

Town of Cape Elizabeth
Minutes of the June 22, 2021
Board of Zoning Appeals Meeting
Zoom Webinar ID: 982 5904 0590

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:

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: Approval of the Minutes for April 27, 2021: A motion to approve the minutes was made by Mr. Justh; seconded by Mr. Tadema-Wielandt. The motion carried. Roll call vote: 6 - 0.

C. Old Business: None.

D. New Business:

Agenda Item 1. To hear the request of Richard B. Armstrong, owner of the property at 2 Waverly Road, Map U4 Lot 172, to enlarge a nonconforming single family dwelling based on Section 19-4-3.B.4 of the Zoning Ordinance.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated that this is for a small addition on the side of the house. It's a nonconforming lot in the RC zone. There's a 20 foot front setback and it is extremely close. Based on the site plan Mr. Armstrong has it is within inches either way of meeting the 20 foot setback. The CEO stated he informed Mr. Armstrong that he would need a survey to demonstrate compliance with the setback. Mr. Armstrong relayed that surveyors would take six to eight weeks to do the survey and asked if there was a different avenue. Mr. McDougal thought that it would be appropriate for the ZBA, being that it is a nonconforming structure.

Richard Armstrong stated that trying to get a surveyor was really tough; they are scheduling 12 to 15 weeks out. He and his wife would like to add a small addition, 11' X 13',

to an existing room. The architect's site plan set the addition back a little bit off the front line by one and one-half to two feet to ensure it would be within the 20 foot setback. The setback goes diagonally across the lot; they are building straight out. Therefore moving further away from the setback as the addition extends out.

The CEO did not received any public feedback.

In response to board questions, Mr. Armstrong stated the location of an existing bathroom makes it impractical to move the addition back any further. The boundary info on the site plan use by the architect came from a mortgage survey.

Board members agreed that mortgage surveys are not always accurate. They expressed concern about the lack of information due to that type of survey.

CEO McDougal stated this appears to be a nonconforming structure. We do not know to the inch how far it is. However this is not a variance; we are not giving a variance to further violate the setback. A nonconforming structure can be expanded.

Mr. Armstrong stated their intent is to meet the setback. They would have liked this project started already.

Board members discussed risk and options with the applicant, and whether a survey will still be required. Board members were not comfortable with lack of information.

If the addition met the set-back, the CEO stated he could issue a building permit. If this survey is in error, board approval would cover it.

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

The Board discussed whether the addition meets the setback to the greatest practice extent possible.

Mr. Mosher moved to approve the request of Richard B. Armstrong, owner of the property at 2 Waverly Road, Map U4 Lot 172, to expand his house based on Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Tadema-Wielandt seconded. The motion carried. Roll call vote: 6 - 0.

Findings of Fact:

1. The property is a nonconforming lot in the RC zone. The property contains a single family dwelling.
2. The existing house does not meet the front setback requirement. The owner would like to construct an addition on the side of 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, 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 Sections 19-4-3.B.2 and B.4 in the Zoning Ordinance.

Mr. Justh moved to approve the Findings of Fact and Additional Findings of Fact.
Mr. Tadema-Wielandt seconded. The motion carried. Roll call vote: 6 - 0.

Agenda Item 2. To hear the request of Anne K. Hill, owner of the property at 6 Crescent View Avenue, Map U16 Lot 54, for a variance to reconstruct and relocate a garage closer to the side property line based on Section 19-5-4 of the Zoning Ordinance.

Attorney Bob Danielson represented Anne Hill who was logged on with her daughter, Kate Thomson.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated that this is a nonconforming lot in the RA zone. The garage is nonconforming to the rear setback, barely conforming to the side setback, and Ms. Hill has been having some trouble with the main door to her house and its proximity to the driveway. In order to make the house door more user friendly, she would like to move the garage over about five feet. It would be the same size garage. These are very small lots for the RA zoning setbacks of 25 feet. 80,000 square foot zoning and this lot is .21 acres - so a small 1/4 acre lot in 2 acre zoning. It is a small lot with difficult setbacks.

Mr. Danielson referred to the photos in application. One of them shows the porch. Ms. Hill can barely open the door because of the railing. What she would like to do is move the garage over 5 feet to create a safe landing on the porch for the house and add some steps. Right now it looks very cramped and is not safe, it's not very accessible or something that can be used with ease.

Ms. Hill would like to rebuild a garage of the same footprint but move it five feet into her yard and rebuild with a safe landing to the house. The driveway is there and there are limitations as to where else she could build because of the location of the septic system and leach field. She has already relocated the generator and propane tanks so that they would not be in a neighbor's view. She is trying to deal with the practical difficulty of the very small lot. The house pre-dates the zoning setback requirement.

Ann Hill stated the garage building would be going straight out and the stairs would go straight down.

In response to board members questions: Ms. Hill stated the lot was planned out in 1959. It is unsure when the garage was built. It's in rough shape now. She has been in the house for five years. This is a request for convenience not disability. It is just an awkward, small, and unsafe landing - even snow removal is difficult. The porch would be gone. Stone steps, going straight down, would take its place. A drawing in the application shows a small overhang added above the steps.

Mr. Danielson replied to a question about a certificate of variance in the application: The property across the street of received a variance in 2010, of 13 feet to replace a one-unit garage with a two-unit garage. The neighborhood is tending this way; more people have nonconforming garages than otherwise. It was included in the application to be helpful.

CEO McDougal stated he received an email in support from neighbors, Rinea and Jim Lewis of 8 Crescent View.

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

The Board discussed the previous variance. This situation is a result of a previous owner's actions. The impractical staircase demonstrates a practical difficulty.

Mr. Danielson stated that the application itself speaks to the practical difficulty. The lot was laid out in 1959 as a small lot. How the garage got there is immaterial. The practical difficulty is that everything around it does not allow for a safe exit from the kitchen. What's in existence now is not safe or practical. This lot is smaller than most of the lots in the neighborhood. The enclosed variance is evidence that the town has granted similar variances. The one across the street is 13 feet into the setback; this would only encroach into the setback five feet.

Ms. Hill said that this is similar to the closest 10 neighbors. That information was documented in the enclosed application for variance for the neighbor across the street.

Mr. Danielson added that the existing garage was built in accordance with the existing setbacks. The garage was squeezed in and does not have access to the kitchen. Ms. Hill just wants to slide the garage over 5 feet and make this a safer situation.

The CEO stated that the setback in this zone was 20 feet on the side in the 50's and 60's, maybe up to the 70's. So the practical difficulty could be the result of a zoning change. This was built prior to current zoning. That could be the argument for item 3.

Members stated this would not alter the character of the neighborhood. It is a no-fault practical difficulty. There are unique difficulties with this problem.

In response to questions Ms. Hill replied moving the garage door would not help. Also the garage is lower than the driveway; the garage floor gets wet and is in terrible shape. The generator and propane tanks have been moved to the north side of the house.

Mr. Caton read a quote from page 3 of the enclosed variance: "The law was created before the Ordinance, so the practical difficulty is not the result of any action taken by the applicant or prior owner." Because of the variances on this street and these circumstances there is a fair basis to move forward and approve.

Mr. Vaillancourt moved to approve the request of Anne K. Hill, owner of the property at 6 Crescent View Avenue, Map U16 Lot 54, for a Variance to reconstruct and relocate her garage based on section 19-5-4 of the Zoning Ordinance. Mr. Mosher seconded.

Discussion: Zoning by variance as opposed to strict application of the Ordinance, as found on these four streets, is the type of Ordinance change the Town should consider. However, in this case it makes logical sense.

The motion carried. Roll call vote: 6 - 0.

Findings of Fact:

1. The property is a nonconforming lot in the RA zone. The property contains a single family dwelling and detached garage.
2. The existing garage is 25 feet from the side property line and 14.1 feet from the rear property line. The owner would like to reconstruct the garage and move it over 5 feet so it will be 20 feet from the side property line and 14.1 feet from the rear property line.
3. No part of the property is located in the Shoreland Overlay District.

Additional Findings of Fact:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.
2. The granting of a variance will not alter the essential character of the neighborhood.
3. The practical difficulty is not the result of action taken by the applicant or prior owner. It is a result of a zoning change by the Town of Cape Elizabeth subsequent to the construction of the home on the property.
4. No other feasible alternative to a variance is available to the petitioner.

Conclusion: There is no substantial departure from the intent of the Ordinance and a literal enforcement of the Ordinance would cause a practical difficulty as defined by 30-A.M.R.S.A. Sec. 4353, 4-C.

Mr. Tadema-Wielandt moved to approve the Findings of Fact, the Additional Findings of Fact, and the Conclusion. Mr. Justh seconded. The motion carried. Roll call vote: 6 - 0.

Agenda Item 3. To hear the request of Gaylin and Robert Zimmerman, owners of the property at 3 Roundabout Lane, Map U36 Lot 77, to enlarge a nonconforming single family dwelling based on Section 19-4-3.B.4 of the Zoning Ordinance.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated that this is a vertical expansion on an existing two-car garage attached to their house, but a portion of that garage is within the 25 foot side setback. This is a nonconforming lot in the RA zone. The existing garage is 13 feet from the side property line and they'd like to expand upward on that. All neighbors support this project; Ben received statements from each of them.

Robert Zimmerman said they have been renovating the house; the garage is the last step. It is an old garage so they would like to replace it and expand upwards to build a rec room. Their two kids will be teenagers soon so they would like to build more family space. It's on the existing footprint. The neighbor that is closest is actually quite far away. They are the ones close to the property line.

Board members commented on the photo in the application; it was great to show impact on views. Mr. Zimmerman said it was taken with a drone. Building over garage does not impact views. The garage will be rebuilt in the same footprint with a stronger footing.

CEO McDougal stated he received seven emails and 1 phone call in support of the project from neighbors.

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

The Board discussed. Height is 35 feet maximum. There is an existing side ramp. The two foot overhang is allowed into/over the setback.

Mr. Caton moved to approve the request of Gaylin and Robert Zimmermann, owners of the property at 3 Roundabout Lane, Map U36 Lot 77, to enlarge a nonconforming single family dwelling based on Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Powers seconded. The motion carried. Roll call vote: 6 - 0.

Findings of Fact:

1. The property is a nonconforming lot in the RA zone. The property contains a single family dwelling.
2. The existing house does not meet the side setback requirement. The owner would like to reconstruct and expand the attached garage upward on the same footprint.

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 Sections 19-4-3.B.2 and B.4 in the Zoning Ordinance.

Mr. Justh moved to approve the Findings of Fact and Additional Findings of Fact. Mr. Mosher seconded. The motion carried. Roll call vote: 6 - 0.

Agenda Item 4. To hear the request of Todd Brydson and Rachel Flaxman, owners of the property at 16 State Avenue, Map U28 Lot 26, to replace a garage with a shed based on Section 19-4-4.B.3 of the Zoning Ordinance.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated they need to replace a dilapidated garage. It is clearly a garage in disrepair; the foundation is shot and sinking. They do not quite meet the setback to Trout Brook so they are required to come before the Zoning Board of Appeals to demonstrate that they are meeting that setback to the greatest practical extent. It is a very small lot in the RC zone.

Rachel Flaxman stated that this is an original 1942/1943 garage. The concrete slab foundation is cracked and slowly sliding. Their hope is to replace it with an 8' X 12' shed that is slightly smaller. It won't be any higher; they will be using the existing footprint or less. It will be the same distance or setback to the brook.

Todd Brydson said it's a prefab shed so it will be delivered already built. They did get a verbal okay from their neighbor, Stephanie Cox at 14 State Avenue. It is just replacing the old garage with a new shed.

CEO McDougal stated he did receive an email from Stephanie Cox at 14 State Avenue, expressing her support for the application. There was no other correspondence.

In response to questions, Ms. Flaxman said the survey was from when they bought the house. Subsequent to that, about 10 or 11 years ago, they put a large addition on the back so their family room goes just about to the 75 foot line. Which is why the shed will be just a little bit smaller than the garage. Mr. Brydson responded that the existing garage is currently four feet, seven inches to the side property line. The new shed will be the same distance, four foot, seven inches, to the side property line. It will not be any closer to property line. They will demo the existing broken slab and use it for backfill. An 18" retaining wall will be built and the shed will sit on a base of crushed stone.

The CEO stated that since this is not 75 feet from Trout Brook it requires Zoning Board approval due to the intent of Shoreland zoning. Setback requirements are the same for any accessory structure, be it a shed or garage. The applicant does not lose any rights by installing a shed.

The applicants said it is currently a 9' X 12' garage which they are replacing with a 8' X 12' shed.

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

The Board discussed the replacement being in same location. This change will probably improve drainage.

Mr. Justh moved to approve the request of Todd Brydson and Rachel Flaxman, owners of the property at 16 State Avenue, Map U28 Lot 26, to replace their garage with a shed based on Section 19-4-4.B.3 of the Zoning Ordinance. Mr. Mosher seconded. The motion carried. Roll call vote: 6 – 0.

Findings of Fact:

1. The property is a nonconforming lot in the RC zone. The property contains a single family dwelling and garage.
2. The existing garage does not meet the 75 foot setback from Trout Brook. The owner would like to replace the garage with a shed without getting closer to Trout Brook.

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 Sections 19-4-4.B.2 and B.3 in the Zoning Ordinance.

Mr. Caton moved to approve the Findings of Fact and Additional Findings of Fact. Mr. Justh seconded. Motion was approved by a roll call vote: 6 - 0.

E. Communications: None.

F. Adjournment: Chairman Vaillancourt adjourned the meeting 8:57 p.m.

