

Town of Cape Elizabeth  
**DRAFT** Minutes of the April 28, 2020  
Zoning Board of Appeals Meeting  
Zoom Webinar ID: 949 1803 8151

As a result of the COVID-19 virus, the Zoning Board 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, and Recording Secretary, Carmen Weatherbie, participated in the webinar.

**A. Call to Order:** Chair Michael Vaillancourt called the meeting to order at 7:00 p.m.

**B. Approval of Minutes:** Mr. Caton noted there should be a small edit on page 2, line 9 to change then to than. Mr. Justh moved to approve, with the edit, the minutes of February 25, 2020; seconded by Mr. Barbieri. The minutes were approved by a roll call vote: 6 – 0; Mr. Mosher abstained.

**C. Old Business:** None.

**D. New Business:** To hear the request of Michael O'Flinn, representing Maureen and Robert Martinack, the owners, of the property at 39 Thrasher Road, Map U32 Lot 6-27, for a Conditional Use Permit to create an Accessory Dwelling Unit (ADU) in the basement of the existing house based on Sections 19-5-5 and 19-7-5 of the Zoning Ordinance.

The CEO stated that Michael O'Flinn is a contractor who came in with an application for a building permit to do a finished basement with a kitchenette. The owners of the property are Maureen and Bob Martinack. He understands that Bob is Maureen's father; they bought this house together with the intention of Bob living downstairs in an in-law apartment situation and Maureen living in the upstairs. The house is a single story house with a walkout basement. It has full light on the backside so it lends itself to having a finished basement. The basement was finished prior and is being refinished at this point. Mr. McDougal informed Mr. O'Flinn if they wanted to have a kitchen down there it would require an Accessory Dwelling Unit approval by the Zoning Board.

Mr. O'Flinn said the CEO's summary was accurate. The basement was already finished; it is just the addition of the kitchen and keeping everything under the 600 square foot per Cape Elizabeth regulation.

Mr. McDougal did not receive any comments from the public concerning this application.

Public Comment: Members of the public logged into the webinar were asked if anyone wanted to speak.

Bob Martinack stated that everything Mike said was the way it is. Bob said that he was retired; his daughter is in Texas and will be coming up in June. They bought the house together around the first of the year. The main reason was because the finished basement was perfect for what he was looking for. It's a place he can live. The main reason he wanted the kitchenette was a place to boil water and cook some food.

The person logged on as Jon was asked if he wanted to comment. His audio was muted. (He later left the webinar meeting.)

Board discussion: The kitchen makes it necessary for the ADU. The CEO replied to a Mr. Justh's question that the town's definition of kitchen is any component of a kitchen makes it a kitchen; it is a judgment call. The CEO stated he did look at the 600 square foot calculations and went over them with Mr. O'Flinn. The CEO believes that they are accurate; he's been in the space. The Office, which is going to be used by Maureen, the Washer and Dryer, and HVAC spaces were not counted. What were counted were the bedroom, the bathroom, the kitchen/living area and the hallway; it is close but it appears to meet the rules. Mr. McDougal responded to Mr. Barbieri's question that this could be a long-term rental some day to a close friend or family member per our ordinance; but this cannot be a short-term rental. This is also a Conditional Use Permit, so if not used for a year, the permit is no longer valid.

Mr. Tadema-Wielandt asked if this basement bedroom was included in the original four-bedroom count. Mr. O'Flinn said it was an already existing bedroom and bath. There are three bedrooms upstairs.

Mr. Caton asked if Maureen had a home business per Ordinance page 182, Section 19-7-5.B.7. Mr. O'Flinn stated he did not know what Maureen's profession was. As far as he knows there is no home business that will be conducted in the home. The board discussed that working at home, as many are doing now, is not a home business; it has to be something more. The CEO stated the Martinacks should be aware that he would not be able to authorize a home business or home occupation in the future.

Mr. Caton moved to approve the request of Michael O'Flinn, representing Maureen and Robert Martinack, the owners of the property at 39 Thrasher Road, Map U32 Lot 6-27, for a Conditional Use Permit to create an Accessory Dwelling Unit in the basement of the existing house based on Sections 19-5-5 and 19-7-5 of the Zoning Ordinance. Mr. Mosher seconded. Motion was approved by of a roll call vote: 7- 0.

**Findings of Fact:**

1. This is a request for a Conditional Use Permit to create an Accessory Dwelling Unit in the basement of the existing house based on Sections 19-5-5 and 19-7-5 of the Zoning Ordinance.
2. The subject property is 39 Thrasher Road, Map U32 Lot 6-27.
3. Michael O'Flinn is the applicant and represents Maureen and Robert Martinack, the owners, of the property at 39 Thrasher Road.

**Additional Findings of Fact:**

1. The proposed use will not create hazardous traffic conditions when added to existing and foreseeable traffic in its vicinity.
2. The proposed use will not create unsanitary conditions by reason of sewage disposal, emissions to the air, or other aspects of its design or operation.
3. The proposed use will not adversely affect the value of adjacent properties.
4. The proposed site plan and layout are compatible with adjacent property uses and with the Comprehensive Plan.
5. The applicant has demonstrated compliance with the requirements in Sections 19-5-5 and 19-7-5.B of the Zoning Ordinance.

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

**E. Adjournment:** Chair Vaillancourt adjourned the meeting at 7:33 p.m.