

TOWN OF CAPE ELIZABETH

MINUTES OF THE March 25, 2025
ZONING BOARD OF APPEALS MEETING
Town Hall & Hybrid

Present:

Doreen Blanc Rockstrom Joseph Barbieri Diana Chapman Kevin Justh
Gretchen Noonan Colin Powers Adam Foster-Webster

Staff: The Code Enforcement Officer (CEO), Benjamin McDougal, and Recording Secretary, Sullivan McCarthy, 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 all seven members present.

A motion to approve the minutes of February 25, 2025, was made by Kevin Justh ; seconded by Colin Powers. The motion carried with a vote of 7 to 0.

B. New Business:

To hear the request of Brett Cary, representing Shelly Bowan, owner of the property at 8 Beach Bluff Terrace, Map U10 Lot 11, to add dormers to create 3rd floor living space 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 Bret Cary visited office with proposal to add dormers. The edge of the house is roughly 20 feet from side property line and the side setback is 25 feet. McDougal stated the property was unique, as it received a variance in 1996 to have two story addition 20 feet from side property line.

Bret Cary, representing Shelly Bowan as the contractor, presented the application. Cary discovered in mortgage information that the house is actually 21 feet from the property line. The dormer that he is proposing would have a cheek wall 23 from side property line. Cary is requesting that the old variance for two story addition stands, so the owners can create maximum expansion of dormers and to achieve the most space out of their existing foot print.

Adam Foster-Webster asked McDougal if structure is existing non-conforming. McDougal felt that going before the board was an appropriate path and that it would be less practical to go through variance. He added, previous owners already did a variance in 1996, but the current owners still need to go to board, as they are adding third story beyond the variance already granted.

Joe Barbieri expressed concern that if house was built with variance, it was never non-conforming. Barbieri continued, the proposed structure change does not fall within the previous variance; either the owners apply for a new variance or board can determine that project exists in the variance already granted.

Gretchen Noonan asked confirmation on whether it was actually non-conforming to CEO.

McDougal agreed with Barbieri that it was conforming and added that there is not a standard boundary survey to confirm that it is 21 feet from side property line.

Barbieri pondered if previous owners had come to code enforcement in 1996 to add dormers after variance was approved, would the CEO have required them to file another variance as long as they stayed in the setback. McDougal replied that they were granted variance for two story and would have required additional application and applicant could not amend previous approved plans.

Kevin Justh asks if the two story was a condition.

CEO stated the structure does not meet the bulk standards of the area it exists in, or the 25 feet setback and could be classified as non-confirming.

Barbieri adds the structure existed preordinance and therefore was legal existing. CEO agrees that there is grey area.

Justh asked if the number of current bedrooms would be changing. The applicant replied the current number of bedrooms would remain at two and the addition was going to be office and playroom with no added plumbing. Justh expressed concerns on view impacts and whether they considered view corridors of neighbors. Cary responds that views from the neighbors would be mostly trees and would not affect views of water.

Barbieri asked Cary if the owners received the letter from neighbors rejecting the project. Cary expressed they were unaware of disapproval. McDougal stated an abutter came into office and then sent email. CEO read email from the owners of 1159 Shore Rd, expressing desire that property stay with in conditions, concerns about increased light from third floor, and affects views.

Diana Chapman asked if trees would be taller than the dormer. Cary stated the trees would mostly block view of the expansion and the dormer is lower than the height of trees, but acknowledge with less foliage in winter, it might be visible. He continued, there is significant distance between concerned abutter and applicant with trees between homes.

Doreen Blanc Rockstrom asked if third floor would be used all the time, in relation to complaint. Cary reiterated that it would be office and play room not a bed room and would not be used or lit late.

Noonan asked for clarification of the application. She noted the second page of application referenced the current structure is 20 feet setback and the applicant is requesting 22 feet setback for the dormers. It was clarified the first story of the house is staying same and the proposed upper level is set a further two feet back. Noonan asked for clarification on increasing or expanding nonconforming in property. CEO quoted the definition of non-conforming and stated the height is not the non-conforming; therefore, increasing height is not increasing the nonconformity. Thus, creating the dormer is not increasing the set back.

Justh asked about the foundation to the property's condition. Cary stated they are working with engineer and will submit plan. He recapped that the foundation is mostly concrete with some original stone that has been reinforce with concrete probably in 1996. Cary showed Google Map images depicting applicant's house in relation to neighbors.

Foster-Webster asked if there are any more questions. There were none and Cary returned to be seated.

Foster-Webster asked if there are thoughts from the board. Barbieri said he would differ to CEO on status of non-conformity and his only concern was view issue. He continued that light pollution was the only issue raised by concerned parties; and the addition was a great enough distance from abutters for it to be a non-issue, therefore, feels inclined to approve. Powers expressed agreement and that the number of trees would block light from the top floor and they would be more concerned with light from existing first and second floor. Diana Chapman agrees and doesn't think it would have more impact than existing lighting. Justh doesn't have issue and is inclined to approve but expressed standards of variance are incredibly high for expansion on nonconforming structure in existing variance, and ponders if other properties would want to expand based on older variances granted. Chapman was also worried about precedent and acknowledges they review each individual case. The applicant does not increase non conformity, does not affect views, and the board will continue to review on case by case. Foster-Webster expressed that he shares Justh's concerns, regarding precedent and internal efficiency. Barbieri argues that by going to board, rather than applying to variance, requires more review and conditions to be met.

Colin Powers made motion to approve application of Brett Cary, representing Shelly Bowan, owner of the property at 8 Beach Bluff Terrace, Map U10 Lot 11, to add dormers to create 3rd floor living space based on Section 19-4-3.B.4 of the Zoning Ordinance. Kevin Justh seconded. Motion carried 7 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. This property was issued a variance in 1996 for this portion of the house to be 20 feet from the side property line.
3. The owner would like to add third floor shed dormers 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 enlargement meets the setback to the greatest practical extent based on the criteria in Section 19-4-3.B.2 & B.4 in the Zoning Ordinance.

Colin Powers made motion to approve Findings of Fact and Additional Findings of Fact; Kevin Justh seconded. Motion carried 7 to 0.

C. Old 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.

Barbieri and Chapman express that they were not at the last meeting but have reviewed the application, watched the meeting, and read the minutes.

Justh motioned to take item off the table; Foster-Webster seconded motion. Motion carried 7 to 0.

Sandra Raymond and her fiancé, Denie Deveau presented the application and provided some history. Raymond purchased the house from family, who had house built in the 1960s. The application was for mudroom and garage addition. Raymond expressed history of medical problems, including falling and breaking bones on ice. She asked to create the home that would prevent them from having to walk outside from the vehicle. Creating a garage would allow her contractor fiancé to store tools and work from home in a more aesthetic building than other alternatives. Raymond argued that her property without a garage would not yield a reasonable return and that 11/16 houses on street have garages that are not up to current setbacks. Raymond continued that she would like to age in place and expand on first floor, due to knee problems. Raymond finished that not having the ability to store tools in garage would impose undue hardship.

Barbieri asked what Raymond paid for the home. She responded \$200,000. He asked what is worth today and she expressed \$500,000.

Chapman asked if the other houses had different setbacks or variances that allowed these homes to have garages. CEO expressed that majority were built long time ago, rather than having variance.

Fiancé, Denie Deveau, stated that the neighbor in attendance has a garage about 11 feet from their property and the application is asking for 12 feet from line. Chapman stated she's aware of the neighbor, and was asking if other properties had variances.

Rockstrom expressed going to one car garage would allow them to exist within the setbacks. Applicant expressed that a one car garage would work for avoiding walking outside in hazardous conditions, but would not work for storing the tools. Applicant continued, without the larger garage, they would have to store the tools in a trailer that would be less aesthetically appealing.

Justh questioned if the applicant considered smaller size. Applicant reiterated that they have not ruled anything out, but it is more of a convenience.

Applicant stated that they had done their homework to define what the reasonable return of the property would be if they were granted this variance. Deveau continued that neighboring property values will increase in the area and the addition would be matter of convenience and quality of living.

Applicant argued that the need for a variance was due to the unique circumstances of the property and is not a general condition of the neighborhood. Applicant stated the lot sizes of their street, 12000-18000sqft, were very small for RA zone, which goes up to 80000sqft.

Commented [SM1]: Is this the correct unit and summarized correctly

Chapman pondered what the amendment on the application was. It was confirmed the amendment came from applicant to provide more detailed answers on the application.

Noonan felt condition was not satisfied; because it is not a unique lot, as all lots in the neighborhood are small.

Foster-Webster opened the floor to public comment.

Neil Moran, Sandy's neighbor, asked committee members if they have visited the property and the neighborhood. He continued, it is a quiet, elderly neighborhood and would strongly recommend that they go look. Moran stated that there is more than ample room to put a two-car garage. He expressed that he has a two-car garage and it does not encroach on her property and added he does not know history of variance. He relayed his observations that many properties in the neighborhood have garages and it would be an improvement. Moran expressed that it would be better for vehicles to be under the cover of a garage rather than parked on street. Moran finished his statement offering support to the applicant.

CEO expressed a public comment that was spoken over the phone; Diane Joyce, 2 Fenway Road, expressed support.

The board entered deliberation

Barbieri expressed strong opposition. He pointed to the requirement that there is not a substantial difference in the setback and added applicant wants to cut the setback in half. Barbieri's second concern was in relation to standard B., whether application reflects unique property lot versus characteristics of the neighborhood. He continued that other houses do not have garages and therefore the property is not unique. Barbieri added that in regards to reasonable return, that standard comes from state of Maine. He quoted the standard "undue hardship test is met where strict application of the zoning ordinance would result in practical loss of all return of the land." He continued that property, according to the applicant, is currently worth \$500,000 without the garage, therefore has not resulted in practical loss of all return of the land.

Powers first wanted to discuss consequences about letting application go to vote tonight. Powers asked applicant if they thought of other alignments. Applicant stated they determined this was the best option after they met with code enforcement about 25% lot coverage, setbacks, and Great Pond. Powers proposed if they removed the mudroom, the setback would go from 12.5 feet to 20 feet. Applicant argued that Great Pond is a unique situation for their lot. The board responded that all lots on that side have the same condition. Powers stated that if they are denied, the board cannot review the same application. Justh added they could reconsider if they change application.

Justh stated that garage would be an improvement. Justh stated that meeting condition B. was not as big of a concern for him as meeting condition D., because the setback change is far too large. He continued, the economic argument is not enough and there are more avenues to explore with the existing conditions.

Rockstrom suggested one car garage and a potential outbuilding. Applicant stated nothing would work and it would be a shipping container instead. Applicant added they would have to rent the house and move somewhere else that would fit their needs.

Foster-Webster expressed that he agrees with Noonan that the property is not a unique lot. He continued that the economic concern defined by state is related to practical loss of all use, not a fraction. Chapman expressed that she agrees, based on the confines of the ordinance, they cannot support the application.

Justh stated that if is denied, an option could be to talk to code enforcement and planning departments to change the zone of the property.

Kevin Justh moved to deny 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. Gretchen Noonan seconded motion. Adam Foster-Webster called the vote 7 to 0 to deny application.

Findings of Fact:

1. This is a variance request for Map U44 Lot 11, 6 Fenway Road.
2. Sandra Raymond is the owner of record of the subject property.

3. The property is a non-conforming lot in the RA district. The lot is also in the Shoreland Performance Overlay District and Resource Protection 1 – Critical Wetland Overlay district (RP-1).
4. The owner is proposing to construct a mudroom and garage 12.6 feet from the side property line. The required setback is 25 feet.
5. In order to receive a building permit for this project, the applicant must demonstrate compliance with all aspects of the Shoreland Performance Overlay District and the RP-1 District.

Additional Findings of Fact:

1. The land in question can yield a reasonable return without a variance being granted.
2. The need for a variance was not due to the unique circumstances of the property and is a general condition of the neighborhood.
3. The granting of a variance will not alter the essential character of the neighborhood.
4. The hardship is the result of action taken by the applicant or prior owner.
5. The applicant's request to move the setback to 12 feet and 6 inches is a substantial departure from the intent of the ordinance.

Kevin Justh moved to accept Findings of Fact and Additional Findings of Fact; Powers seconded. Adam Foster-Webster called vote 7 to 0.

Conclusions:

1. There is substantial departure from the intent of the Ordinance and a literal enforcement of the Ordinance would not cause undue hardship or a practical difficulty as defined by 30-A.M.R.S.A. Sec. 4353, 4-C.

Colin Powers made motion to approve Additional Findings of Fact and Conclusion; Kevin Justh seconded motion. Motion carried 7 to 0.

Meeting adjourned 8:36 P.M.