

ZONING BOARD OF APPEALS
Town of Lewiston 1375 Ridge Road
Lewiston, New York 14092
Thursday – December 11, 2025

Agenda- David Walker Interpretation/ Use variance 1200 Swann Road (A)

Present: Conti, Fontana, Heuck, Warnick

Abstain: Machelor

Presiding: Joseph Conti, Chairman

Pledge of Allegiance

A motion to approve the minutes of November 13, 2025, was made by Heuck, seconded by Warnick and carried.

Conti: If you have not attended a Zoning Board of Appeals meeting before, the task of the Board is to deny or grant requests to vary the Town of Lewiston Code, hence a variance request to allow or disallow a project brought to us because it cannot be built or performed as presented without a hearing to determine whether upon presentation of the details of the request the Board will grant a variance to continue the project or denial to prohibit a project as presented. Tonight, we have one variance for the Estate of David Walker an interpretation/ use variance 11200 Swann Road SBL 88.00-1-44 is there anybody here to speak for the Estate of David Ealker?

Good evening my name is Mike Dowd I am an attorney here in Town I am representing the Estate of David Walker. In addition, the Estate of David Walker I am familiar with Zoning and Planning work I am a Town attorney at the Town of Porter.

Conti: Ok.

Dowd: I am kind of familiar with what we are talking about there are a two prong request I did talk to Mr. Seaman today and I am going to ask the boards consideration to may be separate the interpretation portion of it from the use variance portion. Because I did speak to Mr. Masters about this property and the interpretation but all I got was an oral representation that he didn't think it would be a prior non-conforming use. Neither one of us have a lot of history about the property, the only person that has the history is Mr. Walker who can't help us.

Conti: At least I hope not.

Dowd: So, this property was owned by his father for many years they had a shop there I don't know that it was ever operated as a farm. The very back of the property is over grown, wooded doesn't look like there is any pasture there or orchard or anything like that. So, for many years back in the 70's David's father would keep wood in there and they had this shop if you will a good size shop and they also had like a shed storage area that was built. I do remember years ago when I was working here actually in the Town of Lewiston Bob Coulter who they all remember I believe they issues a building permit for that part of the building I haven't gone back into the records to look at it and what they were for, I know Mr. Coulter was involved. I guess the point there is after that probably its going on 30 plus years Mr. Walker would keep various pieces of equipment not farm equipment necessarily, he would keep bulldozers and a couple other things there. Operating his business and he would maintain equipment in that shop. That went on for years, and years and years without any rejection from the Town or neighbors as far as I am aware. I didn't know Mr. Walker quite well and just seemed to be his shop where he's got his equipment. So, after passing we engaged a realtor Kevi Realty they went out there for over a year, I think trying to find somebody to buy the property and anybody that come to look at it for the purpose of developing as a residential property wouldn't touch it, because of the existence of that shop and years of work on equipment no one was

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going to tackle that problem with tearing that building down. There's a pretty big berm, if you are familiar with the site there's a big berm that goes across the front of it so you can't see what's going on behind there. Suppose if I was to build a house, I would have to get rid of the berm or whatever we could not find a buyer. We did locate a buyer who wants to use the property for the exact same purpose. Maintain their own equipment not a shop that would allow assuming we get this variance we have to get a special permit that there would be no outside traffic, that there would be no customers it would just be storage maintaining a shop and further he would commit to the rear of the property that was still undeveloped. They would say that would go back or remain rural. I do think under the circumstances we've hit all the prongs the biggest one of which you are all aware of this I am sure that Mr. Seaman has told you with this use variance we need to show hardship.

Conti: That's one of the criteria yes.

Dowd: One. Probably the most important criteria. One of the criteria is keeping with the rest of the neighborhood.

Conti: No...

Dowd: And well...

Conti: It's not.

Dowd: You say no but I would suggest if you looked to the property directly west of it. There's a sizable pole barn there I think and there's some storage trailers that are back there. Across the street...

Conti: Is zoned differently.

Dowd: But across the street there an expectation an industrial area that's fairly wide directly across the street that if somebody wanted to use that for that type of purpose you could.

Conti: But that's not why that's light industrial across the street.

Dowd: Sure. But I think that same type of activity could occur in that industrial. So, I guess the point I am making is it's not that far of stretch and on top of that we have a 40-year history of this activity going on without any real objection from neighbors, without rejection from the town and now all of sudden Mr. Walker is gone it wasn't the fault of his beneficiaries his Estate so I wouldn't suggest that it's a self-imposed hardship and again being the activity remains the same once that commitment is made that it would justify a use variance under these circumstances because there's no other way to fix the problem other than let the property go quite honestly. Because we did try to market it we made those efforts and it's just no luck so...I really do believe that the use variance under the circumstance because it is a very unique circumstance justified if the Board would consider that on top of that the fact that I have to go back and do special use as seen on the interpretation portion suggesting that the building inspector was wrong that is in fact a prior non-conforming use I would go back to him and say look can you give me something in writing detailing why you think that because the Board may find the fact that it is a prior non-conforming use. Since I think this type activities been going on since at least prior to the last zoning amendments we would have to dig deep into the history to see in fact if it's a prior non-conforming use, because this activity is never ending. I mean they are keeping the lights on and so I guess my request tonight is to consider the use variance with the special conditions that I outlined and alternatively that the Board perhaps you make that decision tonight it's up to the Board would it be sensible for me to get Tim to put together a formal sort of denial or interpretation so we can compare as to what we are requesting.

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Seaman: If I may speak on that topic. I agree with attorney Dowd; it appears as if this is both an application for a Use variance as well as an interpretation since both of them are circled on the front page but there's really no evidence in here that we would consider or you could consider relative to the interpretation. Typically, what you would see is a letter or somewhere written a determination by Tim Masters the building department that has made a decision relative to that property that Mr. Dowd wants or his clients want for the Zoning Board of Appeals to reinterpret in light of the code and the laws of existing hence since we really don't have anything in writing we don't have a record to actually consider relative to the interpretation so I would suggest this Board should consent to that request it makes perfect sense to me that you consider the Use variance only tonight and table the interpretation perhaps next month there would be a letter from Mr. Masters specifically stating what his interpretation is relative to the non-conforming use position. It's a burden to put that in there before you even if it's been asked Mr. Dowd that to make a decision on that and he's only apparently rendered a verbal decision but he needs to describe for Mr. Dowd and his clients why it's a non-conforming use he needs to do that so the applicant can proceed to ask for an appeal from the Zoning Board of appeals in that regard. So, I would think that's a good idea and if you do that I would there's not many people here today, I would leave the public hearing open because it's already been noticed in the paper, you can leave it open and it will stay open until next month you wouldn't have to re-notice it in the paper.

Conti: For the interpretation.

Seaman: For the interpretation. I would probably unless this Board, this board may want to render a decision on the use variance application tonight ok and if that's the case then go ahead and do that, and then you would leave the, if necessary, you would then leave the public hearing open for next month on the interpretation. Or if you chose not to make a decision on the either of them tonight just leave the public hearing open have them, come back next month and wrap it up.

Conti: Ok.

Seaman: If that all makes sense. Ok. You certainly could consider the use variance criteria this evening.

Conti: So, I do have a question. The estimated market value of that property 121,000 they listed it for 290 ok so right off the bat it is probably going to be hard for us to find somebody to spend that kind of money over or above what the market value is.

Dowd: We couldn't get anybody to put an offer in. We did already settle on a price of 170 they dropped the price understanding that was an issue an offer was submitted for 170,000 I think 178,000 I may have put that...

Conti: Here it says 170

Dowd: So, we do have that. Anybody who looked at it for the purpose of residential had zero interest because of the cost to tear down and reclaim that property. I know something said 112 I probably used the tax assessors value which we know in today's world the assessed value for a lot of properties...

Conti: The Town assessed is forty-eight three, forty-eight three, 48,300 and that's at what percentage right now? About 100%.

Warnick: Fifty

Heuck: No, its 100%.

Conti: You have the Town assessed value on the property here and you have the estimated market value of the property.

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Dowd: Right. Which I think I didn't have a separate figure in front of me so.

Conti: Ok.

Seaman: That's actually the Town assessed value times...

Conti: I guessed that but I don't know. Right. The total acreage is...I was seeing somewhere 26-27.

Dowd: 27 frankly perhaps provide I know people don't like flag shaped lots in our communities anymore but provide access to that rear parcel and not include that and just say that could be developed into a farm or whatever. Maybe just do a carve out of the one or 2 acres that the building is located on.

Conti: As you have mentioned too there are not a lot of records that go back, I know this was done prior to the zoning laws and again there's no records to show it in black and white I talked to a couple people that were around back then and it was very contentious at times between Mr. Walker and Bob Coulter the Town inspector.

Dowd: I don't know if any of you knew Mr. Walker.

Conti: I did not.

Dowd: He and Mr. Coulter I don't know if they saw eye to eye all the time but I do believe that Mr. Coulter issued the building permits to do some of the things.

Conti: Again, that I do not know.

Dowd: That's an old man's mind.

Conti: And also, I heard that there were a lot arguments and fines put out again there's no record so I can't say ok here it is this is what happened but from what I am understanding it wasn't a very good relationship at times because of the status of the property and how it was maintained and the mess it was. Again...

Seaman: How long was Mr. Coulter how long ago was Mr. Coulter the Building inspector?

Dowd: He was there in 95.

Heuck: He was there a long time.

Seaman: How long has Tim been the Building Inspector?

Conti: I don't have those answers I have no idea.

Seaman: Tim would be able to comment on whether or not there's been on going code violations in the last 20 years anyhow.

Talking

Conti: I have no record of these. Just like you have no record of the stuff that is here we don't either unfortunately and from what I understand they didn't keep a lot of records or keep them for very long back then unlike today where we try to keep things and we put them in the computer and everything else after a while things get kind of pushed along/ pushed aside unfortunately. I mean Bob Coulter...

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Seaman: I guess my point is...

Heuck: I worked with him.

Seaman: The relationship with Mr. Coulter was so long ago but Tim Masters has been here for 20 years. That's not an...period of time for us to consider whether or not a use has been used for quite a while.

Conti: But as you know, unless there's been complaints you don't get to everything you don't see it especially the berm so I don't know what went on behind that at all but again this is all hear say. We're going by stuff to say that this is what I heard this is what you heard unless you have something here right, I can't sit there and say hey this happened because I don't have...

Seaman: Truthfully some of that factual investigation that we're talking about is a little bit more applicable probably to the interpretation and the argument that it's a prior non-conforming use and Mr. Masters should make...this board the next meeting and at least in a writing to explain his positions if not actually come here and put some record on...put some testimony on the record to that effect would be important.

Dowd: And obviously that's on me I probably should have said please give us something in writing. I am happy to reach out to him and ask him to supplement his record. All though as an advocate I think it would qualify for the use variance just based on the history of the property.

Conti: That's one part of it and you're correct but there's other parts of it that I don't necessarily agree with as far as character of the neighborhood. I mean you got residential house on both sides of it and you got this piece of property in the middle that's just got storage. I know of numerous people in the town that have come before the board to say hey I want to buy this piece of land but put storage units on it. We turned them down because of the change in a residential zone and you're not allowed to do that. This happened to sneak through and for whatever reason I don't know. That's where we are at, at this point.

Dowd: I understand.

Conti: Questions from the Board?

Warnick: No from me.

Conti: Lou?

Fontana: No.

Conti: Gary?

Heuck: I remember when I was on the Planning Board and we had a discussion about that piece of property about getting a special use permit but it never went anywhere. I think it got buried. One of those things way back then but yeah, I remember it having difficulty with that specific piece of property as to why wasn't it charged with violations excreta so.

Dowd: It's interesting that there was discussion about a special use permit because I can guarantee you, we are not going any further. In fact, entertain our request it would be accompanied with an application for a special permit that we have all the controls we need to make sure it doesn't expand beyond what's happening there. I would be certain of that.

Conti: How many buildings are there right now?

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Dowd: It's one big shop and then there's like a lean-to sort of a roof that extends off one side of the building where he has storage out weather, and then large 20-foot overhead doors that something could be brought inside to work on.

Conti: In that one building.

Dowd: In that one building yes. And so, you know that the person that's thinking about putting this application in and he has another piece of property in the Town of Lewiston where he stores equipment and he worked with Mr. Masters in the past to make sure the equipment where its stored and that sort of thing. Point being if you would consider it if the guy that's talking about buying the property he takes care of his property.

Conti: Ok. Gary anymore questions?

Heuck: No.

Conti: Ok you can have a seat. Is there anybody else here that would like to speak for or against this property? Come up to microphone and state your name and address.

Hi my name is Jeff I am the executor of the Duckett Estate of 1224 Swann Road. The property that is right beside the Walker property. I have been involved with the property for 50 years. I've had many summers there and there's been numerous issues with that property over the years. My grandparents fought tooth and nail when it was originally purchased and that building went up. I know there was some issues and then a berm went up. So that kind of made everything go away. I think it put a halt on everything that was going on, on that property at that time. Our property is a sanctuary its gorgeous back there. I just spent 4 weeks cutting the entire property and reconnected with it. Me and my sister are the co executors and we're planning on keeping the property. But we don't want...I know what can happen when things get zoned differently right. So, we are ok with what the existing property is being used for but giving an expansion on that we would be really against it.

Conti: And you are at 1224.

Warnick: Just to the right of it.

Conti: Ok anything else you'd like to say?

Duckett: No. That will do it. I appreciate it.

Conti: Any question?

Duckett: Thanks.

Conti: Thank you! Anyone else like to speak? I don't want to close the meeting yet. I'd get yelled at. Discussion from the Board? Gary?

Heuck: Too many unanswered questions. I wish Mr. (Mc) Master was here. It would help us. I think the best thing to do is to actually keep the meeting open and get some...Mr. (Mc) Master here or either write a letter or to give us some more input.

Conti: Ok.

Warnick: I agree because we all going a little bit on the hearsay. We are going a little bit on hearsay you talk to him.

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Talking

Conti: Ok so I'd like to leave meeting open and to table it so until January. Meeting January 8th at that point I'd like a letter or have Tim Masters be here at least have a letter on the interpretation as to why and to your concern also there will be conditions if we get to that point, again if we get to that point and again, I am not saying we are going to get there at all. But if we get to that point, it will be conditioned that it's not going to change its going to stay exactly the way it is, but we are not even at that point yet.

Dowd: I understand. We would limit we would shrink the activity to satisfy one of neighbors.

Duckett: The only problem is sir is that it would be right at the front of the property closest to our home and to Swann Road. So yeah, it would be.

Dowd: Why don't I talk to you, I'll talk to you afterwards because it's nothing against the Board but I know you want the neighbors to be happy. We could probably push everything else to the other side.

Conti: But that would move the building.

Talking

Conti: Right now, we are not there we're not even close. Alright Gary made a motion.

Warnick: I'll second it.

Conti: Dave seconded it. All in favor.

Members: AYE.

Conti: Opposed? We don't have to pull the board, do we?

Seaman: No. May I make one quick comment.

Conti: Why sure.

Seaman: This is my last meeting with you guys I will not be serving as you attorney after the New Year So this particular case will be moving over to another attorney. So, the only thing that I want to comment on is when you guys ultimately make you decision make sure that you explicitly go through the 4 criteria's listed as a topic and discuss it. Then do the next one and discuss it. Whether you decide one way or another you have a good record because your record will be up held. If you don't do those things the record very likely would one way or another will not be up held.

Conti: Ok.

Seaman: That's case for really any time you guys make a decision. Reasonable consider all the considerations the judge is almost always going to up hold those. So that will hopefully be ringing in your ears next month when I am not here. But thank you for letting me serve as your attorney for I don't what's it been 5 years.

Conti: And on behalf of the Board, we want to thank you for your years of helping and expertise and guidance in our way here. Who knows you might be back again one day.

Seaman: Yeah maybe.

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Fontana: And its John's meeting

Conti: And it's John Jacoby's last meeting as our Town Board Liaison. So, thank you John for your years of service. I am not sure who's talking your place at this point.

Jacoby: Well, I don't know if they are standing in line or not.

Conti: You know what I quit.

Laughing

Conti: Again, Tom thank you, John Thank you for your years.

Seaman: Thank you!

Conti: Maybe you will be back again Tom don't worry.

Seaman: Maybe.

Conti: You never know. Any other business for tonight. I'd like to make a motion to close.

Warnick: Second.

Conti: Moved. All in favor

Members: AYE.

Respectfully submitted by,



Lisa Wisniewski
Building Dept Clerk



Joseph Conti
Chairman

