

**Town of Webster Zoning Board of Appeals
Meeting Minutes
Town Hall – Basement Conference Room
January 16, 2018**

Present: Board Members: Chairman Mathew Fitton, Vice Jason Piader; Members Dan Cournoyer, Don Malo, Mark Mason, and Associate Member Mike Fafard. Also Present: Special Town Counsel Clement Brown; and Ann Morgan, Town Planner

1. Call to Order

Chairman Fitton called the meeting to order at 6:02 p.m. He announced that agenda items would be taken out of order.

3. Meeting Minutes

No minutes were available for review. This item was tabled to the next meeting.

5. Staff Report

Ms. Morgan reviewed the current work load in the office noting the number of applications being processed not only for the Zoning Board but for the Planning Board as well. She noted that the budget structure for the department is under review and it is hoped that administrative support in the office would be available for the upcoming year.

4. Discussion Items

- a. Potential Condominium Project – Lakeview Road – Janet Blanchette, J&D Engineering for the Property Owner, Webster Ventures, LLC

Ms. Morgan introduced the agenda item noting that the request to appear before the Board was to start an informal discussion and review of a conceptual plan. The project has been presented to the senior land use and public safety staff in a recent Development Team meeting at which time Ms. Blanchette had requested to be schedule on a Board agenda. Ms. Morgan reviewed the permitting context noting that the proposed dwelling units are in a Lake Residential zoning district and that the proposed structures are classified a multi-family units as more than one dwelling unit would be located in each structure. Multi-family units are not allowed in the Lake Residential zoning district which means the applicant would be required to apply for a Special Permit from the Zoning Board of Appeals and apply for a Site Plan Approval by the Planning Board.

Attorney Joshua Lee Smith of Bowditch and Dewey presented the concept plan to the Board noting that he was representing Webster Ventures LLC who owns the property along with the abutting property, the Indian Ranch complex. The proposed project includes nine condo units in three structures with frontage on Lakeview Road – 5 units in one structure which fronts the lake and two units each each for two structures across the road. He noted that these would be marketed as high end units.

Janet Blanchette of J&D Engineering presented the conceptual site plan. Each unit would be approximately 2,500 square feet with two bedrooms each. The preferred access to the units would be through the Indian Ranch complex and not along Lakeview Road. She stated that the structures and lot coverage met the requirements of the Zoning By-law. She added that the units would be marketed to older, empty nester and snowbirds.

Ms. Blanchette stated it was their intention to improve Lakeview Road along the frontage of the project area and the unit owners would have access through the Indian Ranch complex. She recognized that the existing road was in was not good condition. Ms. Morgan noted that staff review had identified this

proposal as problematic as there is no way to guarantee such a requirement of the unit owners. It was noted that Lakeview Road is private and that the Zoning By-Law requires frontage along a public way or a private way that was approved by the Town as a valid subdivision. Ms. Morgan noted that an additional staff concern was the proposed extension of the existing water service on the Indian Ranch complex to provide service connections to the new residential units. The project proponents have undertaken a water modelling study to see if the various water needs of the Indian Ranch complex would not be compromised by adding 9 residential units to the system. No information about those tests have been available to Town staff.

Ms. Blanchette reviewed the zoning noting that the project is located in the Lake Residential and Lake Watershed Protection zoning district. There has been some procedural disagreement between the project team and Town staff regarding the requirements of the permitting needed to advance the project. It is understood that the first step is to present a Special Permit application to the Zoning Board of Appeals for the use. The language of the Zoning By-law requires that the Planning Board submit their recommendation within 30 days of application to the ZBA to include as part of their deliberation on the Special Permit. They understand that if the Special Permit is granted that they will need to submit a fully engineered site plan to the Planning Board as the second step in permitting. A disagreement has arisen as to whether they need to submit a fully engineered site plan as part of the Special Permit application. It is the project team's interpretation that a conceptual plan can be submitted for Planning Board review as part of the Special Permit application. She noted that such a plan is expensive and that her client preferred to wait to spend that money only if the Special Permit was granted.

Mr. Piader asked if the Special Permit was needed for the condos to which Ms. Blanchette responded yes. Ms. Morgan noted that condominiums were a form of ownership and not land use. Any structure that contains more than one dwelling unit is considered a multi-family structure which is the use that would be the subject of the Special Permit application.

Mr. Malo noted that the Board may not have all the necessary information to consider the full scope of a Special Permit application if a fully engineered site plan is not submitted for review at the time of submittal. Ms. Blanchette noted that such a plan is very expensive and that if the use was granted by the ZBA then a fully engineered plan would be submitted to the Planning Board as part of the next phase of permitting. She stated that it was not their intent to circumvent the permitting process but to take a phased approach to the development of engineering documents. Mr. Cournoyer stated that submitting a fully engineered site plan as part of the Special Permit application was not vital since the role of the Zoning Board of Appeals is to consider the use and that the Planning Board would be responsible for the site plan details at a later time.

Mr. Fitton opened the floor for public comment.

Faith Rubin, 5 & 9 Lakeview Road, noted that more condos will mean more boat slips and more boats on the lake which would have negative impacts on the immediate neighborhood which was already very dense. She asked that the Board please take into consideration all the potential impacts to the surrounding residential neighborhood if this project were to come formally before the Board.

Elizabeth Luchina, 31 South Shore Road, asked if new boat slips were proposed. Ms. Blanchette stated that they would not be part of this application but that likely, yes.

2. Public Hearing

- a. Appeal – Michael Cronan, 18 Robinson Street (Petitioner) – continued from December 5, 2017.

Attorney Henry Lane stated that he was representing the Cronans in this matter but that he had not been present at the previous meeting. Attorney Lane reviewed the facts as they pertain to the Zoning By-Law and case law which he later submitted in writing on behalf of his clients. Three issues are specifically addressed in this appeal – 1) the Vinton's fence which extends along the side property line to the sidewalk which has privacy slats - the Cronans believe this poses a public safety hazard and reduced visibility at the end of the driveway; 2) the plywood extensions which have been attached to the existing fence – they believe that these extensions violate the allowable height of a fence as well as presenting a safety hazard; and 3) the size of the newly reconstructed garage. Attorney Lane noted that the Vinton's had a pre-existing, non-conforming garage that they wanted to rebuild and expand. The Vinton's applied for and were denied a variance by the Zoning Board of Appeals on August 10, 2017 for that portion of the new garage footprint that violated the side yard setback. The Vinton's proceeded to build the new garage minus that area which was denied by the Zoning Board of Appeals. Mr. Lane presented an argument that the total square footage of the new structure is in violation of the Zoning By-Law as it relates to expansion of a pre-existing, non-conforming structure. During the public hearing, Attorney Lane stated that the Cronans were seeking relief that included taking down the fence, requiring that the Building Commissioner revoke the building permit for the garage and require that the structure be torn down and removed.

Mr. Piader noted that the letter from the Building Commissioner dated September 27th outlined his reasons for declining enforcement action. He asked if the Building Commissioner made a decision on the garage as the letter dated September 27th which does not refer to the garage. Mr. Lane stated that the appeal is intended to address the Building Commissioner's broad refusal to address all issues identified in the Cronan's request for enforcement dated September 11th.

Special Town Counsel for the Town, Clement Brown, reviewed the procedural history of the appeal filed by the Cronans including all timelines required under State law which details the framework for a timely appeal. He noted that there were multiple issues to be addressed in this appeal that the timelines needed more clarification. Mr. Lane stated his opinion, that after the review of the record, that the building permit for the garage was improvidently granted and that the Cronans acted in a timely manner in filing their complaint and their appeal.

Mr. Brown noted that the fence and the garage complaints were two separate matters and asked when the fence was constructed. Kelly Cronan stated that the fence was constructed on September 29th and that the fencing company just showed up without any notice and placed the fence in the middle of the shared driveway between her house and the Vintons. She stated that she called the Building Commissioner, Mr. Tetreault, who did come out to the property right away. He explained to her that the fence he requires a one foot offset from the property line and, after review on site, that the fence was installed correctly. Mr. Fitton asked when this took place and Ms. Cronan stated the complaint and inspection took place in 2016. She went on explain how the shared driveway had been a source of conflict between the two property owners and over the past couple of years she had made several calls to the Building Commissioner and the Police Department to review a number of issues relating to the fence specifically the safety concerns. She stated that Mr. Tetreault informed her that the conflicts surrounding the shared driveway was a civil matter unrelated to zoning. Ms. Cronan further stated that Mr. Tetreault had told her to "be careful" and expressed concerns that he was being pressured by unknown others to step away from the problems that she reports.

Attorney Brown asked about the plywood extensions to the fence that were cited as part of the appeal. Ms. Cronan stated that the extensions were added on July 27th. She said that they are 4 feet high and 20 feet long and precariously attached to the top of the existing fence. She noted that these several of

the extensions have fallen onto her property and that others were at risk for doing so as well which was a safety concern.

Attorney Donna Pollack stated that she was representing the Vintons. She reviewed the Vinton's positions on the various matters outlined by Attorney Lane. The plywood extensions on the fence were installed because the Cronans had positioned exterior cameras from their property to face the Vinton's backyard which they felt was an invasion of their privacy. The Cronans had taken the issue of the fence to court requesting an injunction which the court refused to grant. The Vintons believe that they have followed the proper process by applying for a variance for the additional square footage which the Zoning Board of Appeals denied. They believe their rebuilt garage is in compliance with the Zoning By-Law. It was noted that the Vinton's changed their plans the day after the variance was denied showing a new footprint minus the portion denied. These plans were submitted to the Building Commissioner on August 14th.

Attorney Brown reviewed previous court actions taken by the Cronans against the Town and the Vintons in relation to this matter. It was noted that one case in August was dismissed with no action taken against the Town and that another case was scheduled in September, also dismissed. He further tried to ascertain the various dates associated with the filing of plans and official complaints to the Town to better identify the timeliness of the appeal.

Attorney Pollack addressed the issue of whether the new structure was similar to the surrounding neighborhood. She noted that there was a garage directly across the street that was much larger. She stated that there was no documentation to prove the claim that the Vintons violated procedure which was evidenced by the dismissal of the two previous court cases. Attorney Lane stated that he was not as familiar with the file as he had just taken on the case but after review of the material, and in particular the plan sets filed with the Building Department, that there was a problem. Attorney Pollack stated that the day after the Zoning Board denied the variance for side yard setback on a portion of the proposed structure that the plan set on file with the Building Department were finalized. Mr. Richard Vinton stated that he had submitted a preliminary plan set with the understanding that if the variance was denied that he would have to revise them which he did the day after the Board's denial.

Mr. Michael Cronan, Sr. stated that he objected to the Vinton's earlier claim that the cameras on their property facing the Vinton property were being used to photograph the Vinton yard and family. He stated that the cameras on his property were being used as surveillance for his property and that all cameras were pointed onto his property. He further stated that he complained about the plywood extensions on the fence between the two properties and that the Building Commissioner had told him that he thought they were dangerous. He then stated that slats installed into the fence that runs along down the driveway were a problem in that they block his view when trying to back out of his driveway and safely enter onto Robinson Street.

Mr. Fitton asked if the Town had an official fence viewer. Mr. Malo thought that once there was one but was unsure if there is one today.

Mr. Cronan, Sr. stated his frustration that these are major issues for his family that he believes that nothing is being done to resolve the problems. He stated his opinion that the Building Commissioner was not doing his job. He disagreed with Attorney Pollack's assessment that the new structure was connected to the existing carport and that the roof of such was used to connect it to the house. He stated the height of the new garage and additional structure were not in keeping with the neighborhood and that they were much higher than the original garage which he felt was a violation. Mr. Cronan stated

that there is no large garage across the street, that it is a church parking lot. His concerns about the plywood extensions on the fence, some of which are not leaning from the fence onto the Vinton's garage, included the fact that snow will slide from the garage roof onto the plywood and then on to his property. He has complained repeatedly to the Building Commissioner and is frustrated that nothing has been done.

Attorney Pollack submitted some photos of the fence to the Board. She noted that the State Building Inspector, Adele Reynolds, had accompanied the Building Commissioner on one of his site visits after one of the complaints about the fence. Ms. Reynolds had told the Vintons that she could find no violation.

Mr. Vinton contested Mr. Cronan Sr.'s statement that about the size of other garages in the area. He noted cited several examples in the vicinity such as 20 Robinson Street and on the street behind his property. He stated that the plywood extensions had been installed during the demolition phase and that only a portion of those extensions now remain to block the cameras installed by the Cronans which he contends are facing his property. Mr. Cronan Sr. stated that the garage at 20 Robinson Street was a three car garage but that it was not as high as the Vintons new garage and additional structure which he sees as all garage. And he wanted to know why the remaining plywood extensions had not been removed after construction was complete. Michael Cronan Jr. stated that his cameras face the front of his not, not the Vintons, and that the Vintons had bragged to him that they, too, were pointing cameras at the Cronans house. Mr. Cronan Jr. stated his opinion that Mr. Vinton was being dishonest that everything that he told the Board was a lie. Madeline Vinton, 16 Robinson Street, stated that she had filed a complaint with the police about the cameras pointing at her house. The police came out on February 6, 2017 to assess the situation and found her claims to be true. Mrs. Vinton noted that she had a police report confirming this.

After no further comment from the parties involved or the audience, Chairman Fitton asked the Board to determine the next steps. Attorney Brown stated his belief that the Board needed clarification on the various timelines associated with filing of documents and complaints to assess the timeliness of the appeal. Mr. Piader, Mr. Cournoyer and Mr. Malo agreed. Mr. Fitton stated that he would like clarification from the Building Commissioner. Mr. Mason stated that he felt that he had enough information. Attorney Brown noted that if the Board was going to seek additional information that the hearing should remain open and be continued.

Mr. Cronan Sr. stated again his belief that the Building Commissioner had not been doing his job. Chairman Fitton stated the Building Commissioner's job performance was not the issue at hand. Job performance should be addressed with Town Administrator. The appeal at hand was to address the specific complaint filed. Mr. Cronan Sr. stated that the northeast corner of the new constructed structure as not on any foundation for footing. Chairman Fitton reiterated that the Board's responsibility is to address the zoning issues. Attorney Brown noted that such a matter is would have to be addressed as a building code violation. Ms. Cronan voices her concerns about the location of the fence where it meets the sidewalk noting the privacy slats were a public safety hazard for vehicles leaving her property and pedestrians, particularly the children from St. Joseph school who walk along that sidewalk every school day.

Motion to continue the public hearing to February 13, 2018 at 6:00 p.m. in the Basement Conference Room of the Webster Town Hall made by Mr. Cournoyer, seconded by Mr. Piader. Motion passed unanimously, 5-0.

Chairman Fitton directed staff to write and submit a letter to Building Commissioner Ted Tetreault and send a copy to the Town Administrator requesting that Mr. Tetreault attend the next meeting. Mr. Piader further

requested that the Deputy Mike Shaw be requested to attend in the same letter for the purposes of addressing the letter sent and to keep the peace.

5. **Any other items which may lawfully come before the Board** – None.

6. **Next Meeting Date**- February 13, 2018, 6:00 p.m. in the Basement Conference Room of the Webster Town Hall.

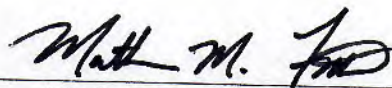
7. Adjournment

Chairman Fitton thanks Special Town Counsel Clem Brown for attending the meeting and providing guidance to the Board. Motion to adjourn the meeting made by Mr. Piader, seconded by Mr. Malo. Motion passed unanimously. The meeting was adjourned at 7:37 p.m.

EXHIBITS

- Public Hearing 2A: Michael Cronan (Petitioner) – Appeal – all documentation pertaining to this agenda item is on file in the Planning Department.
- Discussion Item 4A: Lakeview Condominium Conceptual Plan Prepared for Webster Ventures, LLC; prepared by J&D Civil Engineers, LLC; dated October 2017; 8 1/2" x 11", color; 1 page.

Minutes Approved:



Mathew Fitton, Chairman

5/1/18

Date

RECEIVED
2018 MAY - 2 A 10:29
TOWN CLERK'S OFFICE