

Town of Cape Elizabeth  
**DRAFT** Minutes of the December 2, 2020  
Board of Zoning Appeals Meeting  
Zoom Webinar ID: 971 2633 3652

As a result of the COVID-19 virus, the Board of Zoning Appeals conducted the meeting via Zoom meeting remote access, as provided by Maine law. Zoom allowed all Zoning Board members, applicants, and members of the public to hear all discussion and hear votes, which were taken by roll call, as required by law. Information to access the meeting by video/audio or audio only was provided to the public in advance.

Participating Members of the Board:

|                      |               |                         |
|----------------------|---------------|-------------------------|
| Joseph Barbieri      | Matthew Caton | Kevin Justh             |
| Aaron Mosher         | Colin Powers  | Michael Tadema-Wielandt |
| Michael Vaillancourt |               |                         |

The Code Enforcement Officer (CEO), Benjamin McDougal participated in the webinar. The Recording Secretary, Carmen Weatherbie, was logged on.

**A. Call to Order:** Chairman Vaillancourt called the meeting to order at 7:01 p.m. and reviewed protocols based on Maine Municipal Association Board of Appeals Manual.

**B. Approval of Minutes:**

1. Approval of the Minutes for October 27, 2020: A motion to approve the minutes was made by Mr. Powers; seconded by Mr. Tadema-Wielandt. All were in favor. Vote: 6 –0. (Mr. Justh logged in after this vote.)

**C. Old Business:** None.

**D. New Business Item 1:**

To hear the request of Pavel Darling, owner of the property at 9 Avon Road, Map U12 Lot 12A, to reconstruct and enlarge an attached garage on his property based on Sections 19-4-3.B.3 and B.4 of the Zoning Ordinance.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated that Mr. Darling submitted a building application to reconstruct his garage on the exact same footprint, simply changing the roofline to better match his house architecturally and gain some storage above. In 1990 this garage received a variance in order to be built. It doesn't meet the setback. He thought this was the best way forward as it is a reconstruction and expansion of an existing structure.

Pavel Darling said this is an existing one-story garage. It received a variance in 1990, prior to his ownership. It is a flat roof garage and as a result it has experienced

substantial decay over the years, including structural issues with the railing. It also leaks. He would like to replace the flat roof with a gabled roof to match the existing home roofline.

The building plan shows the proposed addition. It will not extend beyond the existing footprint of the garage nor above the height of the existing house. A site plan is included in the application. The garage itself is a 26' X 26' square; a roof panel extends over the entrance way for the garage. This project would reconstruct the roof over that entranceway as well.

In response to questions, the overhang of the roof was discussed. The variable setback granted was from 6 – 13 feet in the 1990 variance.

Two neighbors in support emailed the CEO. There was no other public correspondence received.

The distance to the neighbor on the same side of the road was discussed. They will be able to see the new roof.

The chair asked for public comment.

Priscilla Armstrong, of 18 Avon Road, she commented that the entrance to the garage was the same as when built. She is in support of the project.

Finding no additional public comment, Chairman Vaillancourt closed the floor.

In response to a question from a board member about why this is an issue for the board, the CEO explained that this process would preclude the owner from building something of excessive height. There was further discussion on the matter. It was agreed this was the best option to protect neighbors.

Mr. Justh moved to approve the request of Pavel Darling, owner of the property at 9 Avon Road, Map U12 Lot 12A, to reconstruct and enlarge an attached garage on his property based on Sections 19-4-3.B.3 and B.4 of the Zoning Ordinance. Mr. Mosher seconded. All were in favor. Vote 7 – 0.

**Findings of Fact:**

1. The property is a conforming lot in the RA zone. The property contains a single-family dwelling and attached garage.
2. The existing garage does not meet the side setback requirement of the RA Zone. The existing garage has a flat roof and the owner is proposing to add a pitched roof to match the existing house.

### **Additional Findings of Fact:**

1. The Zoning Board of Appeals has considered the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, and the impact on views.
2. The proposed structure will not increase the nonconformity of the existing structure.
3. The proposed structure is in compliance with the setback requirement to the greatest practical extent.
4. The building reconstruction meets the setback to the greatest practical extent based on the criteria in Section 19-4-3.B.2, B.3, and B.4 in the Zoning Ordinance.
5. The application conforms and complies with the March 27, 1990, certificate of variance approved by the Cape Elizabeth Board of Zoning Appeals.

Mr. Tadema-Wielandt moved to approve the Findings of Fact and Additional Findings of Fact; Mr. Caton seconded. Motion was approved by a roll call vote: 7 – 0. All were in favor.

### **D. New Business Item 2:**

To hear the request of Kevin Browne Architecture, representing Marisa and Keith Tobias, owners of the property at 16 Smugglers Cove Road, Map U10 Lot 41, to replace and enlarge a non-conforming single-family dwelling on their property based on Sections 19-4-3.B.2, B.3, and B.4 of the Zoning Ordinance.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated that Mr. Browne's clients purchase the property a few years ago. It's a small older cape and they want to reconstruct and expand the house and it's a very tight lot in the RA Zone. The side and front setbacks are 25 feet and it's having trouble meeting those.

Kevin Browne stated they are proposing to tear it down and rebuild a new home on the existing footprint. It is a little larger and squares off the existing house. It will use the existing driveway and basement area and be two stories verses one. This could be built in the building envelope; however, a longer, rectangular rebuilt would have interfered with views of multiple neighbors. A diagram in application shows these multiple options. It will be 4' under the maximum height of 35'. This is a one story 1940's house that has not been updated. They would like to rebuild it for modern living in keeping with the heights of the neighboring houses.

In response to questions, Mr. Browne said two bedrooms and two baths exist today they are not making any more; this would add more living area. The septic is a three-bedroom system. An explanation of the building plan in the application and adjustments to ease impacts on neighbors based on their feedback, location of septic tank, and building height were discussed. The expansion amounts to one new floor.

The CEO said he had not received any written correspondence. He has discussed this with several of the neighbors.

The chair asked for public comment.

Mark Coggin (and wife Johnna) of 9 Smugglers Cove Road stated they moved here in August 2019 and recently replaced a 60-year-old garage with a living space above, built to capture views. This proposal would reduce their view by 60%. Mr. Browne did take their feedback in consideration and adjusted the roofline. The proposed new roof is six feet above the existing roofline.

Mark Haltof of 14 Smugglers Cove, directly to the west, stated this expansion is located between them and the ocean. The screened porch is their only concern; the screening cuts their view by about 20%. If it weren't screened, it would be less intrusive.

Marisa Tobias (and Keith) said they purchased the house in March 2018. They have spent this time considering the best expansion design to fit into the neighborhood and have minimum impact on their neighbors. They think it is still a modest home within the footprint.

Finding no additional public comment, Chairman Vaillancourt closed the floor.

There was discussion with Mr. Browne about the reasons for the height of the new home, which is due to replacing a short basement, that wasn't to code, and adding one floor. The goal of the rebuild is to add more square footage. They have neighbors with views from three different angles. The site plan was discussed for building options, impacts on views and property owners' rights. Board members discussed options for this tight lot situation.

The board decided to hear from the applicant and public limited to expressions on views.

Mr. Browne commented that this was the best solution for expansion taking into account the balance of all neighbors' views.

Rebecca Sargent stated she works at Kevin Browne Architectural and briefly explained how they addressed the impacts on views.

Marisa Tobias expressed that they bought the house in 2018. They have carefully considered how best to do this expansion so that it would fit into the neighborhood. They have adjusted the plans quite a lot trying to be considerate of their neighbors. She stated it was unfair for them to have to adjust again due to a recent expansion.

Susan Mitchell, 8 Smugglers Coves Road, stated she has lived there for 42 years, and has seen additions and decks, which have been respectful of other neighbors. She appreciates how the Tobiases have approached this. If the location moves, it would affect more views, including theirs and everyone to the left of them.

Mark Coggin, 9 Smugglers Cove Road, stated they respected Mr. Browne's expertise and would accept the board's decision. He asked about changing the porch to a deck.

Chairman Vaillancourt closed the floor. The board continued discussion.

Mr. Vaillancourt moved to approve the request of Kevin Browne Architecture, representing Marisa and Keith Tobias, owners of the property at 16 Smugglers Cove Road, Map U10 Lot 41, to replace and enlarge a non-conforming single-family dwelling on their property based on Sections 19-4-3.B.2, B.3 and B.4 of the Zoning Ordinance. Mr. Mosher seconded. All were in favor. Vote 6 – 1. Mr. Justh dissented.

**Findings of Fact:**

1. The property is a nonconforming lot in the RA Zone. The property contains a non-conforming single-family dwelling.
2. The existing house does not meet the front or side setback requirements. The owners would like to reconstruct, relocate, and expand the house.

**Additional Findings of Fact:**

1. The Zoning Board of Appeals has considered the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, location of the septic system, the impact on views and the type and amount of vegetation to be removed.
2. The proposed structure will not increase the nonconformity of the existing structure.
3. The proposed structure is in compliance with the setback requirement to the greatest practical extent.
4. The building reconstruction meets the setback to the greatest practical extent based on the criteria in Section 19-4-3.B.2, B.3, and B.4 in the Zoning Ordinance.

Mr. Powers moved to approve the Findings of Fact and Additional Findings of Fact; Mr. Justh seconded. Motion was approved by a roll call vote: 7 – 0. All were in favor.

**E. Communications:** Meeting protocols based on Maine Municipal Association Board of Appeals Manual were discussed. Chairman Vaillancourt opened today's meeting addressing those protocols.

**F. Adjournment:** Chairman Vaillancourt adjourned the meeting 9:04 p.m.