

Town of Cape Elizabeth
Minutes of the March 26, 2024 Board
of Zoning Appeals Meeting
A Hybrid Meeting

Present:

Joseph Barbieri
Adam Foster-Webster
Colin Powers

Doreen Blanc Rockstrom (remote)
Kevin Justh

Diana Chapman
Katherine Kerkam

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

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

CEO McDougal called the roll. Six board members were present in the Council Chambers and one remote on Zoom. A quorum was declared.

B. Approval of Minutes: A motion to approve the minutes for January 23, 2024, was made by Mr. Barbieri; it was seconded by Ms. Chapman. The motion carried by a roll call vote of 7 to 0.

C. Old Business: None.

D. New Business: To hear the request of Stefan Rurak, owner of the property at 11 Spruce Lane, Map U36 Lot 49, to obtain a Conditional Use Permit to operate an art studio as a Home Business based on Section 19-5-5 of the Zoning Ordinance.

Chair Kevin Justh recused himself. Mr. Rurak is his next-door neighbor. Secretary/Vice Chair Katherine Kerkam assumed the responsibility of the chair.

Chair Kerkam asked CEO McDougal for the background. The CEO stated that this is a nonconforming lot in the RA zone. The applicant is proposing to construct an accessory structure to operate an artist studio. The structure will meet the required setbacks. This is the first application of the new ordinance. In December the Town Council adopted some new regulations and changed the definition of Home Businesses. The biggest change is that it is now allowed in accessory structures that aren't constructed yet. Before December, it could be done in an accessory structure if it existed prior to 1998. It also now allows for additional employees on the site. The Conditional Use standards remain unchanged.

The board is not approving the structure; there will be a subsequent building permit, if this application is approved and the applicant decides to proceed, said the CEO.

Stefan Rurak stated he hoped to construct a studio on his property. He makes art sculptures and furniture. He does not sell from his premises. His pieces get shipped to New York and sold out of a gallery. It will not be a store, it will be only where he makes the products. There will be no people coming to buy at the proposed structure. There will be machines that make noise, the loudest would be the Dust Collector, which is 70 dBA, about the sound of a washing machine. The proposed structure will be insulated with rock wool to reduce the noise coming out of the structure to about 25 dBA, depending on distance, that's like the sound of a fan.

The structure will be set back from the street about 60 feet. It will be painted black to be as inconspicuous as possible. His studio is currently in the Biddeford Pepperell Mill. There are living units above his studio. Noise has not been an issue. He has one employee. The hours of operation will be from 8 to 5. The only traffic would be the one employee coming and leaving. There are not a lot of material deliveries. There may be a delivery by a box (UPS-type) truck about every three months.

In response to board members' questions, Mr. Rurak said there would not be any solvents or hazardous waste. He uses water-based finishes and sometimes hand-rubbed oil finishes. Everything is done inside.

As far as visitors, Mr. Rurak said sadly he doesn't get many visitors. It is predominately for an NY-based market. No one comes to look; it is all shipped out. The intention of his 8 to 5 business hours is not to irritate anyone. If he were to work past 5, he would not be making any noise. With the insulation, there will be very little noise. Anyone walking by would not be aware of any noise unless a window is open.

Mr. Rurak replied the existing garage will remain. The studio will be a separate structure, built according to plans. The CEO described the plans. Mr. Rurak had a standard boundary survey done and has a site plan.

Mr. Rurak said he currently does not have a spray booth and is not going to have a spray booth. That type of work would be done elsewhere, off-site. Only small items, like a small handle, would be sprayed onsite. Shipping of finished products would be consolidated to once every two months or so. They only finish one or two pieces per month. Nothing is larger than 8 feet long by 40 inches high so something the size of a UPS truck is all that is needed.

Items would be disposed of at the appropriate transfer station. There would be no dumpster. Mr. Rurak said he plans on heating the structure with a wood-burning stove, which would also burn any wood waste.

In response to affecting the value of neighboring properties, Mr. Rurak said this would not cause an impediment for neighbors. It is a double lot. No work will be done outside, there will be no fumes, and no toxic chemicals. The highest noise-dampening insulation will be used. The new structure will just blend in, There will be no signs, no noise. It is set back 60 feet from the front. The structure will be painted black to compliment his house and be less noticeable.

When asked about shielding the view of the building, Mr. Rurak said he hadn't thought of considering a landscaping screen. He likes plants, there are a fair amount of trees. There will be no outside storage. The elements are not good for the materials he uses. This structure will connect to the city sewer and the home will be converted from septic and city sewer as well.

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

The CEO stated he has not heard any comments from neighbors.

During the board discussion, it was agreed that this looks like it meets all of the new criteria. In response to additional questions Mr. Rurak stated he had been working 13 years with only one employee, and he couldn't see needing two. He doesn't know what the future holds, but he doesn't anticipate needing an additional employee.

Mr. Powers moved to approve the request of Stefan Rurak, co-owner of the property at 11 Spruce Lane, Map U36 Lot 49, to obtain a Conditional Use Permit to operate an art studio in a separate structure to be built to establish a home business based on Section 19-5-5 of the Zoning Ordinance. Mr. Foster-Webster seconded. The motion carried by a roll call 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 proposed structure complies with the dimensional requirements for a nonconforming lot in the RA Zone.

Additional Findings of Fact:

1. The applicant has demonstrated that their proposal complies with the definition of *Home Business* in Section 19-1-3 of the Zoning Ordinance because
 - a. no more than two (2) full-time or equivalent employees who are not a resident of the dwelling unit shall be involved or employed on the premises on a regular basis in the business or professional use;
 - b. the nature of the business or professional use shall not increase vehicular traffic on the street by more than 10 trips a day;
 - c. the business or professional use shall not produce any odors, fumes, dust, glare, noise, discharge of fluids, or electrical interference in excess of that produced by normal residential use;

d. any external alteration of the building or site, including the provision of parking in accordance with Section 19-7-8, Off-Street Parking, shall not detract from the residential character of the neighborhood;

e. the home business shall be operated on property which is the business owner's residence for the majority of the calendar year.

f. there will be no signs on the property;

g. outdoor storage of equipment or materials shall be screened.

2. The applicant has demonstrated that their proposal complies with the *Standards of Conditional Use Approval* found in Section 19-5-5.D of the Zoning Ordinance because

a. the proposed use will not create hazardous traffic conditions when added to existing and foreseeable traffic in its vicinity;

b. the proposed use will not create unsanitary conditions by reason of sewage disposal, emissions to the air, or other aspects of its design or operation;

c. the proposed use will not adversely affect the value of adjacent properties;

d. the proposed site plan and layout are compatible with adjacent property uses and with the Comprehensive Plan; and

e. the design and external appearance of any proposed building will constitute an attractive and compatible addition to its neighborhood, although it need not have a similar design, appearance, or architecture.

Condition: The approval is granted subject to all elements of the final plans and specifications submitted by the applicant and to all representations, oral or written, made by or on behalf of the applicant in support of the application as per Section 19-5-5.G of the Zoning Ordinance.

Mr. Powers moved to approve the Findings of Fact, Additional Findings of Fact, and the Condition; the applicant has demonstrated that their proposal complies with the definition of Home Business in Section 19-1-3 of the Zoning Ordinance and the applicant has demonstrated that their proposal complies with the standards of conditional use approval found in Section 19-5-5.B of the Zoning Ordinance. Mr. Foster-Webster seconded. The motion carried by a roll call vote of 7 to 0.

E. Communications: None.

F. Adjournment: Chair Kerkam adjourned the meeting 8:05 p.m.