

Town of Cape Elizabeth  
Minutes of the January 25, 2022  
Zoning Board of Appeals Meeting  
Zoom Meeting ID: 857 0738 8570

As a result of the COVID-19 virus, the Zoning Board of 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	Adam Foster-Webster	Kevin Justh
Katherine Kerkam	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.

CEO introduced new members Adam Foster-Webster and Katherine Kerkam.

**A. Call to Order:** Chairman Vaillancourt welcomed the new members and called the meeting to order at 7:00 p.m.

**B. Approval of Minutes:** Approval of the Minutes for December 8, 2021: A motion to approve the minutes was made by Mr. Justh; seconded by Mr. Powers. Vote: 4 - 0. Those present at that meeting were in favor.

**C. Old Business:** None.

**D. New Business:**

1. To hear the request of Mitchell & Associates, representing the owner of the property, Janet Igel, to reconstruct a nonconforming structure within 75 feet of the ocean at 11 Tides Edge Road, Map U8 Lot 16, based on Section 19-4-4.B.3 of the Zoning Ordinance.

Julia Frederick, with Mitchell & Associates, stated this was a replacement of a patio not a 3-D structure. The previous pool patio was demolishing in September 2021. This replacement will not block any views. This proposal will actually increase compliance to shoreland zoning because the patio replacement is quite a bit smaller.

Ms. Frederick showed the proposed plan with the location of the previous pool/patio. The proposed patio reduces the encroachment into the 75 feet setback by 1125 square feet, and pulls the patio back 24 feet away from the water. Overall the patio is 73% smaller than the former one. The overall landscape plan proposes to reduce lot

coverage in the shoreland zone by about 7.3%. It was 40% with the large pool/patio and this plan is 32.4% coverage in shoreland zone because some of the driveway pavement also will be removed. Both the former and proposed patios conform to the State's 75 feet shoreland setback but not the Town's 75 feet from Highest Annual Tide (HAT) line plus 3 vertical feet. That's because there is a very shallow grade at the beach, which pushes the HAT line plus inland in this specific area.

Maintaining a sunny patio on the oceanfront lawn is essential to the purpose and the value of the property in terms of the owner's investment, as the former patio was a key feature of market value and enjoyment of the property. This is the only feasible place for placement due to the location of the septic system and constraints regarding fire pit safety and the house shadow and ice, if pushed back closer to the house. This plan improves the character of the locale with Maine native plantings.

The CEO responded to board members questions stating that the side setback is 15 feet for this location. State law requires this to be called a structure – our definition basically includes anything on and in the ground for humans to use. As to whether this should be considered under Section 19-4-4.B3 or B2, Replacement or Relocation? CEO said it could be interpreted either way. If a structure is damaged or destroyed by more than 50%, reconstruction must be pulled back beyond the 75-foot shoreland limit or come before the Zoning Board.

The CEO stated that the normal high waterline is surveyed for each property that comes before the board. Ms. Frederick said this plan was based on a certified survey. The CEO replied to another inquiry that the replacement structure doesn't have to be the same type but other factors, like impact on views, would need to be considered.

In response to questions Ms. Frederick said the ground slopes very gently away from the house. This patio is going to be just about 2 feet lower than the base of the foundation. Also proposed is an 18-inch seat-wall on the North edge of the patio.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated that the application is pretty clear.

The CEO stated he did not receive any public comments; just a couple of general inquiries without comments.

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

Board members discussed the uniqueness of shoreland zoning, the language and terms in Sections B.2, B.3, and B.4. This is a smaller footprint and provides more vegetation. The board found the application to be thorough and well prepared.

Mr. Justh moved to approve the request of Mitchell & Associates, representing Janet Igel, owner of the property at 11 Tides Edge Road, Map U8 Lot 16, to replace her pool and patio with a patio based on Section 19-4-4.B.3 of the Zoning Ordinance.

Mr. Tadema-Wielandt seconded. Motion was approved by a roll call vote: 7 – 0. All were in favor.

**Findings of Fact:**

1. The property is a nonconforming lot in the RA zone, with a portion of the property in Shoreland Overlay District. The property contains a single-family dwelling.
2. The pool and patio that were demolished September 6, 2021 did not meet the 75-foot setback from the ocean. The owner would like to put a smaller patio in place of the former pool/patio.
3. The former patio encroached 39 feet into the 75-foot ocean setback. The proposed patio encroaches 15 feet into the 75-foot ocean setback.

Mr. Tadema-Wielandt moved to approve the Findings of Fact; Mr. Justh seconded. Motion was approved by a roll call vote: 7 – 0. All were in favor.

**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 the septic system and other on-site soils suitable for septic systems, the location of other structures on the property and on adjacent properties, and the impact on views.
2. The proposed reconstructed patio will not increase the nonconformity of the existing structure.
3. The proposed reconstructed patio is in compliance with the setback requirement to the greatest practical extent.
4. The patio 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.
5. The total amount of floor area and volume of the original structure cannot be relocated or reconstructed beyond the required setback area.
6. The removal of the pool and patio resulted in a loss of market value by more than 50%.

Mr. Powers moved to approve the Additional Findings of Fact; Mr. Justh seconded. Motion was approved by a roll call vote: 7 – 0. All were in favor.

**New Business cont'd:**

2. Election of a Chair and Secretary for a one-year term. Mr. Justh nominated Michael Vaillancourt for Chair; seconded by Mr. Tadema-Wielandt. Chair Vaillancourt

nominated Kevin Justh for Secretary/Vice Chair; seconded by Mr. Tadema-Wielandt. All were in favor of the slate.

**E. Communications:** The 2022 meeting schedule was discussed and established. The November and December meetings will be combined and scheduled for Wednesday, December 7, 2022.

**F. Adjournment:** Chairman Vaillancourt adjourned the meeting at 8:30 p.m.