

Town of Cape Elizabeth  
**Approved** Minutes of the December 8, 2021  
Board of Zoning Appeals Meeting  
Zoom Meeting ID: 867 7389 7658

The Board of Zoning Appeals conducted the meeting via Zoom meeting remote access, as per the ZBA Remote Participation Policy adopted September 28, 2021 and 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  
Aaron Mosher

Matthew Caton  
Colin Powers

Kevin Justh  
Michael Vaillancourt

The Code Enforcement Officer (CEO), Benjamin McDougal participated in the webinar. The Recording Secretary, Carmen Weatherbie, was logged on. Applicant Steven Theodore and property owner David Lakari were logged on.

**A. Call to Order:** Chairman Vaillancourt called the meeting to order at 7:03 p.m.

**B. Approval of Minutes:**

1. Approval of the Minutes for July 27, 2021: A motion to approve the minutes was made by Mr. Justh; seconded by Mr. Vaillancourt. The motion carried. Vote: 5 - 0. Mr. Barbieri abstained.
2. Approval of the Minutes for September 28, 2021: A motion to approve the minutes was made by Mr. Justh; seconded by Mr. Vaillancourt. The motion carried. Vote: 5 - 0. Mr. Mosher abstained.

**C. Old Business:** None.

**D. New Business:** Chairman Vaillancourt reviewed protocols based on Maine Municipal Association Board of Appeals Manual.

1. To hear the request of Steven Theodore, representing David Lakari, owner of the property at 495 Spurwink Avenue, Map R05 Lot 13A, to create an Accessory Dwelling Unit (ADU) in the house that is proposed to be constructed.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated that this was for a conditional use permit for a nonconforming property in the RA Zone. A dilapidated single family dwelling was demolished on the property about four to six months ago. The process for ADU approval on a dwelling to be constructed has been done in Cape before.

Architect Steven Theodore shared his screen to present documents in the application. A Google view of the address shows the old house. The new design takes clues from what's there. The new house will be in a similar location. The driveway will be relocated for better sight views; they are currently going through the process with the Public Works Department.

It is a small lot. Septic tank location was shown. The footprint is similar to old farmhouse. The ADU is 600 sq. ft., the maximum allowable, and is in back with an enclosed connector to main house. Mr. Theodore showed design plans from multiple elevations. Materials to be used include white cedar shingles and vertical and horizontal boarding combo with a composite and metal roof. The design fits into the neighborhood.

Board member questions and comments:

Who is going to be using the apartment? Mr. Lakari stated he was not sure; maybe a caretaker could be a renter. Currently he lives in a three-unit building in Portland and a renter who is a friend is also the winter caretaker there.

The design looks like two separate buildings, not part of one structure. Mr. Theodore stated it is actually three structures. Appropriate to the scale of the farmhouse that was there, the connector can be seen through. He thinks there is presence to that.

The language of the ordinance was discussed.

The original sewage disposal has not been located. There will be a new septic system. When asked why not connecting to town sewer, Mr. Lakari thought there might not be a connector on the street to tie into. He will investigate further.

The town survey shows a resource protection line. The wetlands do encroach on the property. Sebago Technics did an accurate survey.

The walkway between the main house and the ADU is enclosed. The walkway to the garage is covered.

The architect was asked for his interpretation of how a single family structure is maintained in this design. The same windows, materials and scale carry through. It will be uniform. The connected space is heated; it is part of the envelope of the main house.

Due to unstable connection, Steven Theodore rejoined meeting by telephone.

Mr. Theodore said it's a single family structure by the roof line. The scale of the building is more human when broken down by components. The garage is detached making the scale more human. Separate smaller structures have precedent in Cape Elizabeth.

The CEO stated he did not receive any public correspondence and there were no attendees logged in to the meeting.

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

Points made in board discussion:

Although not textbook, it is an attractive concept. The sewage disposal is improved.

ADU policy stated in the Ordinance is intended to be fully contained and for close family or friends. The language in the Ordinance is clunky. It looks like a good project.

The CEO confirmed the driveway and parking are allowed in the setback. The ADU should be part of the single family dwelling and have an interior connecting doorway to the single family dwelling and maintain single family character per Section 19-7-5.B.2.

The Ordinance definition for ADU states it is “wholly contained within a principal building or structure ...”

The heated connector versus contained in. It’s not really within the dwelling. It’s a good solid plan but at the same time it looks like two units. It’s pushing the envelope of ADU.

Nice looking plan, maybe in the future. It’s a modern building. It is connected space. The occupant must have a close personal relationship to owner. It is not a rental.

A previous ADU applicant stated they would not have anyone living in their ADU without having a close personal relationship with that person.

CEO stated a conditional use ADU cannot be a short term rental. Conditions are stated in the Ordinance.

Mr. Justh moved to approve the request for a Conditional Use Permit to create an Accessory Dwelling Unit in proposed single family dwelling based on Sections 19-5-5 and 19-7-5 of the Zoning Ordinance. The property is located at 495 Spurwink Avenue. Mr. Mosher seconded. Motion was approved by a roll call vote: 5 – 1. Mr. Barbieri dissented.

### **Findings of Fact:**

1. This is a request for a Conditional Use Permit to create an Accessory Dwelling Unit in proposed single family dwelling based on Sections 19-5-5 and 19-7-5 of the Zoning Ordinance.
2. The subject property is 495 Spurwink Avenue, Map R05 Lot 13A.
3. The subject property is a nonconforming lot in the RA Zone. A single family dwelling was recently demolished on the property.

4. Steven Theodore, Architect, is representing the owner of the property, David Lakari.

Mr. Powers moved to approve the Findings of Fact; Mr. Justh seconded. Motion was approved by a roll call vote: 6 – 0. All were in favor.

**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 design and external appearance of any proposed building will constitute an attractive and compatible addition to its neighborhood, although it need not have a similar design appearance or architecture.

6. The applicant has demonstrated compliance with the requirements in Section 19-7-5.B of the Zoning Ordinance.

Mr. Mosher moved to approve the Additional Findings of Fact; Mr. Powers seconded. Motion was approved by a roll call vote: 6 – 0. All were in favor.

**E. Announcement:** The Chair announced that this was the last meeting for two long-time board members: Matthew Caton, who has served three consecutive 3-year terms, since January 2013 and Aaron Mosher, who has served seven years consecutively, since October 2014. They were thanked for their service to the board and to the community. The CEO said new members would be announced soon.

**F. Adjournment:** Mr. Justh moved to adjourn; Mr. Mosher seconded. All were in favor. Chairman Vaillancourt adjourned the meeting at 8:34p.m.