

Town of Cape Elizabeth  
**DRAFT** Minutes of the February 25, 2020  
Zoning Board of Appeals Meeting

Present:

Joseph Barbieri  
Colin Powers

Matthew Caton  
Michael Tadema-Wielandt

Kevin Justh  
Michael Vaillancourt

The Code Enforcement Officer (CEO) Benjamin McDougal and Recording Secretary, Carmen Weatherbie, were also present.

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

**B. Elect Chair, Vice Chair and Secretary**

Chairman Vaillancourt offered to stay on as Chair unless someone wanted the position.

Mr. Justh moved that Michael Vaillancourt continue as Chair and Aaron Mosher continue as Vice Chair; seconded by Mr. Tadema-Wielandt. Vote: 6 – 0.

Mr. Justh nominated Matthew Caton for Secretary; seconded by Mr. Tadema-Wielandt. Vote: 6 – 0.

**C. Approval of Minutes:** Mr. Tadema-Wielandt moved to approve the minutes of October 22, 2019; seconded by Mr. Barbieri. The minutes were approved by of a vote of 4 – 0. Mr. Caton and Mr. Justh abstained.

**D. Old Business:** None.

**E. New Business:** To hear the request of Patti and Reed Gramse, owners of the property at 12 Cunner Lane, Map U14 Lot 32, for a Variance to allow their house to expand an additional 5% in the RP-1 Buffer based on Section 19-4-5.A.5 of the Zoning Ordinance.

The CEO stated that almost one year ago Mr. and Mrs. Gramse came in asking for a building permit to enclose a space so that they would have a weather tight area to walk between the garage and the house. They are non-conforming in respect to the resource protection wetland behind the house. The house has already been expanded to 25%. There is a provision in the Zoning Ordinance to expand up to 40% with a variance from the board. On June 25, 2019, they were in front of this board seeking a variance using a different method of approval and that variance was denied. They are back using a different method for approval of the variance.

John Bannon, of Murray, Plump & Murray, Portland, stated he was representing both the Gramses as property owners, but primarily Reed Gramse as the applicant for a disability variance. Mr. Bannon said the CEO bought up what a procedural issue of that

might need to be addressed before for procedural merits of the case, having to do with the provision in the Ordinance that precludes the ZBA from hearing an appeal of similar import. But even if it is of similar import, the board is permitted to hear an appeal within one year of previous denial if a change has taken place in some essential aspect of the case sufficient to warrant reconsideration. At the time of the last application the board did not know the circumstances of Mr. Gramse's health. The details of the disability variance tend to be confidential. Mr. Gramse does suffer from a disability under the customary meaning of that word as well as the definition set forth in the Human Rights Act, which is different than the prior argument that he and his wife simply want to age in place. This is a different kind of argument, a different kind of variance. Mr. Gramse satisfies the criteria for a Disability Variance set forth in the Ordinance Section 19-5-2.B.2.

The board agreed that Mr. Bannon should continue his presentation.

Disability standards state making the dwelling unit accessible to the person with the disability. Mr. Gramse has a condition that qualifies him under state law. Without going into the confidentiality of his condition, Mr. Gramse has difficulty balancing himself when he walks even on dry surfaces. The prevailing winds cause snow to drift over the existing stairs and cause ice to accumulate on them, thereby rendering them extremely slippery. The enclosed walkway would place a roof over and walls around both the stairs and the existing brick walkway, allowing handrails and connecting the garage and house. Rendering his access safe. There are not many criteria in the ordinance for this variance.

In response to board questions, Mr. Bannon replied Mr. Gramse was aware of this disability in June; however, he was hoping to get a variance without having to mention it. The timeframe needed to accomplish this is not known. They hope to have the enclosed walkway before the end of this winter. No engineering drawings have been made. They hope that a foundation would not be needed to support the structure. CEO said it is likely, looking at the architectural drawings, that the building code will require some foundation work.

Mr. Bannon stated they had not pursued this further since the variance had not been approved. If this variance is approved, they would obtain a building permit.

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

Public Comment:

Richard Berman of 58 Hannaford Cove Road stated that he has a background in real estate development and landscape architecture. He has looked at the plans and said that the improvements they are making would have positive environmental impact due to less impervious surface. Mr. Berman stated he supports this whole-heartedly. He wants to keep his neighbors.

Chairman Vaillancourt closed the floor to public comment.

There was a brief board discussion concerning the timing of this request. Making the applicant wait another three months didn't make sense. This application is brought under an entirely different section of the Ordinance.

Mr. Justh moved to allow hearing the application within the one-year period; Mr. Powers seconded. Vote 6 – 0.

The board understands that a disability exists as per Section 19-5-2.B.2. The dictionary definition of necessary is something that is absolutely required. This is a little more than a ramp, which would be limited to the timeframe of the disability. Strict application of the ordinance would impose a hardship due to the disability. The structure is necessary. There are several reasons why this should be a permanent structure versus a temporary structure. Because the house sits lower than the road a covered walkway makes sense, especially in the winter.

Mr. Justh moved to approve the request of Patti and Reed Gramse, owners of the property at 12 Cunner Lane Map U14 Lot 32 for a Variance to allow their house to expand an additional 5% in the RP-1 Buffer based on Section 19-4-5.A.5 and Section 19-5-2.B.2 of the Zoning Ordinance. Mr. Barbieri seconded. All were in favor. Vote 6- 0.

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

1. 12 Cunner Lane is a non-conforming lot in the RA district. The lot is also in the RP-1 district and the house is a non-conforming structure as it relates to the RP-1 district.
2. A portion of the lot is in the Shoreland Overlay District but no part of the proposed project occurs within the Shoreland Overlay District.
3. This house was expanded by approximately 25% already and now the applicant would like to expand the house by an approximately additional 5%. Zoning Ordinance Section 19-4-5.A.5 allows up to a 40% expansion if a variance is granted.
4. Pursuant to Section 19-5-3.E. a change has taken place in some essential aspect of the case sufficient to warrant reconsideration.
5. The board has received evidence that the applicant has a disability.
6. The applicant lives at the property. The board is restricting the variance for the purpose of making the dwelling accessible. The proposed improvement is necessary for access and egress from the dwelling.

Mr. Tadema-Wielandt moved to approve the Findings of Fact; Mr. Powers seconded. All were in favor. Vote: 6 – 0.

**F. Review 2020 meeting calendar.** All meetings would be as normally scheduled on the fourth Tuesday of the month. Except in the month of December, board members

would like to hold that meeting on Wednesday, December 2. The CEO will see if that date is available.

**G. Adjournment:** Chair Vaillancourt adjourned the meeting at 7:53 p.m.