

TOWN OF CAPE ELIZABETH

MINUTES OF THE May 27, 2025 ZONING BOARD OF APPEALS MEETING Town Hall & Hybrid

Present:

Doreen Blanc Rockstrom 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 six members present.

Motion to approve the minutes of March 25, 2025, with friendly spelling amendments, made by Kevin Justh; seconded by Colin Powers. The motion carried with a vote of 6 to 0.

B. New Business:

1. To hear the request of David Whitten & Lisa Fernandes, owners of the property at 1002 Sawyer Road, Map U47 Lot 25, to expand a garage and convert it to living space based on Section 19-4-3.B.4 of the Zoning Ordinance.

Code Enforcement Officer (CEO), Benjamin McDougal, introduced application. McDougal explained the applicant wanted to expand existing garage and move the location to make it more conforming. Justh asked for clarification if it was a demolition and new building or if the existing structure would remain. CEO confirmed it was the same structure being slightly moved and expanded upon towards the rear and center of property.

The applicant, David Whitten, gave an overview of project. Whitten stated they updated the septic system to handle increased residential capacity. Whitten expressed the intended use of structure would be an apartment and the expansion would be a couple hundred square feet.

Diana Chapman confirmed the garage is being converted with the intention of creating an Accessory Dwelling Unit (ADU). Whitten stated the current garage is a two-room rectangle. The expansion will add a kitchen and will create a one-bedroom rental unit. Justh stated that use of ADU is not being considered before the board, just the expansion in regards to the setback. Justh confirmed with CEO the septic installed in 2024 can handle the capacity of expansion. Adam Foster-Webster asked if existing foundation will be expanded upon. Whitten answered they will add more sonotubes to addition. Gretchen Noonan confirmed the drawing of the existing site

plan with addition and clarified shaded area is for the existing addition to the structure. Doreen Blanc Rockstrom confirmed that the existing garage will remain and be re-sided, and the entire building containing the ADU will be single level. Rockstrom asked about the slope of the property and if the garage will handle the weight of new use. Whitten stated the portion of the property being built on is essentially flat.

McDougal confirmed no public comments. There were no further questions from the board; board moved to deliberation. Foster-Webster stated he views application favorably, as applicant is: increasing conformity, covered increase septic use, erosion, foundation, and considered neighbors. Justh agreed that it was a good application. Colin Powers agreed and stated no concerns.

Justh moved to approve the request of David Whitten & Lisa Fernandes, owners of the property at 1002 Sawyer Road, Map U47 Lot 25, to expand a garage and convert it to living space based on Section 19-4-3.B.4 of the Zoning Ordinance. Motion seconded by Noonan. Motion carried by roll call vote of 6-0.

Findings of Fact:

1. The property is a nonconforming lot in the RA zone. The property contains a single family dwelling and detached garage. The garage is 19.32 feet from the side property line. The required side setback is 25 feet.
2. The owner would like to expand the garage and convert it to living space 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 reconstruction meets the setback to the greatest practical extent based on the criteria in Section 19-4-3.B.2 & B.4 of the Zoning Ordinance.

Decision: Justh moved to approve the Findings of Fact and Additional Findings of Fact; Powers seconded. The motion carried by a roll call vote of 6-0.

2. New Business: To hear the request of Scott Hayward & Lisa-Jae Stangarone, owners of the property at 49 Beach Bluff Terrace, Map U10 Lot 23, to expand their house based on Section 19-4-3.B.4 of the Zoning Ordinance.

CEO McDougal gave overview of application. CEO stated desire of applicant to improve property and the house exists almost entirely within setbacks. Applicant wanted to repair compromised foundation and expand across rear and dormer.

Applicant, Scott Hayward, introduced application. Applicants recently purchased property and began renovating both structures on the property. Hayward repaired the small cottage in-law apartment and is living in that building. The main house was originally built early 1900s, very close to property line. Hayward stated the frame is in good condition but the foundation is not. Hayward would like to expand the structure to make it more livable with the general intent to renovate and preserve appearance of the historical structure. The renovation plan includes lifting the home and replacing foundation with full high basement. The applicant described the current foundation as sloping wet stacked stone in the center and part cinderblock. Hayward expressed the back part of building was likely a porch that was built in to building and is in bad condition. Applicants wanted to replace that section of the structure and make it level with the rest of structure and add dormer. Hayward added, to build to current code, they also have to move staircase. Hayward stated they are not expanding length of nonconformity on east side, and the nonconformity is the center of the building envelope. The increase of height is 2-3 feet, and part of increase is due to replacing the foundation. Hayward expressed they reached out to neighbors who submitted letters of approval.

Foster-Webster asked if there were multiple parcels. Hayward responded that the original parcel was 40 feet x 100 feet; overtime, owners added land. Justh asked about septic system inspection and condition. Applicant stated they tested the septic; it is in poor working condition and the leach field in in fair condition. Applicant expressed the intention of repairing septic in the future. CEO stated he has not seen the septic report. Justh asked if there are any structures built on abutting four lots owned by same owner. Hayward confirmed there are no structures. Foster-Webster asked what the maxim height of structure could be, McDougal confirmed 35 feet. Applicant confirmed the current structure is about 20 feet and increasing height by 3 feet would be well within height limit. McDougal confirmed two favorable letters from abutters. Hayward added the rear abutter is Robinson's Woods. Foster-Webster confirmed that east neighbors gave permission to use heavy machinery on their property and asked what would be done to prevent erosion. Hayward responded they will replace and repair damage to neighbors and will build up in front of the house to deter water from neighboring sub pumps. Justh asked if they considered moving the foundation when they lift the house to make it more conforming. Applicant stated doing so would make it tricky to reconnect to septic and cost more.

With no further questions, board moved to deliberation. Powers stated that they are not increasing people living there but still need to consider septic. Justh pondered if they should have a condition of approval that CEO reviews the report of septic. CEO McDougal confirmed that there are very strict rules for failed septic requiring repair. Noonan asked if they need to consider septic condition because they are expanding not relocating, referencing 19-4-3.B.2 of the ordinance. Noonan expressed their interpretation; they only need to consider location of septic, not condition. McDougal stated his interpretation is the same Noonan, and referred to second paragraph of section. CEO stated he believes that the septic system complies with state law. Foster-Webster said he looks favorably at the application, because applicant is improving the structure and considered neighbors.

Justh moved to approve request of Scott Hayward & Lisa-Jae Stangarone, owners of the property at 49 Beach Bluff Terrace, Map U10 Lot 23, to expand their house based on Section

19-4-3.B.4 of the Zoning Ordinance. Seconded by Noonan. Motion carried by roll call vote of 6-0.

Findings of Fact:

1. The property is a nonconforming lot in the RA zone. The property contains a single family dwelling and detached garage. The house is 4.3 feet from the side property line. Most of the existing house is within the 25 foot side setback.
2. The owner would like to expand the house 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, 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 reconstruction meets the setback to the greatest practical extent based on the criteria in Section 19-4-3.B.2, B.3 & B.4 of the Zoning Ordinance.

Decision: Justh moved to approve the Findings of Fact and Additional Findings of Fact; Powers seconded. The motion carried by a roll call vote of 6-0.

3. To hear the request of Michael Ferreira, representing Benjamin Levin, owner of the property at 37 Cottage Farms Road, Map U01 Lot 33 to replace and expand a nonconforming garage based on 19-4-3.B.3 & B.4

CEO McDougal gave overview of application. Applicant came in the office with building permit to replace garage that included increasing the pitch of roof to add storage. McDougal considered it as an expansion of the structure requiring the project to go through the zoning board.

Applicant, Michael Ferreira, stated new structure will be built on existing foundation. The garage would add a header. Ferreira reported there should not be any erosion or damage to soil, heavy machines will be stored in the driveway. The old asphalt garage floor would be replaced with concrete. Ferreira expressed the existing condition of the garage is poor and rotting. Applicant added that the garage will not be used as a living space.

Justh asked how much higher will the new structure be. Ferreira answered about 2-3 feet higher, with a foot for the header. The current pitch is three feet and would be changed to four. Foster-Webster asked about overall height. Applicant responded the current height is 13-14 feet and would increase to 17-18. CEO asked about condition of foundation. Applicant stated they can see three feet of foundation and it looked to be in good condition. CEO confirmed with applicant if the foundation is bad, they will need to amend application and provide a survey. Applicant addressed the request in the application to remove dead trees, as they could only be accessed when garage is demoed. CEO said they can discuss at another meeting.

McDougal confirmed no public comments. With no further questions, board moved to deliberation. Justh asked if applicant has to come back if foundation fails, if board approves application based on not increasing non conformity. CEO confirmed they would not return to the board, but would need to provide survey.

Justh moved to approve request of Michael Ferreira, representing Benjamin Levin, owner of the property at 37 Cottage Farms Road, Map U01 Lot 33 to replace and expand a nonconforming garage based on 19-4-3.B.3 & B.4. Motion seconded by Noonan. Motion carried by roll call vote of 6-0.

Findings of Fact:

1. The property is a nonconforming lot in the RC zone. The property contains a single family dwelling and detached garage. The existing garage does not meet the side and rear setbacks, 10 feet and 15 feet, respectively.
2. The owner would like to reconstruct and expand the garage based on section 19-4-3.B.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, 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 reconstruction meets the setback to the greatest practical extent based on the criteria in Section 19-4-3.B.2, B.3 & B.4 of the Zoning Ordinance.

Decision:

Justh moved to approve the Findings of Fact and Additional Findings of Fact; Noonan seconded. The motion carried by a roll call vote of 6-0

C. Old Business: None

D. Communications: Sully McCarthy spoke about event being hosted in June at the Town Green by the Assessing, Codes, and Planning office. McCarthy described a picnic event at new outdoor tables ordered by the Conservation Committee.

E. Adjournment: Meeting adjourned 7:56 P.M.