

Webster Zoning Board of Appeals
Meeting Minutes
August 26, 2020

A meeting of the Webster Zoning Board of Appeals was via remote participation Zoom meeting in accordance with the Emergency Acts of 2020.

Present: Chairman Jason Piader, Vice Chairman Dan Cournoyer, Clerk Chris Daggett, Members Dan Fales and Mark Mason.

Also Present Ann Morgan, Director of Planning & Economic Development

1. **Call to Order:** Chairman Piader called the meeting to order at 6:01 p.m. Meeting protocols were reviewed. All business of the Board including motions and votes are to be conducted by roll call vote. People were asked to identify themselves when they speak and to change their screen names if they were using the nicknames.

3A. Public Hearing: Variance Application - Side Yard Setback - 485 School Street - Remove existing front porch and replace with a single story addition - Anton Cojocar (Applicant / Owner); Assessor ID 2-K-10-0. Said site is located in a Multi-Family Residential (MFR) zoning district.

Mr. Piader opened the public hearing. Mr. Daggett read the public hearing notice. Ms. Morgan noted that the original meeting notice has been revised to change this to a remote participate meeting via Zoom. Notices were published on the Town website and on all three first floor entrances at Town Hall.

Mr. Cojocar was present to review the application with the Board. He noted that he was seeking a one foot variance in the side yard setback for a one story, 200 square foot addition to extend out from the front of the house. Mr. Piader asked if this addition was replacing the existing deck. Mr. Cojocar stated that it was, that the existing deck was in poor condition. The proposed addition would include an office for his wife to use to work from home. The existing house is nine feet from the side yard lot line.

Mr. Piader noted that four standards for granting variances had to be addressed. He noted that Mr. Cojocar had filled out this portion of the application with "there is nothing unique." Mr. Piader noted that if there is nothing unique then the application, per se, would fail. He asked if Mr. Cojocar wanted to speak to the matter since the lot was large but that the existing house was old and that there might be additional circumstances that weren't listed on the application. He asked if the structure was pre-existing prior to zoning which might create unique circumstances. Mr. Cojocar said the house was built in the late 1940's, or early 1950's. The original deck didn't have the right footings, no proper system to support the structure. Mr. Piader asked if the pre-existing structure makes the lot or his circumstances unique. Mr. Cojocar said that he was unable to address that. Mr. Piader asked if he needed more time to look into the issue further. Mr. Cojocar asked what would happen if he scaled back the proposed addition to get the foundation out of the setback. Mr. Piader stated that it was up to him to make the argument before the Board. Mr. Cojocar stated that he would like additional time to review the criteria.

Mr. Piader stated that he would need to request a continuance. The Board reviewed options for the next meeting date. September 14, 2020 at 6:00 p.m. was agreed upon by all.

Motion to continue the public hearing for the variance application for 485 School Street to September 14, 2020 at 6:00 p.m. made by Mr. Cournoyer, seconded by Mr. Daggett. Motion passed unanimously, 5-0 by roll call vote - Fales - AYE; Cournoyer - AYE; Piader - AYE; Mason - AYE; Daggett- AYE.

3B. Public Hearing: 16 Robinson Street. Public hearing on remand from Land Court, Cronan v. Vinton, et. Al, 18 MISC 000162, concerning reconstruction of a nonconforming garage under Section 650-28 of the Zoning Bylaw and G.L. c. 40A, s. 6., and enforcement of the Zoning Bylaw with respect to such structure.

Mr. Piader opened the public hearing. Mr. Daggett read the public hearing notice.

Barbara Carboni, Webster Special Town Counsel, was present to assist the Board. Attorney Keith Higgins, counsel for the Vintons, and Attorney Henry Lane, counsel for the Cronans were also present. Ms. Carboni reviewed the procedural history of the case which resulted in the remand back to the ZBA for the issue relating to the expansion of a pre-existing non-conforming structure up to but not to exceed 25%. Anything over 25% would require relief from the ZBA in either a variance, a special permit or, possibly, both. The judge found that the ZBA needed to solicit and consider more information on the dimensions of the reconstructed structure so that it consider if relief was required or if it was built as of right. The judge remanded it back to the case for a hearing from both sides and the Building Commissioner on the dimensions and determine if additional relief was needed. The judge's findings included some mathematical equations about the dimensions of the previous and current structure which can be found in the court's decision. The basic remand from the Board is to determine the dimensions of the reconstructed garage.

Mr. Piader noted that he believed that the remand was to consider an analysis of measure of the 25% expansion and whether it was to be volumetric from a square footage standpoint. He noted that part of the issue is to consider the intent of Town Meeting when they adopted that by-law. Ms. Carboni stated that part of the remand includes the Board's interpretation of the 25% - footprint or volume. The interpreter of the by-law in the first instance was the Building Commissioner.

Mr. Piader stated his belief that the Vinton's present at the meeting. Attorney Keith Higgins stated that they were present and that he was representing them. It was noted the Building Commissioner had been asked to submit an analysis and interpretation to the Board which has not been received to date. He said that it didn't appear that the Cronans were present. The Board could go forward with testimony from the Vintons but there wouldn't be an opportunity to take testimony from the Cronans or the Building Commissioner who wasn't present either. Attorney Higgins noted that Attorney Lane was present representing the Cronans.

Attorney Higgins said that it would important to hear from the Building Commissioner first. He knew that there had been a site visit and that photographs were put together and submitted to the record. The judge states in the remand that his calculations are illustrative. Attorney Higgins' concern is that he has his math and the Cronans have their math. Ideally it would be best if all parties had the Building Commissioner's submission in advance for review. This would allow all parties to respond and react when all parties are present to submit testimony. Attorney Higgins noted that there were going to be a number of calculations to discuss such as volume of triangle prism and volume of a rectangle prism and there will be a number of illustrations for all to review. He stated his preference to hear from the Building Commissioner first before continuing the public hearing further.

Mr. Piader asked if Ms. Morgan knew what documentation was being developed by the Building Commissioner. She said that he was preparing a memorandum that outlines his position and that he plans to attend the next meeting. Mr. Piader stated that the hearing would need to be continued. He asked if the

parties agreed upon a date. Attorney Higgins stated the September 14th date had been agreed upon. Mr. Piader asked if the Board had any questions. There were none.

Motion to continue the public hearing for 16 Robinson Street to September 14, 2020 at 6:15 p.m. made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously, 5-0 by roll call vote - Fales - AYE; Cournoyer - AYE; Piader - AYE; Mason - AYE; Daggett- AYE.

2. Action Items – Meeting Minutes

a. **Meeting Minutes - July 21, 2020 and August 4, 2020:** Chairman Piader asked the Board if there were any edits or changes. There were none. Motion to approve the meeting minutes of July 7, 2020 and August 4, 2020 as drafted made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously, 5-0 by roll call vote: - Fales - AYE; Cournoyer - AYE; Piader - AYE; Mason - AYE; Daggett- AYE.

b. **Draft Decision: Variance - 49 Wakefield Avenue - Construct garage within both side yard setbacks - Chad Coporale (Applicant / Owner)**

Ms. Morgan reviewed the sections of the draft decision including the procedural background, the exhibits, the general findings and the specific findings, decision and conditions. Mr. Piader asked if the Board had any questions. There were none.

Motion to approve Findings F1 through F10 as drafted mad by Mr. Cournoyer, seconded by Mr. Mason) voted unanimously 5-0 in favor to make the following findings by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE)

Finding F11: Unique Site Conditions. The Board reviewed the draft language. It was noted that the site size and configuration is the only location on site that could accommodate the proposed

Motion to make a favorable finding for the Applicant on this criteria due to hardship created by site size and configuration made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: Daggett – AYE; Piader – AYE; Mason – AYE; Cournoyer – AYE; Fales - AYE.

Finding F12: Hardship. The Board reviewed the draft language. The Board noted that the Applicant demonstrated hardship based on the site size and configuration which would preclude the construction of a garage anywhere else on the site and that literal enforcement of the Zoning By-law would present a hardship.

Motion to make a favorable finding for the Applicant on this criteria due to hardship created by site size and configuration made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 5-0 by roll call vote: Daggett – AYE; Piader – AYE; Mason – AYE; Cournoyer – AYE; Fales - AYE.

Finding F13: Public Good. The Board reviewed the draft language. The Board noted that the proposed garage, its size, location and encroachment into the side yard setbacks is not detrimental to the public good. It was noted that the Fire Department submitted a comment form stating “No Comment”. The Board interprets this response as indicating that the Fire Department found no impediment to public safety as it relates to their ability to respond to an emergency (see EXHIBIT #5 and FINDING #F5).

Motion to make a favorable finding for the Applicant on this criteria due to hardship created by site size and configuration made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 5-0 by roll call vote: Daggett – AYE; Piader – AYE; Mason – AYE; Cournoyer – AYE; Fales - AYE.

Finding F14: Zoning. The Board reviewed the draft language. The Board noted that materials and photographs submitted by the Applicant adequately demonstrated that the proposed garage and the encroachment into the side yard setbacks are similar to other garages in the neighborhood and that the proposed garage / location was consistent with neighborhood conditions.

Motion to make a favorable finding for the Applicant on this criteria due to hardship created by site size and configuration made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 5-0 by roll call vote: Daggett – AYE; Piader – AYE; Mason – AYE; Cournoyer – AYE; Fales - AYE.

Ms. Morgan reviewed the four draft conditions. She noted that Condition C3 addressed the issue of stormwater run-off from the roof. The Applicant / Owner would be required to satisfy the Building Commissioner during plan review to ensure that stormwater was being managed properly. The Board had no additional questions, edits or conditions.

Motion to GRANT with CONDITIONS based on information received throughout the public hearing the FINDINGS stated herein made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 5-0 by roll call vote: Daggett – AYE; Piader – AYE; Mason – AYE; Cournoyer – AYE; Fales – AYE. The variance was granted with conditions.

c. Draft Decision: Special Permit - 17 Loveland Road - Rebuild garage with a new second floor residential unit - Joseph Seraphin (Applicant / Owner)

Ms. Morgan reviewed the sections of the draft decision including the procedural background, the exhibits, the general findings and the specific findings, decision and conditions. She noted that the conditions for granting were based on Special Permit criteria which were different than criteria for granting a variance. Mr. Piader asked if the Board had any questions. There were none.

Findings F1 through F14: The Board reviewed the draft findings. Mr. Piader asked if there were any comments or edits from the Board. There were none. Motion by Mr. Cournoyer, seconded by Mr. Mason) voted unanimously 5-0 in favor to make the following findings by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

Finding F15: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board. There were none. Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Mason. The motion passed unanimously 5-0 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

Finding F16: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board.

Chairman Piader disagrees with this finding as drafted. The site is located in a Lake Residential zone which specifies single family residential. The additional residential unit proposed is not consistent with the abutting properties, the neighborhood or properties in the zoning district. Mr. Piader noted that the Applicant is seeking the permit legally where there are known violations throughout Town where people have illegally added additional units on their lots.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Mason. The motion passed by majority vote 4-1 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – NAY).

Finding F17: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board.

Mr. Piader reiterated his dissent and reasoning expressed in Finding F16. Multi-family housing on a lot zoned for single family will lead to overcrowding as the lots in this zoning district (Lake Residential) a small and tightly packed into the area. This will increase the density of the surrounding neighborhood.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed by majority vote 4-1 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – NAY).

Finding F18: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board. There were none.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

Finding F19: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board.

Mr. Piader expressed his dissent on this matter noting that traffic will increase on the site and the neighborhood. Adding an additional residential unit will add more vehicles coming and going from the site not only by the residents but by visitors to those residents. He further noted that the neighbors had expressed concern about increased traffic.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed by majority vote 4-1 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – NAY).

Finding F20: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board.

Mr. Piader expressed his dissent on this matter noting that adding an additional residential unit on a lot zoned for single family residential will increase the population on the site and in the neighborhood.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed by majority vote 4-1 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – NAY).

Finding F21: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board.

Mr. Piader noted that the site layout allows for adequate light and air. He noted that the neighbors who submitted written and verbal testimony did not raise any concerns regarding this matter.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

Finding F22: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board.

Mr. Piader noted that the proposed structure sits back from the road and existing house. No concerns were raised by the Fire and Police Departments regarding public safety.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

Finding F23: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board. There were none.

Mr. Piader noted that this application is for one residential unit which will not have any significant impact to the criteria noted in the finding.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

Finding F24: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board. There were none.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

Finding F25: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board. There were none.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Mason. The motion passed unanimously 5-0 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

Finding F26: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board.

Mr. Piader expressed his dissent noting that a second residential unit on the site would be detrimental to the established neighborhood which is comprised of single family residential lots. The future character of the neighborhood is also compromised as this is a single family residential neighborhood. He noted that several neighbors expressed their objections to increased traffic and density that would result by allowing a second residential unit on the lot.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Mason. The motion passed by majority vote 4-1 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – NAY).

Finding F27: The Board reviewed the draft finding. Mr. Piader asked if there were any comments or edits from the Board.

Mr. Piader stated his belief that the second residential unit would not be detrimental to the established or future character of the Town. There are numerous multi-family residential units throughout Town, particularly west of Thompson Road.

Motion to approve this finding as written made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote (Fales – AYE; Daggett – AYE; Mason – AYE; Cournoyer – AYE; Piader – AYE).

Ms. Morgan reviewed the draft conditions which were drawn from the Board’s deliberations about how to address the occupancy of the proposed unit over the garage. She noted that Conditions C2 and C3 made the Special Permit specific to the Applicant and immediate family. The Special Permit would be non-transferrable, even to family, in the event that Mr. Seraphin sells the property. Under no circumstances can the unit cannot be rented out to other parties. Mr. Piader asked if there were any further comments or additional conditions recommended by the Board. There were none.

Motion to grant the Special Permit with Conditions based on information received throughout the public hearing the FINDINGS stated herein made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: Daggett – AYE; Piader – AYE; Mason – AYE; Cournoyer – AYE; Fales – AYE.

It was noted that the Seraphins were in attendance. Ms. Morgan stated that the decision will be revised to reflect the Board’s actions tonight and then will be sent to Chairman Piader for his signature. Once signed, it will be filed with the Town Clerk. A 20 day appeal period will ensue. There will be a mailing to the abutters with information about the Board’s decision and how to appeal. After that, and assuming no one appeals, the decision will have to be filed with the Worcester District Registry of Deeds. Proof of that recording must be submitted to the Planning Department. No building permits will be approved until that information has been forwarded. She asked that the Seraphins call the office the next day to discuss their applications for the same property presently before the Planning Board. They are going to need a Special Permit from the Planning Board to address the issue discovered at the last Planning Board meeting regarding lot coverage. The Seraphins will receive a copy of the signed decision with a letter that outlines the “next steps”. Mr. Seraphin indicated that he was okay with that.

4. **Next Meeting Date:** September 14, 2020 at 6:00 p.m.
5. **Discussion Items: Electronic Signatures** - Ms. Morgan noted that the Board could consider / discuss / vote upon the option to utilize electronic signatures. In thinking ahead in this time of COVID the Board has the right to exercise their option to utilize electronic signatures. Such an action requires a very specific motion and specific wording on the agenda. The Board would sign a document that gets filed with the Worcester District Registry of Deeds. This could be very helpful in the future for any number of reasons including another shut down related to the pandemic. The Planning Board has just adopted this as have many other communities. She said that she could put it on the agenda for September for discussion and possible vote which is at the Board’s discretion. Mr. Piader thought it was a good idea and asked that it be put on September agenda. He further stated his preference for in-person instead of virtual meetings. Interaction between Board members, the applicants and the Board, is necessary and better conveyed in

person. If possible, he'd prefer to have the September meeting with the Cronans and the Vintons conducted in person. Mr. Daggett concurred but added that he wants to be sensitive to those folks are anxious about going out in public. It would be ideal if a hybrid model could be used, if possible, to offer the most opportunity for participation. Ms. Morgan noted that staff continues to work on a technological solution that would provide a good hybrid meeting option which would be best for all. Her concern was that the current technology doesn't pick up audio very well from all the microphones which could be present procedural and open meeting law issues in the future. The library large meeting room might be an option but the projector is currently under repair.

Mr. Piader asked if there was any other business. There was none.

6. **Adjournment:** Motion to adjourn the meeting made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously, 5-0 by roll call vote - Fales - AYE; Cournoyer - AYE; Piader - AYE; Mason - AYE; Daggett- AYE. The meeting was adjourned at 7:15 p.m.

Minutes approved by the Board.



Jason Piader, Chairman

9-17-2020

Date

EXHIBITS

- Public Hearing: Variance Application - Side Yard Setback - 485 School Street - Anton Cojocar (Applicant / Owner); Assessor ID 2-K-10-0. All material associated with this application is on file in the office of the Town Clerk and the Planning Department.
- Public Hearing: 16 Robinson Street. Public hearing on remand from Land Court, Cronan v. Vinton et. Al, 18 MISC 000162, concerning reconstruction of a nonconforming garage under Section 650-28 of the Zoning By-laws and G.L. c. 40A, s.6., and enforcement of the Zoning Bylaw with respect to such structure. All material associated with this application is on file in the office of the Town Clerk and the Planning Department.

REC'D WEBSTER TOWN CLERK
SEP 17 20 4:58:58