

Town of Cape Elizabeth
Minutes of the May 23, 2023, corrected
Board of Zoning Appeals Meeting
A Hybrid Meeting

Present:

Joseph Barbieri
Kevin Justh
Doreen Blanc Rockstrom

Diana Chapman
Katherine Kerkam

Adam Foster-Webster
Colin 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. The chairman reviewed the procedures on how to participate remotely and the protocols based on the Maine Municipal Association Board of Appeals Manual.

B. Approval of Minutes: Approval of the Minutes for March 28, 2023: A motion to approve the minutes as corrected was made by Mr. Powers, seconded by Ms. Chapman. All were in favor. Vote: 7 to 0.

C. Old Business: None.

D. New Business: To hear the request of William and Kelly Hunscher, owners of the property at 303 Delano Park (Map U07 Lot 38), to reconstruct and enlarge a garage based on Section 19-4-3.B.3 and B.4 of the Zoning Ordinance.

Chairman Justh asked CEO McDougal for the background. The CEO stated that applicants have a dilapidated garage/gate house on their property that is ready to fall down. They would like to rebuild it and do a slight extension in order to incorporate an interior set of stairs built to code. It is an expansion of a nonconforming structure. Section 19-4-3.B.3 and B.4. applies.

Bill Hunscher said they are rebuilding the existing structure that has seen better days. It's on wooden sleepers, is sinking and rotting, and needs to be rebuilt. They ask to expand the building four feet to the west, toward Shore Road, to enclose an interior set of stairs rather than have an exterior, exposed set of stairs, which would be visible from Shore Road.

In response to board members' questions, Mr. Hunscher said there really is no current use of the upstairs as it is unsafe. Their proposed use would be a two-car garage and an upstairs office with a bathroom for his wife and himself. There is currently an interior set of stairs but they are not within code. The proposed septic has been designed for just the garage. The house septic and the garage septic cannot be connected due to ledge on the property. There will be a 5-foot deck on the south side of the second floor, which leaves a 15-foot buffer between the edge of the deck and the property line. Due

to the slope of the land, the end of the deck will be about 6 feet above grade. It conforms to the zoning regulations.

The CEO received a call from an abutter who was in attendance.

The chair asked for public comment.

Daniel Pelletier, 203 Delano Park, adjacent to the property, said he has a different view of what's happening and would like to express his concerns. The CEO explained the applicable sections of the ordinance as requested, stating that nonconforming structures can be expanded if approved by the Zoning Board process. If the exterior stairs were not added it would be just an administrative permitting process to replace the existing garage.

Mr. Pelletier said he objected to the expansion because the current structure is less than four feet from the right of way. He has a similar garage that has been maintained. The Hunschers' design is nice, but he thought they have options to rebuild elsewhere and would like those considered. He is opposed to expanding at this location. He stated that he was also leery about this becoming a tiny home or ADU with the addition of the full bathroom with a shower. He has lived in Delano Park 25 years, and the deed restrictions allow for only single-family houses. Mr. Pelletier said the project could be slimmed down and still be a two-car garage.

Finding no additional public comment or comment from Zoom, Chairman Justh closed the floor.

The board and the CEO discussed if this could be used as bonus living space. Under the current code it cannot be used as overnight accommodation. There is not an existing septic system for the proposed garage bathroom. It is impractical to connect to existing house septic system.

The CEO had a full-sized copy of the site plan, including setbacks. The nearest corner of the garage is 2.9 feet, and the other corner is 4.6 feet to right of way. The required setbacks are 25 feet from Delano Park right of way. The Shore Road setback is 40 feet. The nearest corner to Shore Road is 46 feet. The 20-foot rear setback (15 feet for decks) was discussed and because the structure is not square (parallel) to the road, the stairs would need to come in about 6 inches so as not to encroach on the 20-foot rear setback.

The non-conformity is the setback from Delano Park Road and that is not being increased. That is defined in enlargement of nonconforming structures. The criteria of the Findings of Fact were reviewed. With the enclosed stairs it complies with the setback. There are short-term rental restrictions in place. Potential use was discussed as a condition.

Mr. Pelletier expressed concern that the structure at 2.9 feet from the road in summer is even narrower in the winter and is dangerous as a result. It was explained that the

setback from Delano Park Road is not being increased and the structure could be rebuilt on the current footprint.

Mr. Powers moved to approve the request of William and Kelly Hunscher, owners of the property at 303 Delano Park, Map U07 Lot 38, to reconstruct and enlarge a garage based on Section 19-4-3.B.3 and B.4 of the Zoning Ordinance. Mr. Foster-Webster seconded. All were in favor. Vote: 7 - 0.

Findings of Fact:

1. The property is a nonconforming lot in the RA zone. The property contains a single-family dwelling and a detached two-story garage.
2. The owner is proposing to reconstruct and expand the garage.

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, 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 board considered the physical condition and type of foundation present, if any, in addition to the criteria in Section 19-4-3.B.2.
5. The building reconstruction meets the setback to the greatest practical extent based on the criteria in Sections 19-4-3.B.3 and B.4 in the Zoning Ordinance.
6. The proposed structure is a residential accessory structure and needs to comply with the requirements in the Zoning Ordinance for such structures.
7. The applicant agreed to alter the application so that the staircase addition will be no closer than 20 feet from the rear property line.

Mr. Powers moved to approve the Findings of Fact and Additional Findings of Fact; Ms. Kerkam seconded. Motion was approved by a vote of 7 to 0. All were in favor.

E. Communications: None.

F. Adjournment: Chairman Justh adjourned the meeting at 7:43 p.m.