

Town of Cape Elizabeth
Minutes of the March 28, 2023
Board of Zoning Appeals Meeting
A Hybrid Meeting

Present:

Joseph Barbieri
Kevin Justh
Doreen Blanc Rockstrom

Diana Chapman
Katherine Kerkam (remote)

Adam Foster-Webster
Colin P. Powers

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 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.

B. Approval of Minutes: Approval of the Minutes for January 24, 2023: A motion to approve the minutes was made by Mr. Barbieri; seconded by Mr. Foster-Webster. Roll call vote: 6 - 0, in favor. Mr. Powers who was not present at that meeting abstained.

C. Old Business: To hear the Variance request, tabled at the August 23, 2022 meeting, of Ronald Stanton, owner of the property at 25 Stonybrook Road (Map U3 Lot 137), to construct an addition on the front of his house 15 feet from the front property line.

Chairman Justh asked CEO McDougal for the background. The CEO stated that the board tabled this for Mr. Stanton to provide additional information. Mr. Stanton has added that information to his new application and pulled the addition back to 15 feet from front property line.

Ronald Stanton stated the original request was to build 10 feet from front property line. One of the previous concerns there wasn't a record as to what the average setback was in the houses closest to his. That information is now included as a spreadsheet. The distance of the estimated front setback, measured with a laser measurer, of the 10 closest houses, determined by plot map, is on the spreadsheet. Where right of way actually ends is the variable. The average front setup is 13.5 feet or so. The other concern is the deed restriction of building to 15 feet, maximum, of the front property line. The town's attorney looked at the subdivision's deed restrictions; however, to avoid a potential title issue in the future, Mr. Stanton's plan is now 15 feet from the front property line.

The CEO responded to the questions from board members: Stonybrook is classified as a "local" road. The distance from the front property line to the construction is 15 feet.

The distance of the front corner of the garage is' 2" to the front property line. The corner that is being bumped out is 16'7" from the front property line. The expansion is 1'8". The variance is technically only 14.5 inches.

In response to board questions Mr. Stanton said the 10 nearest properties were from the Cape Elizabeth plot map. He measured with a laser measurer. The unique nature of the property is that the attached garage doesn't have an entry into the house; due to angles, a connected mudroom could not be build in any other location due to the way the house is situated on the lot. As to economic injury: The property card states this home is 1260 square feet, it is one of the smallest in the neighborhood. 2,000 - 3,000 square feet is standard in the neighborhood. Aesthetically this plan is better. The new square footage would be 1550/1560, adding 150 square feet, per floor. It will still be a three-bedroom house.

CEO McDougal said recently he received a supportive email from Liza and Christopher Quinn, 24 Ocean View Road.

Mr. Stanton stated the neighbors who have commented have been mostly positive.

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

Board discussion: Economic injury and practical difficulty definitions were discussed. Current ordinances were not in place in 1930 when these houses were built, many of which do not meet current zoning guidelines. It's a 1260 sq. ft. home in a neighborhood where the majority are larger 2,000+ sq. ft. houses. It's a neighborhood of non-conforming lots; you do the best you can to get the most of your home. The applicant has done his due diligence; he's left with little choice. It is consistent with neighborhood and desirable for the applicant to provide access to the attached garage from inside the home.

Mr. Powers moved to approve the request originally heard and tabled at the August 23, 2022, meeting, of Ronald Stanton, owner of the property at 25 Stonybrook Road, Map U3 Lot 137 for a variance to construct an addition on the front of the house. Mr. Foster-Webster seconded. The motion carried with a roll call vote: 6 - 1 in favor. Mr. Barbieri dissented.

Findings of Fact:

1. The subject lot is a nonconforming lot in the RC Zone.
2. As a nonconforming lot, the setbacks are 20 feet on the front, 10 feet on the side and 15 feet on the rear of the lot.
3. The house is currently 16.2 feet from the front property line and the applicant would like to construct an addition 15 feet from the front property line.
4. No part of the property is located in the Shoreland Overlay District.

Additional Findings of Fact:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.
2. The granting of a variance will not alter the essential character of the neighborhood.
3. The practical difficulty is not the result of action taken by the applicant or prior owner.
4. No other feasible alternative to a variance is available to the petitioner.
5. The town received legal advice that the deed restrictions are not a legal consideration.

Conclusion: There is no substantial departure from the intent of the Ordinance and a literal enforcement of the Ordinance would cause a practical difficulty as defined by 30-A M.R.S.A. Sec. 4353, 4-C.

Mr. Powers moved to approve the Findings of Fact, Additional Findings of Fact and Conclusion; Ms. Chapman seconded. The motion carried by a roll call vote of: 7 – 0.

D. New Business:

1. To hear the request of Joe Chalut, Architect, representing Caroline & Jason Kendall, owners of the property at 15 Scott Dyer, Map U22 Lot 71, to expand a nonconforming structure 37 feet 7 inches from the front property line based on Section 19-4-3.B.4 of the Zoning Ordinance.

Chairman Justh asked CEO McDougal for the background. The CEO stated that Joe Chalut is a local architect who would like to do a remodel of this house, that includes a pretty large expansion on the rear, that meets all the zoning requirements and a pretty small expansion on the side, a portion of which doesn't meet the 40 foot front set back from Scott Dyer Road. It's an extremely small portion that doesn't meet the setback. It's a tiny sliver of floor area. The setback is because it's on a major road.

Joe Chalut presented remotely on Zoom. The expansion at the front is to create a little bay onto the kitchen to put in a built-in table. The house was constructed well before the 40-foot setback was in effect; the 40-foot setback cuts through a good chunk of the house. The proposed expansion of the little bay is sideways so it's not coming forward at all. It is coming out 4 feet 4 inches toward existing driveway area. It's pretty small.

In response to questions from the board: Mr. Chalut stated that the site plan reflects the proposed expansion in this area is 95 square feet - it should be 76. The incursion into the setback is 40 square feet. The footprint of the remodel is right at the 25% lot coverage. The CEO said the section that is nonconforming is 4' by 2.5'; it's only 10 sq. ft. total. It is 37' 7" from the front property line. The house is currently 34' 7" from the front property line. Surveyor's calculation of 13,090 sq. ft. is more accurate than the property card.

The CEO received no public correspondence.

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

Board Discussion: CEO McDougal explained the existing house nonconformity is 34' 7" from the front property line and the proposed addition is 37' 7" from the front property line therefore it does not increase the nonconformity. Mr. Chalatz clarified that the foundation would be piers with an insulated floor and the addition in the back will be a crawl space.

Mr. Foster-Webster moved to approve the request of Josef Chalatz, Architect, representing Caroline and Jason Kendall, owners of the property at 15 Scott Dyer Road (Map U22 Lot 71), to expand their house based on Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Powers seconded. The motion carried by a roll call vote of: 7 – 0

Findings of Fact:

1. The property is a nonconforming lot in the RC zone. The property contains a nonconforming single-family dwelling.
2. The existing house is 34' 7" from the front property line. The owner would like to expand the house by constructing a single story addition, 37' 7" from the front property line.

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 impact on views, and the type and condition of foundation.
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.
5. The size of the lot as surveyed is 13,090 sq. ft. and size of the side addition is 76 sq. ft.

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 – 0.

2. To hear the request of Todd Swinton, owner of the property at 68 Eastman Road (Map R04 Lot 18), to convert an area of the house into an Accessory Dwelling Unit (ADU) based on Sections 19-7-5 and 19-5-5 of the Zoning Ordinance.

Chairman Justh asked CEO McDougal for the background. The CEO stated that Mr. Swinton submitted an application to remodel, improve, and make safer a space that is in the house. The prior owner might have installed a kitchen in this area creating an illegal apartment, unbeknownst to Mr. Swinton when he bought the house. Mr. Swinton wants to update this apartment and make it safer. There was nothing on file for an ADU and he would have to go through the formal process of creating an accessory dwelling unit, in order to have the building permits and have it be a legal apartment.

Mr. Swinton said he wanted to take this space, that someone was already living in and make it legal. When he moved in there were pots and pans up there and he found out someone had been living there. Mr. Swinton said there would be no changes to the exterior. He wants to make it legal. He's made it look better and the few neighbors that he has talked to are in support.

There was extensive discussion on septic/sewer system throughout this proceeding. Mr. Swinton's deed is restrictive, per the subdivision plan, as to replacing the septic system and if malfunction occurs, this property must connect to Eastman Meadows, which is a private system that goes into the public sewer. The connection pipe is already installed on Swinton's property. The property owners would connect at their expense and then share the cost with Eastman Meadows. Advanced Leachfields inspected the system when the house was purchased; no problems or history of problems was noted.

The CEO explained septic malfunction. Mr. Swinton has a backup plan in place in case of failure.

Board member, Doreen Rockstrom, disclosed that she lives in Eastman Meadows.

Location of ADU designated parking space was discussed. There is a lockable, interior connection door. The building permit was issued in 2010 for this space above the garage. This space is a small studio apartment comfortable for only one individual. The home is currently three bedrooms and the septic is sized as such.

The Chair asked for public comment.

Greg Froton of 20 Tanager Lane wanted to know more about the scope of this project. Mr. Froton questioned as to why only three residents of the 26 were notified. CEO McDougal explained how notification is done. In Eastman Meadows each condo is its own property, so only the closest were notified. CEO agreed in the future the president of an association should be informed. Mr. Swinton said the exterior would have no modifications. The location of existing septic tank and disposal field were described and are also in the application. James Grant, a licensed master plumber and L.P. Murray have looked into connecting septic to the Eastman Meadows sewer.

Steven Brooks, President of Eastman Meadows Condominium Association, said they have no objections to this proposal. The addition of the farmhouse was included as part of the approved subdivision plan. Mr. Brooks stated for the record, that once the connection is made, the farmhouse owners are financially (1/47th) responsible as part

of Eastman Meadows. If and when connected they should notify Eastman Meadows, preferably before. Mr. Brooks stated he has provided, in writing, to the CEO everything concerning the farmhouse connecting to Eastman Meadows sewer. The CEO said a connection permit would be necessary; he is not aware of any notification procedure.

Greg Froton said he was okay with Mr. Swinton's project. He is just concerned about a failing septic next to where he lives.

Mr. Swinton responded to public comments. His deed contains language about the financial commitment to Eastman Meadows should sewer connections be necessary. And in the L.P. Murray quote, loam and seed would be applied to repair any area disturbed by connecting to Eastman Meadows sewer.

Finding no public comment, Chairman Justh closed the floor.

The board continued in depth discussion of the extraordinary septic/sewer arrangement. The requirement to have close, personal relationship with whoever lives in the ADU was discussed. Mr. Swinton confirmed that the apartment was occupied at the time of purchase. So there is evidence that historically there hasn't been a problem. There is an interior connecting doorway.

Mr. Powers moved to approve the request of Todd Swinton, owner of the property at 68 Eastman Road (Map R04 Lot 18), to convert an area of the house into an Accessory Dwelling Unit based on Section 19-7-5 and 19-5-5 of the Zoning Ordinance. Mr. Foster-Webster seconded. The motion carried with a roll call vote: 6 - 1. Mr. Barbieri dissented.

Findings of Fact:

1. This is a request for a Conditional Use Permit to create an Accessory Dwelling Unit based on Section 19-7-5 and 19-5-5 of the Zoning Ordinance.
2. The subject property is 68 Eastman Road (Map R04-1 Lot 18).
3. The subject property is a conforming lot in the RB zone and part of the Eastman Meadows Subdivision. A single-family dwelling is currently on the lot.
4. Todd Swinton is the owner of the property.

Additional Findings of Fact:

1. The proposed use will not create hazardous traffic conditions when added to existing and foreseeable traffic in its vicinity.
2. 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.
3. The proposed use will not adversely affect the value of adjacent properties.
4. The proposed site plan and layout are compatible with adjacent property uses and with the Comprehensive Plan.
5. 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.

6. The applicant has demonstrated compliance with the requirements in Section 19-7-5.B of the Zoning Ordinance.

Conditions:

1. The subsurface wastewater inspection report of April 20, 2021, is reviewed by the Code Enforcement Officer and that the subsurface wastewater disposal system is determined to be in good working order.
2. The owner of the property shall notify Eastman Meadows Association upon failure of the septic system.

Mr. Powers moved to approve the Findings of Fact, Additional Findings of Fact and Conditions; Ms. Chapman seconded. The motion carried with a roll call vote of: 5 – 0. Mr. Barbieri and Ms. Rockstrom abstained.

E. Communications: None.

F. Adjournment: Chairman Justh adjourned the meeting at 9:32 p.m.