikely for a house to be built near the  
9 property line. Hearing no further public comment he closed the hearing to public comment and the board  
10 began its deliberations.  
11

12 Member Drown stated that he didn't have a problem with the addition as long as it stayed outside the 25ft  
13 setback and Chairperson Bender agreed. Member Larochelle was curious about what Mr. Fournier  
14 planned to build. Chairperson Bender asked Mr. Fournier what he planned to build, and Mr. Fournier  
15 responded that he planned to build a 24ft by 24ft living space with a mud room.  
16

17 **ROLL CALL VOTE:**

18 *To approve the Special Exception for Joseph & Amber Fournier to build an addition within the 25ft*  
19 *setbacks on Map 5 Lot 84.*

20 **BARBRA CORLISS- YES**

21 **ROBERT DROWN - YES**

22 **MARTIN BENDER - YES**

23 **NORMANDIE BLAKE - YES**

24 **GUY LAROCHELLE - YES**

25 **The vote passed 5 to 0**  
26

27 Chairperson Bender moved to ZBA Case 23-01 and opened the hearing at 7:44pm. The Board then took  
28 attendance again and the result was the same. He then went over the ground rules for the hearing and  
29 informed Mr. Djulabic of his rights to ask for a re-hearing within 30 days of the Boards decision.  
30

31 Chairperson Bender asked if Mr. Djulabic was asking for permission to put in a Road. Member Corliss  
32 commented that she was also confused about what Mr. Djulabic was asking for. Mr. Djulabic said that he  
33 wanted to build a small camp on his lot at Brookfield Circle and added that he was having difficulty  
34 understanding what the Board. Member Corliss stated that her understanding was that Brookfield Circle  
35 was a paper road and the abutters owned up until the center line. Chairperson Bender agreed that it was a  
36 paper road and only existed on the original plan recorded in 1968 as part of the Pillsbury Lake  
37 Subdivision. Member Corliss's understanding after reading the Planning Board minutes was that the road  
38 did not exist. Mr. Djulabic said it did exist, and he had built it. Member Corliss asked if he had gotten  
39 Town approval to build the road. Mr. Djulabic stated that he had. Chairperson Bender stated that one of  
40 his major concerns was the ability to get fire access to the lot and pointed out that Brookfield Circle was a  
41 private Road because it had never been accepted by the Town. Member Corliss felt that a logging access  
42 that was done in 2008 did not constitute a road.  
43

44 Member Drown recalled that in the past they did not allow building on Private Roads. Chairperson  
45 Bender pointed out that the road was pre-existing and there were other private roads in the Town. He  
46 added that the owner had to know the risk of building on a Class VI and private road. Member Drown  
47 also in the past recalled that they did not allow building on Class VI roads. Chairperson Bender stated that  
48 the State Laws had changed since then. Member Larochelle brought up the letter from the Select Board  
49 stating that they had no authority to grant Mr. Djulabic the right to access his property because it is a  
50 private road.  
51

1 Member Drown asked when the policy had changed regarding building on Class VI and Private Roads.  
2 Chairperson Bender gave a brief history of how the Town had gotten the advice from the Town Council  
3 to not allow building on Class VI roads when they had reviewed a case on Gerrish Road. This then  
4 became the Town's policy. Around 2005 the States Supreme Court reviewed cases and allowed building  
5 on Class VI roads. The legislature then changed the law to allow building on Class VI and Private Roads  
6 if a waiver was signed. Member Corliss pointed out that in a recent ZBA/Planning Board training that she  
7 had learned that this waiver on applied to the property owner and visitors of the owner could still hold the  
8 Town liable for not responding. Member Drown added that they had decided somebody on Guide Board  
9 Hill Road after that time citing the policy. Chairperson Bender added that the Board made a mistake with  
10 that decision.

11  
12 Member Larochelle thought Mr. Dijulabic would need to get an easement from the neighbors to build on  
13 the lot. Chairperson Bender noticed that Mr. Scofield was in attendance, and he had a house on  
14 Brookfield Circle. He asked Mr. Schofield how he had gotten permission to build. Mr. Scofield responded  
15 that the previous owner had gotten an easement from the neighbor on the corner lot. He added that what  
16 appeared to be Brookfield Circle was his driveway and the actual location of the Road would be 20 feet  
17 further into the woods. He added that there was a letter from Mr. Dijulabic's attorney regarding the  
18 logging and clearing of access to Mr. Dijulabic's lot at Brookfield Circle. It stated that Mr. Dijulabic  
19 couldn't not be denied access, however any logging to his property would require the abutters to be  
20 compensated for the cut trees. He added that Mr. Dijulabic had pushed several of the downed trees onto  
21 the abutting lots. He added that no one was denying him access to his lot, but he had never been  
22 compensated for the logging. Mr. Dijulabic had also built access to his lot over the logging access, and it  
23 was separate from his driveway. He just wanted to make sure that the proper process was being followed.

24  
25 Mr. Dijulabic stated that he had disagreements with Mr. Schofield in the past and had to gott restraining  
26 order against him that had recently expired. He stated that no downed trees had been pushed onto the  
27 abutters lots and that he had a survey done to determine the location of Brookfield Circle. He pointed out  
28 that the Town should still have a copy of the survey. Member Larochelle stated that they did and noted  
29 that the plans did not have a surveyor's seal. He then asked if Mr. Dijulabic knew the location of the  
30 boundary markers for the Road. Mr. Dijulabic said the plan showed the locations and had been purchased  
31 from Steven Hays. The Board then reviewed the plans.

32  
33 Member Corliss thought that this would also be a road frontage problem because the road had never been  
34 built. Coordinator Tatro thought that he had seen a vote from the Town abandoning the Road.  
35 Chairperson Bender said if the Road had been abandoned or discontinued that the easement would still  
36 exist. He thought that it would be up to the Planning Board to set the standards for building a private road.  
37 Member Corliss added that this still would not address the concern of the Town's potential liability to  
38 visitors even if a waiver had been signed. Mr. Schofield asked what the liability would be if a fire started  
39 on the camp, and it spread to his property. Chairperson Bender said that Mr. Dijulabic would be liable in  
40 the case. Member Larochelle asked who would need to be satisfied for the right of way access.  
41 Chairperson Bender felt that would be a private concern. The Board then briefly discussed the location of  
42 where the road would be.

43  
44 Member Larochelle asked what the Board would recommend to Mr. Dijulabic. Chairperson Bender felt  
45 that they did not have enough answers to decide tonight and that they should continue the hearing the next  
46 month. This would give time to do further research into the matter. He also thought it would be a good  
47 idea to invite the Planning Board to the next hearing. The Board agreed and they scheduled to continue  
48 the hearing at the May 9<sup>th</sup> meeting at 7:00pm. Chairperson Bender also suggested that Mr. Dijulabic enlist  
49 the aid of an attorney because he felt this would make the process easier for both him and the Board.

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51 **MOTION:** Chairperson Martin Bender

*To adjourn the meeting at 8:56pm.*

**SECOND:** Member Corliss

**BARBRA CORLISS– YES**

**ROBERT DROWN – YES**

**MARTIN BENDER – YES**

**NORMANDIE BLAKE – YES**

**GUY LAROCHELLE – YES**

**The vote passed 5 to 0**

Respectfully,

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Chairperson Martin Bender

*Minutes taken by Russell Tatro*