

**Town of Webster Zoning Board of Appeals
Meeting Minutes
Town Hall – Basement Conference Room
February 13, 2018**

Present: Board Members: Chairman Mathew Fitton, Members Dan Cournoyer, Don Malo, Mark Mason, and Associate Member Mike Fafard. Also Present: Special Town Counsel Clement Brown, Building Commissioner Ted Tetreault, Deputy Police Chief Michael Shaw, and Ann Morgan, Town Planner

1. Call to Order

Chairman Fitton called the meeting to order at 6:00 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.

4. Staff Report

Ms. Morgan reviewed the ongoing effort to develop website content on the Board's page. She reviewed some of the features which now allow the public to view application information. There is a new feature that also allows the public and the Board members to view the agenda as it develops. At the request of the Board, Ms. Morgan was instructed to provide an update on the appeal of the 18 Bates Point Road appeal in court.

It was noted that Vice Chairman Piader had informed the Board that he would not be attending this meeting and the Member Don Malo was not present at the moment when the posted hearing was ready to be continued. It was noted that Mr. Malo was in transit and expected any moment.

Motion to take a 10 minute from recess to allow time for Mr. Malo to arrive made by Mr. Fitton, seconded by Mr. Cournoyer. Motion passed unanimously, 3-0.

The meeting reconvened at 6:13 p.m. after the arrival of Mr. Malo.

Motion to appoint Associate Member Mr. Fafard as a voting member for Cronan Appeal made by Mr. Malo, seconded by Mr. Cournoyer. Motion passed unanimously, 4-0.

2. Public Hearing

a. Appeal – Michael Cronan, 18 Robinson Street (Petitioner) – continued from January 16, 2018.

Chairman Fitton requested that Building Commissioner Tetreault provide the Board an overview of filings and his actions. Mr. Tetreault reviewed the following:

- a) Permitting, location and public safety issues associated with the fence. Mr. Tetreault reviewed the Town requirements for installing a fence. The Town does require a permit and one was issued to the Vinton's for the fence in question. He stated that fences can be put on a property line but he requires that they be placed one foot off the line to allow for any problems that may occur during installation. Property lines are determined by survey. He noted that an as built plan is not required for a fence. The privacy slats do not violate any code. As noted in his letter, he did not find that the location or the privacy slats presented a public safety hazard and, therefore, a problem did not exist.

- b) Safety and height issues associated with the plywood extensions on portions of the fence. Mr. Cronan stated that the extensions were close to his property line and submitted photos to illustrate his point. He stated his belief that these were not properly installed, that they impeded his view and were a safety hazard. Mr. Tetreault noted that anything below six feet was allowed to be installed by right and that the plywood extensions on top of portions of the fence exceed what is allowed. He stated that the plywood was not considered a part of the permanent structure. It was his understanding that they were installed by the Vinton's for privacy, a situation that he believed was a civil matter and not a building code issue. It was noted that a permit had been issued for the fence itself and that the installation was done properly. It was noted that the permit had been issued in 2016.
- c) The garage. The Vinton's sought to rebuild and expand a pre-existing, non-conforming garage. He reviewed the code with regards to time lines and allowances set out for rebuilding in place which the Vinton's did not violate. The area proposed for expansion into the back yard was determined to be in violation of the side yard setback and was denied, thereby triggering a variance application. The Zoning Board of Appeals denied that portion of the expanded building which encroached into the side yard setback. This required the Vinton's to revise their plans to remove that portion of the building from their permit request which they submitted on August 14, 2018. The Vintons poured a concrete pad in the area that could not be built upon. The Cronans stated that they believe the height of the new structure to be excessive and in violation of the Zoning By-law. Mr. Tetreault reviewed those requirements and stated that he found no violation.
- d) Inspections / site visits. Mr. Tetreault stated that he had been to the properties multiple times at the request of both parties over the course of the past two years. On each of those visits he was accompanied by others such as the Board of Health Agent or the State Building Inspector who visited the site once and found no violations. Ms. Cronan stated that Mr. Tetreault had been responsive to her requests to visit the site when asked.

At the Board's request, Mr. Tetreault reviewed the nature of the building plans as they relate to the zoning code's definition of pre-existing, non-conforming. Mr. Tetreault noted that when the plans were submitted they showed:

- a) The demolition of the existing garage which was pre-existing, non-conforming. The non-conformity is due to the old garage's encroachment into side yard setback. Mr. Tetreault explained that the code allows for the building of a new structure on the existing footprint within two years. The proposed plans showed that a slightly smaller garage on that existing footprint.
- b) The plans also showed that the Vintons were proposed and extension directly behind the footprint of the old garage. Mr. Tetreault denied this portion of the new structure noting that the area was an extension and expansion of the existing non-conformity and did not have protection under the pre-existing, non-conforming rule. He told the Vinton's that they would need a variance as that extension was in violation of the side yard setback requirements. That variance request was denied by the Zoning Board of Appeals which required the Vintons to remove that portion of the footprint from their plans which they did.
- c) Additional square footage adjacent to the newly proposed garage on the pre-existing, non-conforming foundation shown on the plan set conformed to all dimensional requirements and was not deemed to be in violation of the zoning code.

Mr. Mason asked if the newly constructed garage on the pre-existing, non-conforming portion of the lot was built in accordance with all requirements to which Mr. Tetreault stated yes.

Mr. Fitton thanked Mr. Tetreault and asked Deputy Shaw to review the letter he submitted into the record regarding his review of the public safety issues. Deputy Shaw stated that at the request of the Building Commissioner, he had gone out to the site to assess the complaints regarding potential public safety hazards associated with the fence along the driveway. He noted that the fence did not encroach onto the sidewalk, that it was installed on private property. After viewing the fence with the privacy slats he determined that no public safety issues for pedestrians on the sidewalk or vehicles exiting the Cronan property were present. Mr. Fafard stated that he had driven by the property view the fence and could not find any evidence of a public safety hazard.

Attorney Lane addressed the Board stating that the entire footprint as submitted violated the Town's Zoning By-law's rule regarding the 25% expansion of pre-existing, non-conforming structures. He stated that the entire footprint, excluding that area denied by the Zoning Board of Appeals in an earlier variance case, exceeded 25%, a situation that should have triggered a variance process in accordance with the Zoning Board of Appeals. Mr. Tetreault disagreed noting that the Vintons were only proposing a garage on the old garage footprint that the other floor area was in conformance with the code and that no violation of the 25% rule was present. He stated that the Building Commissioner was wrong on that matter, that the building should come down and be made to conform, and that he was wrong on his determinations regarding the fence which should be taken down.

Kelly Cronan, 18 Robinson Street, stated that she had a conversation with the Building Commissioner when the fence was installed and she filed a complaint. She noted that he came out to the site within 10 minutes of her calling the office and stated that he knew about the fence. She claims that he told her that he believed that the fence, style and privacy slats, were going to be a public safety hazard to children and animals. She also stated that he told her to notify him if the Cronans decided to build their own driveway. She stated that Mr. Tetreault said that he would speak with the Vintons and the police but that she never heard back from him. Ms. Cronan noted that, in the past, Mr. Tetreault had been responsive to her requests for site visits relating to complaints and that she had faith that he would follow through. She noted the Adele Reynolds, the State Building Inspector, had accompanied Mr. Tetreault on one of his site visits and noted that the plywood extensions violated the state building code which only allows an 8 foot high fence by right. The plywood extensions are four feet on top of the existing fence which is six feet high which creates a violation. The Vintons would need a building permit to have a ten foot high fence which Ms. Reynolds recommended. Ms. Reynolds asked if permits were issued for the other work to which the answer was yes. When asked about the types of recourse the Cronans had, Ms. Reynolds stated the Cronans could call her.

Mr. Cronan Sr. stated that he objected to comments made by Mrs. Madeline Vinton at during the January 16th public hearing session regarding his cameras. He submitted photos to illustrate his point noting that none of the cameras are facing the Vinton's back yard. He noted that his family had lived in that house for over 7 years and that he took offense to Mrs. Vinton's claim that he was recording her children as they play in their back yard.

Chairman Fitton was that Attorney Brown provide the Board with his assessment of the proceedings thus far. Mr. Brown stated that the Board was responsible for the final decision and that he was acting in a purely advisory role. The Board should have a clear understanding of the chain of events as they relate to timely filings in accordance with the law. Chairman Fitton noted that Building Commissioner Tetreault had been issued prior to the variance proceedings which denied a portion of the footprint submitted to the Building Department. Attorney Lane noted that the building permit had been issued on June 22nd and that the allowable footprint was altered by the denial of the variance and that no

revised plan set had been submitted. He stated that the new structure was not built in accordance with the permit issued and therefore not valid. Mr. Tetreault.

Mr. Malo questioned Mr. Tetreault on the matter wanting to know what was submitted after the Board denied the variance request which reduced the amount of allowable footprint to be constructed. Mr. Tetreault noted that the Vintons did not submit a revised plan set but rather the disallowed portion of the foot print was not built.

Attorney Brown noted that the Board had several issues that required action as part of their decision making process – the building expansion, to issues relating to the fence and height of the new structure which the Cronans object to as not being in keeping with the surrounding neighborhood.

Chairman Fitton asked Mr. Tetreault if a building permit is required for a fence that is allowed by right. Mr. Tetreault noted that he does require a permit for fences and that he requires a one foot offset from the property line to ensure that there is no encroachment on the abutting property if issues arise during installation. This is not required by State or local law. Mr. Mason asked then why does he require a permit to which Mr. Tetreault responded that it was good practice and a formality. Mr. Tetreault submitted a copy of the building permit for the Vintons fence which was issued in 2016. When asked what is required for submittal to request a building permit for fence, Mr. Tetreault responded that applicants need to show a plot plan with the proposed fence location. Mr. Fafard asked about the complaint filed after the fence was constructed and if an as built plan was required and reviewed. Mr. Tetreault stated that he was the Town's fence viewer, that he did inspect the installed fence and found no problems, and that, no, an as-built plan is not required. Mr. Malo noted that the complaint in 2016 appeared to be handled in a timely manner, no appeal was filed, and that it was 2 years later.

The Board discussed its options with Mr. Fafard suggesting a site visit for the members. Attorney Brown noted reviewed the requirements of site visits stating that the Board would need permission from both parties to enter on their property, that Board could only observe, ask questions of the property owners, and that there was to be no discussion or deliberation amongst the members which would be a violation of the open meeting law. The law allows for site visits without a posted agenda under the parameters outlined. Ms. Cronan stated that she wanted someone from her family home at the time of any scheduled site visit. Attorney Pollack stated that her clients, the Vintons, agree to a site visit to facilitate the timely closure of the matter. The Board discussed potential dates and times for a site visit.

Mr. Cronan Sr. stated that he wanted the Board to look closely to the privacy slats in the fence located along the driveway. He agreed that, yes, you can see through them but that visibility is compromised, especially at night.

Motion to close the public hearing made by Mr. Cournoyer. Motion failed due to lack of a second. Mr. Cournyyer withdrew his motion.

Motion for the Board to conduct a site visit on February 17, 2018 at 1:00 p.m. made by Mr. Fafard, seconded by Mr. Malo.

Discussion: Mr. Mason stated his belief that there was enough information submitted to the record and during public hearing to make a decision without a site visit. The Board had heard from all the necessary Town officials, none of which had found any violations or public safety issues.

Chairman Fitton asked the Vintons and the Cronans if they would agree to site visit on that that date and time to which they both agreed. Chairman Fitton asked Deputy Shaw if he could make an officer available for the site visit as well to which he agreed. Ms. Cronan asked why that was necessary to which Chairman Fitton replied that it was advisable for keeping the peace. Attorney Brown reminded the Board of site visit protocol reminding them no one is go on either property without explicit permission of the property owner and that the individual property owners do not enter each other's property without permission. Mr. Malo stated that he believed that a site visit would be helpful.

Vote: By roll call vote the Board, the motion for the Board to conduct a site visit on February 17, 2018 at 1:00 p.m. was passed by majority vote of 3 to 2 (Malo – AYE; Fafard - AYE; Cournoyer – NAY; Mason – NAY; Fitton – AYE).

Motion to continue the public hearing to February 27, 2018 at 6:00 p.m. in the Basement Conference Room of the Webster Town Hall made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously, 5-0.

Chairman Fitton directed requested that Attorney Brown, Building Commissioner Tetreault and Deputy Shaw attend the next meeting. All three responded that they would attend.

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

6. **Next Meeting Date**- February 27, 2018, 6:00 p.m. in the Basement Conference Room of the Webster Town Hall.

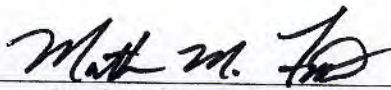
7. Adjournment

Motion to adjourn the meeting made by Mr. Malo, seconded by Mr. Cournoyer. Motion passed unanimously. The meeting was adjourned at 7:02 p.m.

EXHIBITS

- Public Hearing 2A: Michael Cronan (Petitioner) – Appeal – all documentation pertaining to this agenda item is on file in the Planning Department.

Minutes Approved:


Mathew Fitton, Chairman

5/1/2018

Date

TOWN CLERK'S OFFICE

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