

**Webster Zoning Board of Appeals
Meeting Minutes – February 17, 2021**

A meeting of the Webster Zoning Board of Appeals was held on February 17, 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 (joining the meeting at 6:35 p.m.), and Member Mark Mason.

Absent: Member Dan Fales.

Also Present: Ann Morgan, Director of Planning & Economic Development; Barbara Carboni, Special Town Counsel, KP Law.

1. **Call to Order:** Chairman Piader called the meeting to order at 6:02 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. It was noted that anyone wishing to record the meeting for their own use must notify the Chairman in advance. Mr. Piader asked if anyone wished to do so. No one requested to do so.

The Chairman directed staff to take attendance of the Board by roll call: Cournoyer - Present; Mason - Present; Piader - Present. Chris Daggett joined the meeting at 6:35 p.m.

2. Action Items

a. Approval of Meeting Minutes

The draft minutes from January 5, 2021 were reviewed. Mr. Piader asked the Board had any edits. There were none. Motion to approve the meeting minutes as drafted made by Mr. Cournoyer, seconded by Mr. Mason. The motion passed unanimously 3-0 by roll call vote: Mr. Cournoyer – yes; Mr. Mason – yes; Mr. Piader – yes.

The draft minutes from January 11, 2021 were reviewed. Mr. Piader asked the Board had any edits. There were none. Motion to approve the meeting minutes as drafted made by Mr. Mason, seconded by Mr. Cournoyer. The motion passed unanimously 3-0 by roll call vote: Mr. Cournoyer – yes; Mr. Mason – yes; Mr. Piader – yes.

- b. Draft Decision: 16 Robinson Street – Remand from Land Court, Cronan v. Vinton, et. al, 18 MISC 0000162, concerning reconstruction of a non-conforming garage under Section 650-28 of the Zoning By-law and G.L. c. 40A, s.6, and enforcement of the Zoning By-law with respect to such structure.**

Mr. Piader asked Attorney Carboni to review the draft decision with the Board and offer advice how to take each motion and finding. Ms. Carboni started by reviewing some facts. The Judge had remanded this case to the Board to make findings on a narrow set of issues, in particular certain dimensions of the old and the new garage. The Board was directed to apply the Zoning By-law provision that was at issue in this case, which was the ability to expand up to by not over 25% of the existing garage. She noted that the Board has a draft decision with the findings the Board was required to make by the Court. The decision applied By-law to those facts to reach its conclusions about the new structure. Ms. Carboni proceeded to review each page of the draft decision. She noted that Judge Vhay had instructed the Board to “show its work” which it did.

Mr. Daggett joined the meeting at 6:35 p.m.

Ms. Carboni noted that the draft was prepared by Ms. Morgan who provided comment to the Board on how the findings were prepared. She noted that information was taken almost verbatim from transcription of the meeting minutes. Everything presented in Findings F13 through F23 reflect the numbers from the minutes and that those numbers will be presented in Finding F23 and beyond. These numbers are plugged into the formulas used by both parties and taken from documents submitted by both parties.

Mr. Piader noted that Finding F25a – northern side roof calculations - needed to be changed to reflect a cubic mark after the feet reference to show that it is a cubic volume. In looking at the measurement of 138.635 ft. a cubic marking should be added after feet. It was noted that this was a scrivener's error and that it doesn't change anything.

Ms. Carboni noted that two specific findings in Section IV show that the Board's factual findings differ from the Judge – the length of the old garage being 19.33 feet as opposed to 36 feet. However, she noted that neither party disputed the length of the garage as demonstrated in each of their submissions. Ms. Carboni went on to review the factual findings relating to volume calculations found in Section IV. Ms. Carboni noted that these calculations were reviewed by the other attorney working with her on this case, Ms. Murray, and they were found to be correct. Ms. Morgan noted that the math was checked by others and that she had used a reverse engineering method to present the same calculations presented by the parties. Ms. Carboni and the Board went through each calculation individually in Findings F24 through F26.

Ms. Carboni reviewed the draft language in Section V which presents the conclusions that the Board is making in response to the remand. The first conclusion states that the Board takes no position on the matter regarding the portion of the new as built garage outside of the setback and how the 25% expansion allowance should be calculated in relation to the dimensional requirements of the By-law. This is a matter for interpretation by the Zoning Enforcement Officer. Ms. Carboni noted that this conclusion keeps the Board's decision within the scope of the remand order. The Board is just answering the question the Court asked and not going further. Ms. Carboni reviewed the language in Vb. and asked if the word "area" should be changed to "volume". Mr. Piader confirmed that "volume" is the correct word. He added that the second reference to area in Vb and the same reference in Vc should be changed to volume as well. The Board reviewed finding Vc which outlines an earlier variance application for the same matter. Ms. Morgan noted that the previous variance decision was not filed with the Worcester District Registry of Deeds and asked Ms. Carboni if that was relevant in this matter. Mr. Piader noted that the other variance request was denied by the Board which explains why the new garage is L shaped. Ms. Carboni recommended that the Vc be removed from the decision as she didn't think the Board had to answer address the previous application as it was outside the scope of the remand requirements. Mr. Piader agreed.

Ms. Carboni concluded her review noting that the Judge had remanded this to the Board, the Board made factual findings – some that differed from the Court's findings which was demonstrated by the Board. The Board answered the question presented on remand and had shown its work as required by the Court.

Mr. Piader thanked Ms. Carboni and Ms. Morgan and proceeded. He suggested that the Board take all the Findings (F1-F26) under one motion.

Motion to approve the Record, Exhibits and Findings F1 through F26 made by Mr. Mason, seconded by Mr. Cournoyer. Mr. Piader asked if there was any discussion. There was none. Motion passed unanimously 4-0 by roll call vote (Mr. Daggett - YES; Mr. Cournoyer - YES; Mr. Mason - YES; Mr. Piader - YES).

Motion to make the following Decision in Section V excluding part c and changing area to volume twice in part b made by Mr. Cournoyer, seconded by Mr. Mason. Mr. Piader asked if there was any discussion. There was none. Motion passed unanimously 4-0 by roll call vote (Mr. Daggett - YES; Mr. Cournoyer - YES; Mr. Mason - YES; Mr. Piader - YES).

Motion to direct the Chairman to sign the DECISION on behalf of the Board by use of electronic signature as authorized by the Board and filed with the Worcester District Registry of Deeds (Book 63786, Page 314) made by Mr. Mason, seconded by Mr. Cournoyer. Mr. Piader asked if there was any discussion. There was none. Motion passed unanimously 4-0 by roll call vote (Mr. Daggett AYE; Mr. Cournoyer - AYE; Mr. Mason - AYE; Mr. Piader - AYE).

Ms. Morgan noted that the decision would be filed with the Town Clerk and copies sent via Certified Mail to the property owners for each party. Copies will be sent to their attorneys by electronic mail. Ms. Carboni reviewed additional steps as the case was before the Board on remand. She will forward the Decision to Judge Vhay. The clock will begin on the appeal period for any party that wanted to appeal the Board's decision, but she wants to get it to the Judge right away. Ms. Carboni speculated that the Judge would call the parties in for a conference to discuss the decision and what his next steps are once he's read it. If there are any appeals of this Decision, it would be consolidated with the appeal currently before Judge Vhay. Mr. Piader asked Ms. Morgan if there was any further business associated with this matter to which she replied no.

3. Public Hearings

- a. **Variance Application – 153 Gore Road – Broad Brook Development, LLC (Applicant / Owner); Assessor ID 74-A-1-0: Request for lot size dimensional relief to divide one vacant lot into three house lots. Property is located in the Gore Business District (B5A) and Lake Watershed Protection (LWP) zoning districts.**

Before opening the public hearing, Mr. Piader noted that there were only four members present tonight. A supermajority vote of 4 out of 5 members is required to grant a variance. Mr. Fales would have the option to view the meeting video or listen to the audio recording and sign a Mullin Certificate which would allow him to remain eligible to vote later. He asked Mr. Doherty (representing the Applicant / Owner), if he wished to proceed or wait until the next meeting when all were present. Mr. O'Brien (Applicant / Owner) asked if it was typical that absent members would review the tapes to which Mr. Piader stated that members are not required to do so. Mr. O'Brien stated that he understood would like to proceed anyway.

Mr. Daggett read the public hearing notice.

Mr. Doherty reviewed the Application. The lot is located across the street from The Lodge Restaurant and has 22,492 square feet and 150 feet for frontage. The topography of the lot is relatively flat for about the first 100 feet in and then rises steeply as you move in a northeasterly direction. He stated that the Owner had purchased this property back in 2007 with the intent to construct a commercial use building to be rented or leased to a tenant. He noted that Owner had been before the Board two separate times for special permits. The lot size does not conform to the zoning district requirements. He's also aggressively marketed this lot for the past 14 years to no avail. The abutting properties to the north and south have been developed with residential uses after this property was purchased. Both lots have 50 feet of frontage and similar depth as this lot. He stated that he believes that this lot has been undevelopable as a commercial lot is the size and topography. It is also not desirable to locate a

commercial tenant between two residential properties. Mr. Doherty reviewed the zoning district, Gore Business District, which has only one commercial property, an auto business that likely pre-dates the creation of the Gore Business District. The Owner now feels that the most appropriate use of the lot is residential given that all the surrounding properties are residential in nature. Mr. Doherty stated that the lot is one of the largest in the area and it wouldn't be economically feasible to build just one house on it because it would have to be very large and wouldn't fit in with the area. Such a large house would be better suited in a subdivision away from the busy street. The Owner is seeking to divide the lot into three lots, each with 50 feet of frontage which is similar to adjacent properties that have been developed in the area and similar to the other residential lots within this district. The division of the lot would require a lot area dimensional variances from the 43,560 required square feet to 7,497 square feet. They are also seeking to reduce the required 30 front yard setback to 20 feet and the side yard setbacks from 25 feet to 10 feet. The proposed homes would be modest in size and similar to those on the abutting properties. It would allow new families or lower income families to get a new house at an affordable price and would fit in with the district. Mr. Doherty noted that the deeds show that that the lot was originally three tracts, each 50 feet wide and 150 feet deep. A note on the deed indicates the intent was to transfer 3 lots to the purchaser. In summary, Mr. Doherty noted that even though this is commercial zoning district they don't think they will be able to find a commercial or business tenant. A single home on this lot would not make economic sense and that three residential lots would be consistent with the Zoning By-law and fit in with the neighborhood.

Mr. Piader asked if they plan to divide the lot based on the old three tract plan indicated in the deed. Mr. O'Brien noted that they would have to prepare and submit a survey outlining a re-subdivision of the current lot but that the new three lots would be almost identical in width and depth.

Mr. Piader noted that the application indicates that they are applying for four variances - side yard setbacks (2 per lot), front yard setbacks (1 per lot) and minimum lot size (1 per lot). He stated that he has enough information to assess the lot area but didn't have enough information for the side and front yard setbacks. He noted that the Applicant has demonstrated what is unique about these lots that is forcing the development of the proposed houses into those setbacks. Without seeing the proposed structures it is difficult to determine if those variance requests are justified. Mr. Piader stated that he would need more information as to why those structures couldn't be located elsewhere on the site and whether or not they have met the hardship condition. Mr. Piader asked the Board if anyone had other comments on opinions on this matter. There were none.

Ms. Morgan noted that she and the Building Commissioner, Ted Tetreault, noted that the Gore Business District has a long and complicated history but was ultimately approved in 2008. The area had originally been zoned Agricultural Single Family Residential, which has a one acre lot size requirement, as well as the Gore Business District. The lot size requirements for the new zoning didn't change. The Applicant is correct in that the zoning district (Gore Business) was created specifically for and around that auto use to the north of this site. The original intent was to promote business and commercial activity in that area, but that has not been the case. She noted that it is a difficult situation and that the site has some issues that may make it difficult to build out as commercial, such as the volume and rate of speed of traffic in that area. Ms. Morgan noted that the Town's engineer had submitted comments about safety relating to sight lines which would be a problem for any development of the site. She noted that the two residential abutting properties, noted by the Applicant, are pre-existing non-conforming because they were built prior to the 2008 zoning change. One of the houses was built on an existing foundation which is permitted and the other house received its building permits right before the zoning change.

Mr. Daggett asked about how that particular area was identified for the zoning change. Ms. Morgan displayed the area under discussion from the Town's GIS on the screen for all to see. She noted that there are a number of residential uses in the area and in the Gore Business District. There has been no movement towards developing the properties in this district into businesses as was hoped for and intended when the zoning was changed.

Mr. Piader stated that he understood the issue relating to minimum lot size. The site is unique because of its large size compared to others in the area. He understands that this would create a hardship when trying to sell a larger home in an area that might not support the selling price. He restated his position that he did not have enough information to make findings about the front yard and side yard setback variance requests without seeing what the proposed structures would look like. This information wasn't presented in the application. A drawing would be helpful to the Board when making a determination.

Mr. Doherty reviewed how they arrived at the setbacks for the proposed lots. Dividing the lot into three equally sized lots was purely math. Regarding the setbacks, they based on those measurements on the requirements in the Lake Residential zoning district which is in the vicinity of this site. The Lake Residential zoning district allows for 50 feet of frontage, 20 foot front yard setback and 10 foot side yard setbacks. It would be impossible to get a house on any of these three lots if the side yard setback requirements were more than 10 feet. All the proposed setbacks mimic those of the Lake Residential zoning district, although they could probably adhere to the 30 foot front yard setback requirements and not request that variance. Mr. Doherty noted that non-conforming lots are allowed 10 foot setbacks. Ms. Morgan stated no, that wasn't true, but that there was a by-law that allowed for a calculated distance based on an average of front yard setbacks within 300 feet of the site. That would have to be looked into and assessed. But with the other setbacks, the Gore Business District requirements apply regardless of the proximity to the area zoned Lake Residential in close proximity to the site.

Mr. Doherty stated he could prepare some sketches of the type of houses they are proposing. He noted that they would be concerned that approvals would be based on whatever they present because they haven't gotten the architecture done yet. But he could produce some concept plans and demonstrate why the 10 foot side yard setbacks are being requested. Mr. Piader stated that conceptual plans would be very helpful. He noted that the Mr. Doherty is presenting the argument that the slope of the hill topography at the rear of these lots are constricting their options for house placement. Mr. Piader asked for more information about the slopes would be helpful to better understand the constraints and why those variances are required.

Ms. Morgan noted the issue of buildability as it relates to making a decision on the various variances requested. If the Board should approve the setbacks in the application they are set. And if the Owner goes to build on that lot and finds the site constraints require him to move the building footprint then they would have to come back for additional variances. The Board can consider acting on just the lot size dimensional variance requests and leave the setback variances for when the lot is ready for development. She noted that there are a lot of unknown factors regarding buildability of lots that aren't known at this time.

Mr. Piader stated that there are three options - continue the hearing to gather more information, move forward with looking at the lot size, or the Applicant can withdraw the application without prejudice.

Mr. Doherty stated that they would like to continue the hearing to gather more information. Mr. Piader asked how much time they would need to gather the information. Mr. Doherty stated that a week if necessary but definitely within a week before the next Board meeting.

Motion to continue the public hearing to March 16, 2021 at 6:00 p.m. made by Mr. Mason, seconded by Mr. Daggett. Mr. Piader asked if there was any discussion. There was none. Motion passed unanimously 4-0 by roll call vote (Daggett – YES; Mason – YES; Cournoyer – YES; Piader – YES).

b. Variance Application – 30 South Point Road – Gerald Evans (Applicant / Owner); Assessor ID 46-A-25-0; Request for front and side yard variances to construct an accessory structure. Property is located in the Lake Residential (LR) and Lake Watershed Protection (LWP) zoning districts.

Before opening the public hearing, Mr. Piader stated that same situation regarding voting members as outlined in the previous public hearing applies to this same matter. He asked Mr. Evans (Applicant / Owner) if he wished to proceed or wait until the next meeting when all were present. Mr. Evans stated that he would like to proceed.

Mr. Piader opened the public hearing. Mr. Daggett read the public hearing notice. Mr. Evans was present to discuss the application with the Board. He noted that they are proposing an accessory structure, not a garage has stated in the hearing notice. Ms. Morgan displayed the site plan on the screen for all to see.

Mr. Evans stated that the new structure is to be used for storage and will not be used as a garage and no garage doors will be installed. It was noted that the Board granted a variance in 2018 to demolish the existing house and build a new, smaller house on the lot. The variance was to allow for the construction of a new second floor which exceeded the pre-existing non-conformity of the previous structure. Mr. Evans noted that the new accessory structure is needed because the house is small and they need extra storage. He stated that he labeled it as an accessory structure because it wasn't a garage and he wasn't sure how to label it on the plan.

Mr. Evans was asked about hardship. Mr. Evans reviewed the site plan noting that the topography / slope was especially limiting as to where and that the chosen location was preferred. Moving the structure closer to the house would be problematic given the location of the sewer injector pump and the retaining wall. He could possibly move it a foot away from the side yard setback but that would reduce his parking. Mr. Piader asked if there was another location on the site that the structure could be located. He noted that there was a least one location at the front of the house that could accommodate an expansion or additional structure that would not encroach as much into the front yard setback. Mr. Evans noted that such an expansion would require him to seek a variance as well.

Mr. Piader asked how this fits in with the rest of the neighborhood. Were there other properties on South Point Road with similar structures with decks as close to the street and side yard setback as what is proposed? Mr. Evans noted that his neighbor at 23 South Point Road had a permit for a temporary shed that was close to the street and a "She Shed" on a property near him (no address given) that probably pre-dates side yard setback requirements. He stated that the Board had recently granted variances to three property owners on Point Breeze Road for new garages that that were close to the road. It was noted that these variances were for garages and not 'accessory structures'.

Ms. Morgan asked Mr. Evans to clarify what types of uses were proposed for the structure since it wasn't a garage and specifically if there were future plans to convert the accessory structure into living space. She noted that most storage structures don't typically include a cantilevered deck. Mr. Evans stated that can't run plumbing to the structure and is working with National Grid to see if electricity could be installed. He noted that he plans to use the structure for storage and include a fitness area and possibly a desk.

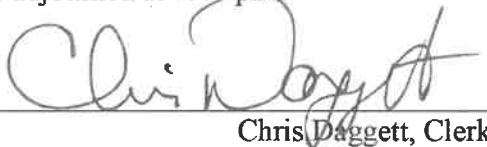
Mr. Piader asked if the Board had any comments. There were none. He asked if there were any comments from the public. There were none.


Motion to close the public hearing made by Mr. Cournoyer, seconded by Mr. Daggett. Mr. Piader asked if there was any discussion. There was none. Motion passed unanimously, 4-0 by roll call vote (Daggett – YES; Cournoyer – YES; Mason – YES; Piader – YES).

4. **Next Meeting Date** – The next meeting will be held on Wednesday, March 16, 2021 at 6:00 p.m. via remote participation.

5. **Adjournment**

Motion to adjourn the meeting made by Mr. Cournoyer, seconded by Mr. Daggett. The motion passed unanimously 4-0 by roll call vote: Fales - AYE; Mason - AYE; Daggett - AYE; Piader - AYE. The meeting was adjourned at 7:44 p.m.


Chris Daggett, Clerk


Date

EXHIBITS

Public Hearing 2a. Variance Application – 153 Gore Road – Broad Brook Development, LLC (Applicant / Owner); Assessor ID 74-A-1-0: Request for lot size dimensional relief to divide one vacant lot into three house lots.

- Application Packet prepared and submitted by Broad Brook Development, LLC; received January 7, 2021; including the following:
 - Variance Application form; 4 pages.
 - Certified Abutters List prepared by Town Assessor; dated December 23, 2020; 3 pages.
 - Quitclaim Deed; Worcester District Registry of Deeds Book 40668, Page 365; dated February 14, 2007; 3 pages.
 - Project Description; Variance Application – 153 Gore Road; prepared by MidPoint Engineering; dated December 23, 2020; 1 page.
 - Project Location; 153 Gore Road; Webster GIS On-line Platform; dated December 23, 2020; 1 page.
- Zoning Board of Appeals Public Hearing Notice; filed with the Town Clerk on January 7, 2021; 1 page.
- Department Comment Form submitted by the Engineering Department on January 8, 2021; 1 page.

- Department Comment Form submitted by the Police Department on January 8, 2021; 1 page.
- Department Comment Form submitted by the Conservation Agent on January 12, 2021; 1 page.

Public Hearing 2b. Variance Application – 30 South Point Road – Gerald Evans (Applicant / Owner); Assessor ID 46-A-25-0; Request for front and side yard variances to construct an accessory structure.

- Application Packet prepared and submitted by the Applicant / Owner; received January 11, 2021; including the following:
 - Variance Application form; 4 pages.
 - Certified Abutters List prepared by Town Assessor; dated January 5, 2021; 3 pages.
 - Massachusetts Quitclaim Deed; Worcester District Registry of Deeds Book 58017, Pages 93 & 94; dated November 9, 2017; 2 pages.
 - Project Description; not dated; 1 page.
 - Certified Plot Plan, 30 South Point Road, Webster, Massachusetts; prepared by Alfred Berry, Professional Land Surveyor, 129 South Main Street, Athol, MA; dated December 29, 2020; 1 sheet.
 - Site Photos; not dated; color; 8 ½ x 11”; 3 pages.
- Zoning Board of Appeals Public Hearing Notice; filed with the Town Clerk on January 13, 2021; 1 page.
- Department Comment Form submitted by the Fire Department on January 13, 2021; 1 page.
- Department Comment Form submitted by the Police Department on January 13, 2021; 1 page.
- Department Comment Form submitted by the Engineering Department on January 25, 2021; 1 page
- Town of Webster, MA Request for Continuance of Public Hearing and Extend Decision Deadline; signed by the Applicant and approved by the Board on March 16, 2021; 1 page.