

Subject to Approval

**ZONING BOARD OF APPEALS
SPECIAL MEETING MINUTES
March 3, 2021**

The Special Meeting of the Madison Zoning Board of Appeals was conducted Wednesday, March 3, 2021, at 7 p.m. by way of an online Zoom Webinar, with public participation available through a Zoom Webinar link and password, as well as through a telephone call in number, with a Zoom Webinar identification number, all publicly posted.

MEMBERS PRESENT

Chairman Ned Moore, Vice Chairman Thomas Kelty and Commissioners Jason Brown, Richard Gilbert, and William Piggott.

MEMBERS ABSENT

None.

ALTERNATES PRESENT

Dennis Crowe and Catherine Ferrante.

OTHERS PRESENT

Zoning Enforcement Officer John De Laura; Director of Planning and Economic Development David Anderson; Town Attorney Peter Gelderman.

The Special Meeting of the Madison Zoning Board of Appeals opened at approximately 7 p.m. Director of Planning and Economic Development David Anderson explained that this Special Meeting has one agenda item, discussion with the town attorney regarding rebuilding nonconforming structures; it is not a public hearing, and no comments or questions may be taken from the public.

Discussion with Town Attorney Peter Gelderman regarding rebuilding nonconforming structures.

Town Attorney Peter Gelderman opened the discussion topic regarding rebuilding nonconforming structures and stated that discussion must stay on this item, during this special meeting. In the Connecticut General Statutes Public Act 17-39 Section 8-2, this matter is addressed and relates to the demolition of nonconforming structures and states that the demolition of a nonconforming structure is not in, and of itself, an abandonment of that nonconformity. Under that statute, a property owner can now demolish that structure and replace it, as long as he replaces it where it was and keeps the nonconformity. An abandonment is a matter of intent, Mr. Gelderman stated. But intent can be inferred by actions; however demolition is not one of those actions, according to Mr. Gelderman. Once demolished, that house can be rebuilt where it was, even if it violates zoning regulations, he stated. The state legislature has carved out an exception for demolition of a structure, Mr. Gelderman stated. Commissioner Jason Brown stated that the new statute says that demolition, alone, is not considered intent to abandon the structure, but he asked, if the new structure is not in the same footprint as the original, is that intent to abandon the structure? Yes, it is, Mr. Gelderman stated, adding that zoning regulations would have to be followed, or the property owner would have to

seek a variance. There are two legal reasons for granting a variance—a legal hardship and in the absence of the hardship, a reduction of nonconformities, Mr. Gelderman stated. If a property owner, with a nonconforming structure, as to setback, wants to increase the height of the structure, and reduces the setback nonconformity, the Zoning Board of Appeals cannot say it will, therefore, grant the variance for height, because the setback nonconformity was reduced; it does not mean the Zoning Board of Appeals has to grant the variance—it is in the absence of a hardship, to grant the variance for a nonconformity. Mr. Gelderman stated that he can get cases, if anyone wants to have them. It is not a trade-off, Mr. Gelderman stated. Chairman Ned Moore asked if the nonconformity on one side is reduced, can the building be moved into another setback. Mr. Gelderman stated that a new nonconformity cannot be created. Commissioner Brown questioned the ramifications of a Zoning Board of Appeals denying a variance. In terms of a variance being denied, there have been very few cases where the Zoning Board of Appeals was overruled or reversed for denying a variance; it is very rare, Mr. Gelderman stated. The establishment of the hardship has to be very clear to win the appeal. De minimus differences are not recognized; it is the same; it has to be the same footprint; it has to be the same structure, Mr. Gelderman stated. Commissioner Richard Gilbert asked about the Zoning Board of Appeals having a homeowner who bought two lots and wanted to demolish both structures and build one gigantic new one. It might be a valid situation; it is case by case; it's apples to apples, Mr. Gelderman stated. Commissioner Catherine Ferrante asked how to judge apples to apples. Mr. Gelderman stated, assume that on the two lots, each house went 10 feet close, toward the street; both houses are demolished, and the new structure is five feet further away from the street than the two original structures. The new house is in a different location, so it is not a strict apples to apples pattern, Mr. Gelderman stated. The reduction of nonconformities is not going to be applied very often—it is an exception to the hardship; all you can do is relocate the house in the same setback, but less in the setback; they have to voluntarily reduce the size of the house and make the nonconformity smaller, Mr. Gelderman stated. A variance would be needed, if someone tore down a house, built a new one, and moved it back six feet, thus reducing the nonconformity that was originally 10 feet, according to Mr. Gelderman. A variance is not needed to demolish a house and replace it; the structure has to be in the same location, in the absence of variances, according to Mr. Gelderman. No one needs a variance to rebuild in the same location or smaller than the footprint that existed before, he stated; people have the legal right to retain the nonconformity. Once someone builds a house on a lot that's conforming, then that person has abandoned the nonconformity, according to Mr. Gelderman. When the Zoning Board of Appeals is determining whether someone has abandoned a nonconformity, it has to look at intent to abandon, and every situation is fact dependent, Mr. Gelderman stated. Someone may have demolished a structure and lived on the lot, and then when rebuilding, state that it was only put there temporarily, and it was not abandoned; the Zoning Board of Appeals has to decide, in that case, if there was intent to abandon. Mr. Gelderman gave the example of a gas station existing for years, in a location where gas stations are no longer allowed; the owner had to close the gas station to complete an environmental clean-up, which took 10 years, and then he wanted to put his gas station back, but he was told he could not; the court ruled that he could put his gas station back, because he did not abandon. Commissioner Ferrante sought clarification on the combining of the lots problem. If the two previous structures had the setback between the two houses, and that nonconformity is then in a new location—no longer between the two houses because it is now one structure, so the nonconformity is now in the front of the single building, then Mr. Gelderman stated that he would think that the reduction of nonconformities is a good argument there for achieving a variance. Mr. Gelderman stated that if anyone has any further questions, they may direct them to Mr. Anderson, who would then give the questions to him.

The Zoning Board of Appeals has a right, after a public hearing, to ask technical questions, but anything substantive has to be asked in the public hearing; typically the Zoning Board of Appeals cannot ask if the board can grant a variance in a particular case, Mr. Gelderman stated. That is the job of the Zoning Board of Appeals to decide, according to Mr. Gelderman.

ADJOURNMENT ~ The Special Meeting closed at 7:52 p.m.

Respectfully submitted,
Marlene H. Kennedy
Clerk