

Town of Cape Elizabeth
Minutes of the April 24, 2024 Board
of Zoning Appeals Meeting A Hybrid
Meeting

Present:

Joseph Barbieri
Katherine Kerkam
Adam Foster-Webster

Diana Chapman
Colin Powers

Kevin Justh
Doreen Blanc Rockstrom

The Code Enforcement Officer (CEO), Benjamin McDougal was present. The Recording Secretary, Carmen Weatherbie, was absent; minutes were transcribed from the video.

A. Call to Order: Chairman Justh called the meeting to order at 7:00 p.m. The Chair reviewed the procedures on how to participate remotely and the protocols based on the Maine Municipal Association Board of Appeals Manual.

All board members were present; a quorum was declared.

B. Approval of Minutes: Mr. Powers moved to approve the minutes of March 26, 2024; seconded by Mr. Foster-Webster. The motion carried. Vote: 7 to 0.

C. Old Business: None.

D. New Business:

1. To hear the request of Steven and Mary Ballou, owners of the property at 2 Pheasant Hill Road (Map R04 Lot 3-2), to replace and enlarge a section of their house based on Sections 19-4-3.B.3 and B.4 of the Zoning Ordinance.

Chairman Justh asked CEO McDougal for the background. The CEO stated that Mr. Ballou would like to reconstruct and expand a rear portion of the house that is shown in the pictures in the application. It is currently one-story coming off the house, and he wants to rebuild it as a two-story, which would match the roofline of the existing house. The required setback is 25 feet, and it's into that setback by a few feet; however, going straight up on the existing does not increase the nonconformity as he's rebuilding in the exact same footprint.

Steve Ballou came to the podium and responded to board members' questions. He hired someone to draft detailed drawings based on the measurements; elevation drawings are not included in the application but could be produced if necessary. As he understood the process, if this was approved by the board, he would then go into the detail stage and apply for a building permit with detailed drawings that a contractor could provide quotes on. The CEO explained that the footprint dimensions provided were what the board had to work with at this point. Often, applicants don't want to spend additional money on design work until the application is approved. On the

drawing the applicant provided, the addition comes out 18 feet 3 inches from the rear of the house and is 22 feet 4 inches wide for the footprint. There is an elevation drawing that shows that the peak of the roof matches the existing peak of the roof. Mr. Ballou stated they would never expand the footprint larger than the current addition, and they would never build it taller than the existing roof line of the house. But he didn't have those dimensions with him.

The chair pointed out that this does not include another bedroom. The CEO stated that minor discrepancies would be allowed, such as windows being a little different or being eliminated because the desired window wasn't available. But if one window turned into five, that would be a problem. If the height increased or the footprint changed, it would need to come back to the board.

In response to questions, Mr. Ballou stated that it is currently an addition that was built on posts, such as a deck would be. The roof of the new structure will have an overhang similar to that of the house. The CEO explained that the roof overhang is exempt, specifically in the ordinance, from the footprint requirement in order to have healthy buildings. The change for up to a 2-foot overhang to be exempt from the footprint requirement occurred about eight years ago.

Mr. Ballou explained that a new, proper foundation would provide the base for the new addition. He told of the structural deficiencies of the current structure. Mr. Ballou has discussed building the addition with his abutters, one of which would have a minor impact on their view. Both abutters are supportive of the new addition. Mr. Ballou responded that there is no evidence of water under the current addition. He further explained the slope of the property and drainage. The septic system will not be disturbed by the addition.

The CEO received emails from both abutters; they were in support of the project.

The chair asked for public comment. Finding no public comment, Chairman Justh closed the floor.

During board discussion, it was noted that the side setback in the application needs to be changed from 16 feet 5 inches to 15 feet 8 inches, according to the Owen Haskell survey.

Mr. Foster-Webster moved to approve the request of Steven and Mary Ballou, owners of the property at 2 Pheasant Hill Road, Map R04 Lot 3-2, to replace and enlarge a portion of their house based on Sections 19-4-3.B.3 and B.4 of the Zoning Ordinance. Ms. Chapman seconded. The motion carried by a vote of 7 to 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 property line setbacks. The owner is requesting to remove, reconstruct, and expand an area on the rear of the house 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, the location of the septic system and other on-site soils suitable for septic systems, the impact on views, and the type and amount of vegetation to be removed to accomplish the relocation.
2. The proposed structure will not increase the nonconformity of the existing structure.
3. The proposed structure complies 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, B.3, and B.4 in the Zoning Ordinance.
5. The approval is conditioned on the reconstruction being no higher than the existing structure.

Mr. Powers moved to approve the Findings of Fact and Additional Findings of Fact; Mr. Barbieri seconded. The motion carried by a vote of 7 to 0.

2. To hear the request of Matthew Ahlberg, representing Alissa and John Kanwit, owners of the property at 10 Lighthouse Point Road (Map U15 Lot 48), to replace and enlarge their deck based on Sections 19-4-3.B.3 and B.4 of the Zoning Ordinance. Mr. Ahlberg was remote on Zoom.

Chairman Justh asked CEO McDougal for the background. The CEO stated that this applicant was before the board about a year ago for a small addition on the front of the house, turning deck space into living space, which was approved by the board. They have since done a survey and want to do an expansion of a deck on the other side of the house. Originally, they thought the deck would be within setbacks, but the survey shows it isn't. The CEO responded to an inquiry from the chair, stating that there was no limitation in the ordinance on approving two different projects on the same house.

Matthew Ahlberg said it was just a couple of months ago that they were before the board seeking approval for the small addition. They would have sought approval for both projects concurrently, but they weren't sure about the deck expansion being within setbacks, so a new survey was done. They are not changing any of the existing setbacks; they are all going to be in line with the existing deck. The geometry of one of the corners has an odd truncated angle; this proposes, in line with the existing structure, to connect those two, which adds about 20 additional square feet to one of the corners. To make it more practical with the layout and how you could furnish it, and also because

the deck is currently in a state of disrepair and we were planning on replacing it anyway, this would be the time to square that corner off and add a little bit of additional square footage. Per the plan, it is an additional 112 square feet to make it work better with the interior layout of the house.

In response to board members's questions, Mr. Ahlberg confirmed that the deck would still be elevated. Both areas of expansion are over existing lawn. The only item that would be relocated would be an existing propane tank. It will be moved according to regulations, mostly likely down along the same side of the building. Some footings would be replaced to comply with structural engineering for the deck. The deck is currently on piers; any water runoff is allowed to freely flow under the deck, which is 6 feet off of grade and would be the same with any expansion of the deck. It is served by public sewer. No impact on views is anticipated; nothing extends beyond what is currently there.

The CEO stated he did not receive any inquiries or correspondence on this application.

The chair asked for public comment. Finding no public comment, Chairman Justh closed the floor.

Mr. Foster-Webster moved to approve the request of Matthew Ahlberg, representing Alissa and John Kanwit, owners of the property at 10 Lighthouse Point Road, Map U15 Lot 48, to replace and expand the deck based on Sections 19-4-3.B.3 and B.4 of the Zoning Ordinance. Mr. Powers seconded. The motion carried by a vote of 7 to 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 front or side property line setbacks. The owner is requesting to reconstruct and expand a deck 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 complies 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, B.3, and B.4 in the Zoning Ordinance.

Mr. Powers moved to approve the Findings of Fact and Additional Findings of Fact; Mr. Barbieri seconded. The motion carried by a vote of 7 to 0.

3. To hear the request of Colin Pears and Christina Day, owners of the property at 1 Roundabout Lane (Map U36 Lot 76), to relocate a basement bulkhead based on Section 19-4-3.B.2 of the Zoning Ordinance.

Chairman Justh asked CEO McDougal for the background. The CEO stated that this was the property that was before the board about a year ago. They received approval to do a sizable remodel and addition to this house. Now they realize that the bulkhead, which is required by code due to the construction that was approved, needs to be relocated. This seems to be the only location where they can relocate the bulkhead. This is also in the side setback, but it is no closer to the side property line than the house is existing today.

Colin Pears stated that the CEO summed up the problem nicely.

In response to whether the neighbors had been informed about the new bulkhead location, Mr. Pears confirmed they had been. He also replied that there would be no aggregate change in lot coverage. We recognized the water mitigation problem would not be resolved without relocating the bulkhead to the far side of the lot, closest to the adjacent lot, to ensure there would be no further water issues with the foundation. There is a survey on file. The bulkhead will be 6 inches inside the existing setback. It will be a typical bulkhead.

The CEO stated he did not receive any inquiries or correspondence on this application.

The chair asked for public comment. Finding no public comment, Chairman Justh closed the floor.

Mr. Powers moved to approve the request of Colin Pears and Christina Day, owners of the property at 1 Roundabout Lane, Map U36 Lot 76, to relocate the bulkhead based on Sections 19-4-3.B.2 and B.4 of the Zoning Ordinance. Ms. Chapman seconded. The motion carried by a vote of 7 to 0.

Findings of Fact:

1. The property is a nonconforming lot in the RA zone. The property contains a single-family dwelling. The Zoning Board approved an expansion of this house on April 27, 2022.
2. The owner would like to relocate a bulkhead enclosure based on Sections 19-4-3.B.2 and B.4 of the Zoning Ordinance.

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 complies 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. Powers moved to approve the Findings of Fact and Additional Findings of Fact; Ms. Kerkam seconded. The motion carried by a vote of 7 to 0.

E. Communications: None.

F. Adjournment: Chairman Justh adjourned the meeting at 7:55 p.m.