

**Town of Webster Zoning Board of Appeals  
Meeting Minutes  
Town Hall – Basement Conference Room  
February 27, 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 noted that the Board was awaiting the arrival of Ted Tetreault, Building Commissioner, and Board Member Don Malo and would take agenda items out of order until they arrived.

**4. Staff Report - None**

**3. Action Items: Meeting Minutes**

- a. October 24, 2017: Ms. Morgan noted that these minutes had been previously approved by the Board.
- b. December 5, 2017: The Board reviewed the draft minutes. No edits were made. Motion to approve the minutes as drafted made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously, 4-0.
- c. January 16, 2018: No draft was available for review. Item was tabled to the next meeting.
- d. February 13, 2018: No draft was available for review. Item was tabled to the next meeting.

Motion to take a five-minute recess to wait for the arrival of the Building Commissioner and Board member Don Malo made by Mr. Cournoyer, seconded by Mr. Fafard. Motion passed unanimously, 4-0.

The recess expired and neither the Mr. Malo or Mr. Tetreault had arrived. Motion to take a 10-minute recess to wait for the arrival of the Building Commissioner and Board member Don Malo made by Mr. Cournoyer, seconded by Mr. Fitton. Motion passed unanimously, 4-0.

The recess expired and Board Member Mr. Malo had not arrived. Motion to take a recess the meeting until Board Member Malo arrived made by Mr. Cournoyer, seconded by Mr. Fafard. Motion passed unanimously, 4-0.

Mr. Malo arrived at 6:26 p.m. and the meeting was reconvened.

**2. Public Hearing**

- a. Appeal – Michael Cronan, 18 Robinson Street (Petitioner) – continued from February 13, 2018.

Chairman Fitton provided an overview of the site visit conducted on February 17, 2018. Ms. Morgan noted that Kelly Cronan had called the office prior to the site visit noting that she or her family no longer wished to participate in the site visit and asked that no one enter her property. The Board had been notified of this request. Chairman Fitton noted that several Board members attended the site visit. They were escorted onto the Vinton property Vintons and their attorney in small groups. It was also noted that the Cronans attorney had formally submitted the letter reviewed at the last meeting stating

their objections and position in the matter. Attorney Brown asked if the letter had been distributed to opposing counsel to which the answer was yes.

Chairman Fitton asked the Board if they had any questions for Building Commissioner Ted Tetreault. Mr. Malo asked for further clarification about the process for installing fences. Mr. Tetreault explained that any fence that is allowed by right (at the time, 6 feet, now up to 8 feet) does not technically require a permit but he does. Fences can be put directly on the property line but the Town requires that they be offset by a foot to ensure that no problems occur during installation that may force the fence over onto the neighbor's property. The Vintons did pull a permit for the fence. The Cronans did file a complaint at the time of installation, the fence was checked and moved in accordance with the requirements. He noted that the plywood extensions were installed after the fence and that he had nothing to do with that.

Mr. Malo noted that he was unable to attend the site visit at the appointed time but went later in the day. The Vintons gave him permission to enter the property and allowed him to observe and ask questions. He had noticed that a concrete pad had been poured in the area of the footprint that was denied by the Board as part of the earlier variance hearing. Mr. Tetreault stated that the pad did not require a permit and that the Vintons were in compliance with the code so long as they did not build upon it.

Chairman Fitton asked if an as built plan was required for fences. Mr. Tetreault stated no adding that surveyors are responsible for identifying the property line prior to installation. Ms. Cronan asked what an as-built plan was. Mr. Tetreault stated that is a plan by a registered engineer that certified the correct installation and the proper location identified in the building permit. With regards to the structures he added that an architect did show the original footprint on the submitted plan set.

No other questions were asked by the Board or those present. Chairman Fitton asked how the Board wanted to proceed. Attorney Brown noted that this was an administrative hearing and that the Board should proceed accordingly. He recommended that the Board ask each party to be offered the opportunity to make closing comments.

Motion to allow each party the opportunity closing remarks not to exceed 3 minutes each made by Mr. Cournoyer, seconded by Mr. Malo. Motion passed unanimously.

Chairman Fitton asked the Cronans if they had any remarks. Ms. Cronan stated that the letter submitted by Attorney Lane was sufficient. Attorney Keith Higgins, representing the Vintons, noted that he was present at the opening of hearing but had missed the two other dates that the hearing was continued on. After review of all the material he stated his opinion that the Cronans had not met the benchmark as an aggrieved party.

Motion to close the public hearing made by Mr. Malo, seconded by Mr. Cournoyer. Motion passed unanimously. Chairman Fitton stated the Board would deliberate and make decisions but that the hearing was closed and no more public comment would be permitted.

#### Decision 1

Relief Requested: Removal of Fence – The Board reviewed all the information submitted during the public hearing. The reason for the requested relief is public safety concerns. The Board noted that neither the police nor the Building Commissioner found a public safety issue with the privacy slats.

The height of the permanent fence (excluding the plywood extensions) had been duly and properly permitted and installed. It was further noted that the fence permit had been issued and installed in 2016 and that the request for enforcement action by means to revoking the building permit and subsequent appeal period had expired.

Motion to deny the enforcement request and not require the Building Commissioner to revoke the building permit for the fence or require that the fence be demolished made by Mr. Malo, seconded by Mr. Fafard. Motion passed unanimously 5-0 by roll call vote (Cournoyer – AYE; Fafard – AYE; Mason – AYE; Malo – AYE; Fitton – AYE)

Decision 2: Relief Requested - Removal of Plywood Extensions on Top of the Fence – The Board reviewed all the information submitted during the public hearing. It was noted that the extensions are not considered a permanent part of the structure of the fence but were over six feet in total height and do not have a permit as required by State Code.

Motion to order enforcement action be taken by the Building Commissioner and require removal of the plywood extension made by Mr. Malo, seconded by Mr. Cournoyer. Motion passed by majority vote 4-1 by roll call vote (Cournoyer – AYE; Fafard – AYE; Mason – AYE; Malo – AYE; Fitton – NAY)

Decision 3: Relief Requested - Revocation of Building Permit and Removal of the Garage – The Board discussed and considered two aspects of the relief sought.

The Vinton's had poured a concrete pad in the area which was not buildable as a result of the variance request denied by the Board. Mr. Malo expressed his belief that the concrete pad had to meet zoning while other members disagreed stating that it was not a permanent "structure" and therefore not subject to zoning.

- a. Motion to order enforcement action be taken by the Building Commissioner to require removal of the concrete pad made by Mr. Malo, seconded by Mr. Cournoyer. Motion failed 4-1 by roll call vote (Cournoyer – NAY; Fafard – NAY; Mason – NAY; Malo – AYE; Fitton – NAY)

With regards to garage, it was noted that the Board had taken up the matter during the public hearing for the variance which was denied by Decision on August 10, 2017 and written Decision filed with the Town Clerk on August 23, 2017. The Board noted that the Applicant was contesting several aspects of the newly constructed garage based on size, height and the allowable percentage of expansion of the pre-existing, non-conforming use. It was noted that these issues had been reviewed and addressed during the variance process for the structure. At the time of Decision on the variance application the Board had found that the height and size of the structure were not in violation of the Zoning By-Law as determined by the Building Commissioner who is the Zoning Enforcement Officer. The side yard setback variance was denied and no other action was taken by the Board. The Board found that the Vintons did not violate the variance Decision and only built what was allowed under the requirements of the Zoning By-Law. The Board noted that this new appeal application did not present any new information that would warrant overturning or amending the original variance decision. Members of the Board further stated their belief that the efforts of the local building official as well as the State Building Inspector demonstrated a satisfactory level of due diligence.

- b. Motion to deny enforcement request and not order the Building Commissioner to revoke the building permit and order demolition of the garage made by Mr. Fafard, seconded by Mr.

Cournoyer. Motion passed by majority vote 4-1 by roll call vote (Cournoyer – AYE; Fafard – AYE; Mason – AYE; Malo – NAY; Fitton – AYE)

Chairman Fitton noted that the Decision will be filed with the Town Clerk on or before March 23, 2018. Ms. Cronan asked when the meeting minutes would be available. Chairman Fitton noted that some of the outstanding meeting minutes would be approved tonight and others would be reviewed at future meetings.

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

**6. Next Meeting Date**

April 3, 2018, 6:00 p.m. in the Basement Conference Room of the Webster Town Hall.

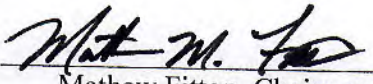
**7. Adjournment**

Motion to adjourn the meeting made by Mr. Mason, seconded by Mr. Cournoyer. Motion passed unanimously. The meeting was adjourned at 7:01 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

5/1/18  
Date

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