

Town of Cape Elizabeth
Minutes of the January 28, 2025
Board of Zoning Appeals Meeting
A Hybrid Meeting

Present:

Joseph Barbieri
Gretchen Noonan

Diana Chapman
Colin Powers

Kevin Justh (remote)
Adam Foster-Webster

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

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

CEO McDougal called the roll of members. A quorum was declared with five members present and one remote.

B. Caucus for Chair/Secretary: Mr. Justh moved that Adam Foster-Webster be Chair and Colin Powers serve as Vice Chair/Secretary. Ms. Chapman second. The motion carried with a roll call vote of 6 to 0.

C. Approval of Minutes: A motion to approve the minutes of September 24, 2024, with corrections, was made by Mr. Powers; seconded by Mr Barbieri. The motion carried with a roll call vote of 6 to 0.

D. Old Business: None.

E. New Business: To hear the request of Edward and Kate Gilman, owners of the property at 2 Bayberry Lane, Map U19 Lot 41, to enlarge a nonconforming structure by adding living space above and behind the garage based on Section 19-4-3.B.4 of the Zoning Ordinance.

Chair asked CEO McDougal to provide an overview of the application. The CEO stated that the Gilmans want to expand their garage to add some living space. It is a nonconforming lot in the RA Zone, with a side setback of 25 feet. These are relatively small lots for the RA Zone. Their garage is 20.8 feet from the side property line, where the required setback is 25 feet. They are proposing to expand the garage upward and backward without getting closer to that side property line. There are no other setback issues.

Mr. Gilman stated they want to add more space above the garage for parents and to add a staircase for access as well as access from inside the house. The expansion was redesigned after learning the building was slightly askew, so as not to go any further into the side setback.

In response to the board members' questions, Mr. Gilman explained the second-story porch will extend to the right side of the building. The update to the drawing was not received in time for inclusion in the application. The structure between the garage and the house is to cover the stairwell and a hallway connection to a breezeway that's also being extended so there would be a connection into the home. A new septic is being coordinated with LP Murray to be installed at the same time if this expansion is approved.

A member noted and the CEO agreed that this was not a variance request. When asked whether this will be co-permitted as an ADU, Mr. Gilman stated he was not sure at this time. CEO explained the kitchen element of an ADU and said it doesn't change the scope of this approval. It would be documented on the building permit as an ADU. There are no plans to expand the public sewer in this area that the CEO is aware of. Regarding the impact on views, Mr. Gilman stated that this is a U-shaped neighborhood with trees all around, so there is no impact on views.

Mr. Gilman said the current foundation under the breezeway is a frost wall, and then there is a slab for the garage. It is in great condition. The expansion will be no closer than 20'8" to the side property line; that was the modification to the plan. The CEO explained the setback for decks.

The CEO did not receive any comments concerning this application.

Board members commented that the application was clear, straightforward, and adjusted to stay within the setbacks.

No members of the public were present for comment.

Mr. Justh moved to approve the request of Edward and Kate Gilman, owners of the property at 2 Bayberry Lane, Map U19 Lot 41, to enlarge a nonconforming structure by adding living space above and behind the garage based on Section 19-4-3.B.4 of the Zoning Ordinance. Ms Chapman seconded. The motion carried by a roll call vote of 6 to 0.

Findings of Fact:

1. The property is a nonconforming lot in the RA zone. The property contains a single-family dwelling, a portion of which is nonconforming.
2. The owners would like to expand their house above and behind the garage based on Section 19-4-3.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, the location of the septic system and other on-site soils suitable for septic systems, 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 Section 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; Mr. Barbieri seconded. The motion carried by a roll call vote of 6 to 0.

E. “FOAA” review: The CEO answered a question concerning board members' annual review of the Maine Freedom of Access Act “FOAA.”

E. Communications: None.

F. Adjournment: The Chair adjourned the meeting at 7:34 p.m.