Town of Cape Elizabeth

DRAFT Minutes of the March 23, 2021

 Zoning Board of Appeals Meeting

Web Meeting ID: 873 3904 5062

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 Michael Tadema-Wielandt Michael Vaillancourt

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

**A. Call to Order**: Chair Michael Vaillancourt called the meeting to order at 7:08 p.m. and reviewed protocols based on Maine Municipal Association Board of Appeals Manual.

**B. Approval of Minutes:** Mr. Caton moved to approve the minutes of January 26, 2021; seconded by Mr. Justh. The minutes were approved by of a roll call vote of 6 - 0.

**C. Old Business:** None.

**D. New Business:** To hear the request of Pamela Mullin, owner of the property at 44 Two Lights Road, Map U37 Lot 5-3, variance to construct a farmer porch based on Section19-5-4 of the Zoning Ordinance.

The CEO stated a couple of months ago Ms. Mullin consulted him about putting a farmer’s porch on the front of her house. She lives on a conforming lot in RA Zone. Two Lights Road is a rural connector street, which requires a 40 foot front setback. He estimated, based on the survey, that probably a six-foot farmer’s porch could fit and meet the 40 foot front setback. Ms. Mullin wanted to seek a variance because she feels that an eight-foot width is necessary.

Ben did not receive any formal comment concerning this application.

Ms. Pamela Mullin stated that she was just shy of the required area. The front of the house is rotted and needs to be replaced. She would like to add an eight-foot farmer’s porch instead of what’s currently there. She thought it would add to the look of the house and be in keeping with the other farmhouses on Two Lights Road. She thought the setback was 30 feet because she did a major project in 2018 – 2019. Mitchell and Associates did the site work; Spurwink Surveying did the other work. These plans were

approved by Planning Board in 2018. She thought the setback then was 30 feet, so she was surprised to find that it’s 40 feet. She wants to do this the right way.

Board questions: Mr. Justh commented that site plan approval for day care was done by Planning Board. Wouldn’t this fall under that approval? CEO thought this project lays with the house, a single family structure, not with the daycare site plan approval for the property. CEO stated he had talked with town planner, Maureen O’Meara.

The CEO stated the setback has always been 40 feet. The daycare work was 100 feet or so away from the road so the site plan setback error wasn’t noticed.

Mr. Tadema-Wielandt noted that the Planning Board cannot approve something that needs a variance. He mentioned a provision in Space and Bulk Standards for the RA Zone: Section 19-6-1.E Standards. The front setback may be reduced by the average setbacks of two closest structures… CEO had already considered that option and found the setback average not favorable

Mr. Barbieri had questions about the Planning Board approval. The CEO confirmed there was no approval for work concerning the daycare in the front setback.

Mr. Barbieri asked the applicant if there was any reason a six-foot porch wouldn’t work. Ms. Mullin stated (after conferring with Fred Beranger, a friend, neighbor and builder) that the current stairs go out 7 feet 4 inches. The house was built 1992. CEO said he doesn’t know why stairs were placed. With a landing and 3 stairs, it is possible that two stairs are in the setback. There was a 40’ setback at the time the house was built. Ms. Mullin stated the porch would look better and by easier to get around if it were wider.

Mr. Caton referred to the page in the application about porch decking where it states 26’3” wide, and asked how much is nonconforming? Mr. Beranger thought about 24 inches. In reply to another question Mr. Beranger said the profile of the stairs is 4” over the porch railing.

There was additional discussion of drawings in application and measurements. The CEO confirmed that the Spinnaker Heights Subdivision plan specifies a 40 foot front setback.

Finding no public participants logged in, Chairman Vaillancourt closed the floor to public comment

There was a brief board discussion. It was agreed that practical difficulty is an extremely difficult standard to meet, which this doesn’t meet, although it meets all other standards. This would be two feet into setback. The board is constrained by state law and local ordinance. Perhaps the numbers would be better with current survey.

Mr. Tadema-Wielandt moved to deny the request of Pamela Mullin, owner of the property at 44 Two Lights Road, Map U37 Lot 5-3 for a variance to add a farmer porch to the house. Mr. Mosher seconded. Motion to deny the request was approved by a roll call vote: 6 - 0.

**Findings of Fact:**

1. Pamela and Peter Mullin are the owners of the property.

2. The subject lot is a conforming lot in the RA Zone. The lot was approved by the Planning Board in1988 with a 40 foot front setback shown on the approved Spinnaker Heights subdivision plan.

3. Pamela and Peter Mullin purchased the lot and constructed the existing house in 1992.

4. Two Lights Road is classified as a *Rural Connector Street* and therefore the Zoning Ordinance requires a 40 foot front setback.

5. The property is currently used as a single family dwelling with an attached day care facility.

6. No part of the property is located in the Shoreland Overlay District.

Mr. Tadema-Wielandt moved to approve the Findings of Fact; Mr. Justh seconded.

Motion was approved by a roll call vote: 6 - 0.

**Additional Findings of Fact:**

A literal enforcement of the Ordinance will not cause a practical difficulty as defined by 30-A.M.R.S.A. Sec. 4353, 4-C.

Mr. Tadema-Wielandt moved to approve the Additional Findings of Fact. Motion was approved by a roll call vote: 6 - 0.

**E. Communications:**  None.

Note: Mr. Caton emailed board members the reference that states applicants do not need to be present at the hearing.

That reference is: Chapter 3 of Maine Municipal Association, Manual for Local Land Use Appeals Board (Feb. 2017). The section on page 32 entitled "Attendance by Applicant / Appellant" states: An applicant need not attend a ZBA hearing, but note that there are due process and practical issues to be aware of in such circumstances.

**G. Adjournment:**  Chair Vaillancourt adjourned the meeting at 8:02 p.m.