

**Webster Zoning Board of Appeals
Meeting Minutes - January 5, 2021**

A meeting of the Webster Zoning Board of Appeals was held on January 5, 2021 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; Ted Tetreault, Building Commissioner / Zoning Enforcement Officer

1. Call to Order: Chairman Piader called the meeting to order at 6:03 p.m. The Chairman read the meeting notice from the agenda regarding the Governor's order about remote participation and the number of people who can convene at the public meeting at one time. Meeting protocols were reviewed. The Chairman directed staff to take attendance of the Board by roll call vote: Daggett - Present; Fales - Present; Mason - Present; Piader - Present.

2. Action Items

a. Approval of Meeting Minutes - December 1, 2020

The Board reviewed the draft meeting minutes. No changes or edits were made. Motion to approve the meeting minutes of December 1, 2020 as drafted made by Mr. Fales, seconded by Mr. Daggett. Motion passed unanimously, 4-0 by roll call vote: Piader - AYE; Daggett - AYE; Fales - AYE, Mason - AYE.

b. Vote to Exercise the Mullin Rule for Use by the Board at Future Meetings - Ms. Morgan noted she that had previously sent out a memo explaining the process by which a member of the Board would exercise the Mullin Rule. A sample form was attached to the memo. It can be used if a member misses one meeting only. Video must be reviewed and a signed form must be submitted. This enables members to remain eligible to vote on a matter particularly in cases where the hearing may extend beyond more than one meeting. Mr. Morgan noted that that Town Meeting had voted to adopt the Mullin Rule and that it was good practice for the Board to vote to state their intent to exercise their right to access and use said Rule. Several Board members agreed that this would be a useful tool.

Motion to Motion to allow the Board to utilize the Mullin Rule at future meetings made by Mr. Mason, seconded by Mr. Fales. Motion passed unanimously 4-0 by roll call vote: Mr. Fales - AYE; Mr. Mason - AYE; Mr. Daggett - AYE; Mr. Piader - AYE.

Mr. Cournoyer joined the meeting at 6:08 p.m.

c. Draft Decision: Variance Application - 9 Loveland Road - Front yard setback variance to construct new house. Stanley Ciesla (Applicant / Owner).

The Board reviewed the draft decision and made some edits to their findings.

Motion to approve Findings F1 through F6 as drafted made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

Motion to make favorable finding F7 as drafted and edited made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

Motion to make favorable finding F8 as drafted and edited made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

Motion to make favorable finding F9 as drafted and edited made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

Motion to make favorable finding F10 as drafted and edited made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

The Board reviewed the draft conditions. No edits were made. Ms. Morgan recommended that the Board add an additional Condition which requires that, at the time of application for a building permit, that a copy of the Decision (as filed by the Worcester District Registry of Deeds) and the approved plan be submitted as part of that application packet. Mr. Daggett expressed concern that this would create additional and duplicative work for the person applying for the building permit. He noted that the documentation is already in the office and that it should be required to be submitted again. Ms. Morgan reviewed the on line permitting process noting that uploading those documents would be fairly easy. If the contractor doesn't have the documents she is able to upload them into the system. In the past there had been some problems with changes to the approved plan at the time of application usually due to a miscommunication between the property owner and the contractor. This would close that gap.

Motion to grant the variance with conditions including the addition of a new condition requiring the submission of the Decision and approved plan at the time of application for a building permit made by Mr. Cournoyer, seconded by Mr. Daggett. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

d. Draft Decision: Variance Application - 96 Point Breeze Road - side and front yard setback variances to raze existing garage and construct a new 21' x 22' garage. Charles Hanko (Applicant / Owner).

The Board reviewed the draft decision and made edits to some of the findings.

Motion to approve Findings F1 through F6 as drafted made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

Motion to approve Finding F7 as drafted and edited made by Mr. Cournoyer, seconded by Mr. Daggett. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

Motion to approve Finding F8 as drafted and edited made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

Motion to approve Finding F9 as drafted and edited made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

Motion to approve Finding F10 as drafted and edited made by Mr. Cournoyer, seconded by Mr. Fales. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

The Board reviewed the draft conditions. No edits were made.

Motion to grant the variance with conditions as drafted made by Mr. Cournoyer, seconded by Mr. Mason. Motion passed unanimously 5-0 by roll call vote: Mr. Fales - AYE; Mr. Daggett - AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE.

3. Discussion Items

- a. **16 Robinson Street - Public Hearing on remand from Land Court, Cronan v. Vinton, et. Al.; 18 MISC 000162, concerning reconstruction of a non-conforming garage under Section 650-28 of the Webster Zoning By-law and G.L. c. 40A, Section 6, and enforcement of the Webster Zoning By-law with respect to such structure.**

Mr. Piader noted that Attorney Murray was present. He asked her to review the findings that the Board should make regarding 16 Robinson Street. Attorney Murray agreed and stated that it came down to identifying two distances that will help the Board plug those numbers into the equation to figure out whether the new garage is more than 25% or exceeds the prior garage size by more than 25%. The first dimension or distance that the Board needs to make a finding of the distance between the prior garage setback from the property line with respect to the Vinton's and Cronan's property. One of the Jalbert engineering plans that the Building Inspector relied upon that showed the old garage being about 1.5 feet off the property line. Attorney Higgins had submitted materials that distance being more like 1.845 feet. The Cronans had submitted a plan the fence on the property line but it has been shown since that fence is actually a foot inside the Vinton property line then, from there, the garage was even further into the Vinton's property line. In contrast, the Land Court stated in its findings that the old garage was "no more than 3 feet away" from that particular side yard lot line. The other dimension that the Board needs to determine is the height of former garage and the new garage, coming down to the new garage more than anything. The Land Court focuses on different dimensions, at one point, assuming that the new garage was going to be 20 feet in height. The Building Inspector's memo to the Board submitted in September uses a height of 22 feet. The Cronans submitted a professional engineer stamped plan that shows 26.2 feet in height. Attorney Higgins has information on what the Vintons believe the height of the new structure happens to be. The Board, then as instructed by the Land Court, must show its math after taking all these dimensions and making a finding on those two dimensions. Going back to the September 14th and the September 28th submissions by Counsel for both sides it appears that everyone agrees that the formulas to be used and is now a question of what dimensions get plugged into those particular formulas. The area of the new structure can then be determined, and the Board can see how that compares to area of the old structure to determine whether or not the new structure is more than 25% larger. And, if so, identify whether if any further zoning relief, in particular

a special permit, might have been required. That is what needs to be done. If, for example, the Board were to find that the prior garage was actually two feet off the property line that, in addition to making the finding, the Board should identify what document or documents presented to the Board on which we base those dimensions.

Mr. Piader noted that his plan for this discussion was to take every dimension as its own finding, which he estimated at approximately ten, so the Board can show the Judge its math and that none of the dimensions are in question. He also had a finding as the shape of the roof. Both the Judge and the Building Commissioner calculated it based on a gable roof although it was pyramid shaped roof. He asked Attorney Murray if his approach was appropriate, if the Board should focus on those two dimensions, and if she recommended any additional dimensions be considered. Attorney Murray stated her opinion that the approach would make clear to the Judge that the Board arrived at their determinations on what numbers to use in the formula. Attorney Murray noted that there was one other dimension in the Land Court's decision which was erroneous. It wasn't one of the dimensions that the Board was instructed to make a finding on but it ultimately has some bearing on 25% review. It was the length of the new garage. The Court used 36 feet which the Building Commissioner pointed out was not correct. Mr. Piader noted that the actual length, 19.33 feet, is not in dispute. Mr. Piader proceeded to outline his findings as follows

1. **Roof** – Mr. Piader found that the old garage had a four sided square pitched roof i.e. a pyramid roof, and not a gable roof based on testimony taken from the Building Inspector on October 5th, and, because this fact was not disputed by the parties during testimony. He asked the Board anyone had a different finding as to the shape of the old garage roof. There were no comments from the Board.

Mr. Piader stated that he would now move into findings for the length, width, ground story, roof height, roof overhang, and side yard setback of the old garage. Each would be taken one at a time. He stated that he would make his finding first as Chairman and noted that other members of the Board could subsequently make their own finding. The Board would then have time to discuss any discrepancies and would discuss which evidence they based their findings upon.

2. **Length of the Old Garage which ran parallel to the property line** – Mr. Piader found this dimension to be **20.33 feet** based on the Land Court Decision, and the fact that the parties did not dispute this dimension during testimony or disputed it in Exhibit 14 or 15 where the calculations were submitted by Attorney Lane and Attorney Higgins. Mr. Piader asked if any members of the Board would like to submit a finding on this dimension. There were none.
3. **Ground Story Height of the Old Garage (First Floor)** - Mr. Piader found this dimension to be **8 feet** based on the Land Court Decision, and the fact that the parties did not dispute this dimension during testimony or disputed it in Exhibit 14 or 15. Mr. Piader asked if any members of the Board would like to submit a finding on this dimension. There were none.
4. **Roof Height** – Mr. Piader found this dimension to be **12 feet**. This finding was based on the Land Court Decision and Exhibits 14 and 15, and specifically asking Attorney Lane because he had a slightly different number of 12.5 feet during testimony which Attorney Lane stated that this dimension was not material compared to Attorney Higgins and that Building Inspector had a finding of 4 feet, Mr. Piader stated that he finds this dimension of the roof to be 4 feet. Mr. Piader asked if any members of the Board had a different finding. There were none.

5. **Roof Overhang** - Mr. Piader found this dimension to be **1 foot**. His finding was based on the Land Court Decision which used a 1 foot overhang, and the fact that Attorney Lane for the Cronans did not produce evidence supporting his assertion of ¼ foot overhang after being asked on October 5th, and because there was no submission to rebut the assertion of a 1 foot overhang from Attorney Higgins or the Court. Mr. Piader asked if any members of the Board had a different finding. There were none.
6. **Setback of the Old Garage from the Property Line** – Mr. Piader found **the distance of the old garage to the Cronan property to be 1.845 feet**. In considering all the Exhibits presented, all the testimony heard, and the Court’s finding that the old garage was “no more than 3 feet from 16 Robinson Street”; he finds that the width or distance of the old garage within the setback should be 8.155 feet calculated as being the 10 foot setback requirement minus the 1.845 feet. He found that the clarity of Exhibit 17 (displayed on the screen for all to see), the photographs in Exhibit 18, and the argument made by Attorney Higgins on November 5th were persuasive in finding this distance. In considering Exhibit 21 (shown on the screen for all to see) which was labeled to the Board as Trial Exhibit 47 which is what the Land Court used to make their finding of “no more than 3 feet”, Mr. Piader found that the distance of dashed lines in that Exhibit which indicate the old garage to the property line is not discernible. The property line is not clearly marked as it is in Exhibit 17 and there’s no visible measurement or scale from the edge of the property line to the old garage within Exhibit 21. In his opinion, clarity and scale of Exhibit 17 compared to Exhibit 21 was much clearer in order for him to create an exact measurement. He recognized that the Building Inspector has stated it as about 1½ feet. A survey team went out to the site with a stamped drawing and figured out where the property line was located which he found persuasive. Mr. Piader asked if any members of the Board had a different finding. There were none. Mr. Piader asked Attorney Murray if any dimensions were missed. She stated that he had got them all. No additional findings or comment were submitted by other Board members.
7. **Length of New Garage** – Mr. Piader found the length of the new garage to be **19.33 feet**. Although the Court found 36 feet, neither of the parties disputed that the length of the new garage was 19.33 feet. Mr. Piader stated that, in his opinion, that the 36 feet is erroneous and that is further based on the parties’ testimony and Exhibits 14 and 15 which were the calculations submitted by both Attorney Lane and Attorney Higgins. No additional findings or comment were submitted by other Board members.
8. **Ground Story Height of New Garage** – Mr. Piader found this to be **11.7 feet** based on the Land Court Decision and the fact it was not disputed by the parties in testimony or the various exhibits submitted, particularly Exhibits 14 and 15. No additional findings or comment were submitted by other Board members.
9. **Roof Overhang of New Garage** – Mr. Piader found this dimension to be **1 foot**. This was not a disputed dimension by the parties during their testimony or any of their exhibits, specifically Exhibit 14 and 15. No additional findings or comment were submitted by other Board members.
10. **Side Yard Setback** – Mr. Piader stated that he finds the side yard setback of the new garage to be **3.75 feet** which gives a width of 6.25 feet. His reasoning being that this is the same dimension that the Land Court found. Second, a smaller dimension which was found by the Vintons and the Building Inspector of 3 feet would actually help the Cronans case of arguing that the new garage violates the 25% expansion. Viewing this fact as presented by the Cronans

if it was, in fact, smaller he would have expected them to assert the smaller dimension of 3 feet. So, in determining favorability of the Cronans assertion, he finds that the dimension is 3.75 feet. No additional findings or comment were submitted by other Board members. Mr. Piader asked if any members of the Board had a finding on the side yard setback. There were none.

11. **Roof Height** – Mr. Piader stated that he finds that the **new garage has a total height of 26.2 feet and a roof height of 14.5 feet.** In looking at Exhibit 22 and at Exhibit 23 (displayed on the screen for all to see), it appears in his opinion that the 24 foot calculation doesn't take into account what could be an added elevation because of framing. The measurement submitted by the Building Inspector is based on the height of the plywood (Exhibit 20). Mr. Piader stated that he finds a laser measurement to be more exacting especially when it's done by an engineer compared to a photograph which supposes the sheets of plywood are cut to a certain dimension but that he finds the laser measurement to be more persuasive. Mr. Piader asked if any members of the Board had a different finding regarding the roof height. There were none. Ms. Morgan asked Mr. Piader if the finding pertained to the area within the setback. He stated that was the total height and that he had not made a finding of the height within the setback. Testimony was received from Attorney Higgins for the Vintons. However, there wasn't any dispute between the parties regarding the equations to be used to conduct the analysis to whether or not this alteration violated the 25% expansion by law. These dimensions would work in those equations to perform the calculations. He stated that it would be difficult for the Board to determine the height within the setback when there are equations that are accepted that could be used to make that determination with greater accuracy as opposed to using a person with a tape measure. Having the Board be encumbered with visiting the site would create a burden for the Board. He stated that Board can make that determination with accepted geometrical equations.

Mr. Piader asked Attorney Murray if any additional dimensions should be considered. She stated that he had covered all of them.

Mr. Piader stated that now the Board has all the dimensions and that, for the record, he did not calculate if these dimensions would create a violation of the 25% expansion by law. The findings tonight were made based on the evidence presented to the Board and he trusts the math will be accurate noting that there is no dispute between the parties regarding the equations to be used. That will lead the Board to its conclusion.

Mr. Piader asked Attorney Murray for guidance on directing Ms. Morgan to draft a decision using those equations. Attorney Murray suggested that Ms. Morgan request a copy of either Counsel's memos from September 14th or 28th in Word format. It would be helpful but she doesn't know if it's required. Ms. Morgan should draft the decision running through the procedural history and make the findings as laid out at this meeting. The next step should be referencing that on September 28th and September 14th that Counsel for both parties submitted the geometric equations that they think helped the Board arrive at the volume occupied by both the prior and current structure. Then they can plug the dimensions into those equations and then come to the ultimate conclusion to determine the question of 25%. It's important to note that these equations are coming to the Board from Counsel for the Plaintiffs, the Cronans, and Counsel for the Vintons didn't dispute those equations. The Board should move forward with those equations to show the Judge not only the dimensions, the formulas, and then ultimately plug the numbers in. Attorney Murray asked the Chairman if the next step was to have a

draft prepared for discussion and final decision at a different meeting. He stated yes, the Board should see and discuss a draft before making the final decision. Attorney Murray stated that she would be happy to work with Ms. Morgan in preparing a draft and plugging in all the information for the Board to review.

Mr. Piader asked if there were any questions or comments from the Board about moving forward with that plan. There were none. He asked if the Board had any additional findings to make on the dimensions. There were none.

Attorney Murray asked Mr. Piader if he wanted to make a finding regarding the length of the new garage. Mr. Piader stated that he believed that he had made a finding of 19.33 feet to which Attorney Murray noted that he had.

Mr. Piader asked Ms. Morgan if a formal vote to draft a decision was required. Ms. Morgan stated no and that she would have a draft ready for the next regular meeting.

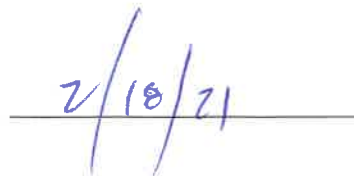
4. **Next Meeting Date** - January 11, 2021 – Workshop. Please forward any requests for specific subject matter to Ms. Morgan and she'll get that to Jay Talerman who will conducting the workshop. February 17, 2021 - Regular Meeting. Ms. Morgan noted that there were two new cases to be scheduled.

5. **Adjournment**

Motion to adjourn the meeting made by Mr. Cournoyer, seconded by Mr. Fales. The motion passed unanimously 5-0 by roll call vote: Fales - AYE; Cournoyer - AYE; Mason - AYE; Daggett - AYE; Piader - AYE. The meeting was adjourned at 7:16 p.m.


Chris Daggett, Clerk

Date



EXHIBITS

Variance Application - 9 Loveland Road. Front yard setback variance to construct a new house. Stanley Ciesla (Applicant / Owner).

- Draft Decision - 5 pages.

Variance Application - 96 Point Breeze Road. Side and front yard setback variances to raze existing garage and construct a new 21' x 22' garage. Charles Hanko (Applicant / Owner).

- Draft Decision - 5 pages.

Discussion Item 3A: 16 Robinson Street - Public Hearing on remand from Land Court, Cronan v. Vinton, et. Al.; 18 MISC 000162, concerning reconstruction of a non-conforming garage under Section 650-28 of the Webster Zoning By-law and G.L. c. 40A, Section 6, and enforcement of the Webster Zoning By-law with respect to such structure.

- Exhibit 17 – Memorandum from Ted Tetreault, Building Commissioner / Zoning Enforcement Officer and Ann Morgan, Director of Planning & Economic Development; Cronan v. Vinton Remand – Additional Material; dated November 2, 2020; 3 pages.
- Exhibit 21 – Trial Exhibit 47; Plan – Framing Progress at Proposed Garage, 16 Robinson Street, Webster, MA, Based on Construction Measurements Taken by Thaddeus Szkoda, PE; dated August 9, 2017; 1 page.
- Exhibit 23 – Drawing with Measurements; 16 Robinson Street (Garage), Webster, MA; submitted by Counsel for the Vintons; received December 1, 2020; 1 page.