

Town of Cape Elizabeth
DRAFT Minutes of the February 25, 2025
Board of Zoning Appeals Meeting
A Hybrid Meeting

Present:

Adam Foster-Webster
Colin Powers

Kevin Justh
Doreen Rockstrom

Gretchen Noonan

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

A. Call to Order: Chairman Foster-Webster 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. The Chair called the roll of members. A quorum was declared with five members present.

B. Approval of Minutes: A motion to approve the minutes of January 28, 2025, with corrections, was made by Mr. Justh; seconded by Mr. Powers. The motion carried with a vote of 5 to 0.

C. Old Business: None.

D. New Business: To hear the request of Sandra Raymond, owner of the property at 6 Fenway Road, Map U44 Lot 11, to obtain a variance to add a mudroom and garage to her house based on Section 19-5-2.B.2 of the Zoning Ordinance.

Chair asked CEO McDougal to provide an overview of the application. The CEO stated that Denie Deveau, Sandra Raymond's fiancé, wanted to build a garage on the house on Fenway Road. It's a small lot in RA Zone and the RA Zone has larger setbacks; the non-conforming lots have a side setback of 25'. This is a very small lot for the RA Zone. They are currently 40' from that sideline and propose to be 12' 6" with the garage. The lot is also in the Resource Protection Zone and the Shoreland Overlay District. They are able to demonstrate compliance with the Shoreland Zone and the Resource Protection Zone. Limiting their expansion to 25% they meet the setbacks of both the Shoreland Zone and Resource Protection Zone. However, the issue is the side setback for the RA Zone.

Sandra Raymond and Denie Deveau, a carpenter and builder, came to the podium. Ms. Raymond said she purchased this home as a retirement home, and Mr. Deveau will be joining her. She is requesting this variance for safety, quality of life, storage, and to expand to make more room for her two grown sons, who are still living at home. Mr. Deveau referred to the photos of Sandra's lot and house next door. Based on the plans submitted, the third photo shows the gable end of the neighbor's house and the corner stake of the garage. There is a clear view of Great Pond, which is behind us, for the neighbor. The first photo shows the outline where the front of the garage would lie. Ms. Raymond said that when she bought the home, there were previous obstructions to the view, as shown in the Google photo from that time, which is included. There was a

fence, tall shrubs, and a tall tree, which she took down, so there had been obstructions to the neighbor's view. Other photos in the application were discussed. There are 16 houses on this road and 11 have garages. Based on the 1962 site plan, most lots are the same size. The house across the street mirrors this one, and their garage is 11' from the property line.

In response to the board members' questions, the CEO explained Section 19-5-2.B.2.c. concerning the "dimensional standards" to reduce a setback to less than 10'. The applicant was asked about "undue hardship and reasonable return." The CEO stated it's not defined in the Zoning Ordinance. His understanding of it means you are unable to get a reasonable return on your investment and it puts you at a disadvantage should you sell your property. Ms. Raymond said the garage would add tremendous value to the home. Without it, there's not enough space; it would add to their quality of life, and storage space is needed. They do not want to turn this into a rental or add a shed or something that is not as appealing to see.

In response to a question about the location of the garage, Mr. Deveau said they had considered different locations but were concerned about the neighbor's views. The CEO also said they couldn't move the location because of the Resource Protection. There was a discussion about the barriers to moving the location. A variance is the only way to achieve this. Out of the 16 houses, 11 have garages.

The CEO received one voicemail expressing support from the owner of 16 Fenway Road. There were two people in the online waiting room.

The CEO explained the 18'8" and 25' expansion question given the different zoning requirements.

The Chair called for public comment.

Debra Peck of 21 Cottage Farms Road stated she was interested in the answer to the question regarding the undue hardship standard. They have worked very hard to add 15' to the back of their house for a much-needed downstairs bathroom, to allow for aging in place. She would like the term to be defined so that its meaning is based on facts rather than perception.

The Chair responded that it is the job of the Zoning Board to determine the meaning on a case-by-case basis. Ms. Noonan read four criteria listed in the Ordinance for the Shoreland Zone. The CEO stated that Ms. Peck's issue was a different situation and that there is a zoning change in the works to solve that (her) issue.

Mr. Powers commented that the lot is consistent with the neighborhood, and many neighbors have garages. This is not a result of anything these or prior owners did. The hard requirement to get around is that the property cannot yield a reasonable return unless a variance is granted. Could we consider that return on her investment in this case is the use of the house to its full potential, particularly given the health hazards of equipment storage, and parking is an issue on that road. So, can we consider that return, instead of what she can sell it for? The value one can get out of property while

living in it is a more important return in many respects than the financial gain at the end. Mr. Foster-Weber added utility and return go hand in hand. You have shelter, safety, comfort; these things have substantial value. Health concerns are mentioned in the application, and aging in place is a priority of the town.

Mr. Justh said there are provisions in the ordinance for health concerns and aging in place; the board has granted some variances for that. It's hard to find that "This land cannot yield a reasonable return unless this variance is granted." It's a single-family home in Cape Elizabeth. There are only three of them for sale, and they have appreciated at obscene levels over the last few years. Mr. Justh had a hard time saying a garage is necessary for a single-family home for this land to yield a reasonable return. This is a 15,000 square foot lot in the RA Zone with an 80,000 square foot minimum in this entire area, which is not zoned properly, but that's not our matter. The setback would be 10' in the RC Zone. There is an option to petition the Town Council to change the zoning. Driving down this street, if there was already a garage with a 12' setback, it would not look out of place.

Ms. Noonan commented that anyone could use the utility argument, which doesn't work in this case. It would be a useless criterion.

The second condition, the unique circumstances of the property and not the general condition of the neighborhood, was discussed. The issue is the small setbacks, not this one lot. We would need to see what the setbacks are in the neighborhood. The intent of the ordinance is to have a decision tree for undue hardship. If 10 or more properties have this, it becomes a data point. Ms. Noonan said it's not about the garages, but the addition, no matter its use.

Mr. Justh moved to deny the request of Sandra Raymond, owner of the property at 6 Fenway Road, Map U44 Lot 11, to obtain a variance to add a mudroom and garage to her house based on Section 19-5-2.B.2 of the Zoning Ordinance. Ms. Noonan seconded. Vote in favor: 2.

Mr. Powers moved to approve the application. Mr. Foster-Webster seconded. Vote in favor: 3.

Neither vote carried. Four votes were needed. Mr. Justh moved to table the application for 6 Fenway Road until a full board meeting next month. The vote was unanimous, 5 to 0.

The process was explained to the applicant. There was a brief discussion with Mr. Deveau.

E. Communications: None.

F. Adjournment: The Chair adjourned the meeting at 7:50 p.m.