

Town of Cape Elizabeth
Minutes of the August 23, 2022
Board of Zoning Appeals Meeting

Present:

Joseph Barbieri
Katherine Kerkam

Adam Foster-Webster
Colin Powers

Kevin Justh
Michael Tadema-Wielandt

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

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

B. Approval of Minutes: Mr. Barbieri moved to approve the minutes of July 26, 2022, with the following corrections: Page 1, next to last paragraph should read *relatively* old house, three lines down change envelop to *envelope*, and Page 2, Public Comment, third line change by to *be*. The motion was seconded by Mr. Foster-Webster. The minutes were approved by of a vote of 4 - 0. Two members not present at that meeting, abstained.

C. Old Business: None.

D. New Business:

Agenda Item 1: To hear the variance request 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 10 feet from the front property line.

Acting Chairman Justh asked CEO McDougal for the background. The CEO stated that Mr. Stanton wanted to build an addition onto his house, due to the configuration of his house it seemed to only work on the front. It is a very small lot in the RC Zone. It is a nonconforming lot with a nonconforming structure. The existing structure is 16.7 feet from the front property line. He is seeking a variance to get even closer to the front property line. The setback is 20 feet. He is currently 16.7 feet; he'd like to get down to 10 feet. So 6.7 feet closer to the front property line.

Mr. Ronald Stanton said the house is small and it's on a small lot. It's a little under 1300 sq. ft. After living in the house a couple of years, the lack of any entryway/mudroom is a detriment. They have considered different addition options to make it work but even if built flush with garage, the footprint is so small it would not provide the desired space. The proposed plan comes out and up one story to help the look of the original facade.

Questions from Board regarding one of the standards to be met when getting a variance is *practical injury* — a significant economic injury to the property owner. Mr. Stanton said the 1260 square feet of their house relative to their neighbors, who average about

2500 square feet and the lack of an entryway in a cold climate is a disadvantage. There's one house smaller in Stonybrook; his is the second smallest house. His is certainly the smallest using the 10 nearest houses.

Another condition for approval is that it is not *an undesirable change to the character of the neighborhood*. The definition in Ordinance was read. Mr. Stanton included several images of structures that are significantly closer to the road than 10 feet. He stated he didn't know exactly where his property line and right of way were until the property survey had been done. There is no way to know where the property lines are, in relation to the road. The houses referenced in the application are certainly closer to the road and the distance was measured by tape or laser measure from the street. The immediate neighbor accesses their house from Oceanview and use the Stonybrook side as a back yard. Mr. Stanton said his immediate neighbors have written in support of this application.

The 10 nearest neighbors have not been selected for comparison in the application. Mr. Stanton can't know where the line is for each property, that's why he included a map of the neighborhood. He'd been in his home two to three years before realizing that his property line is six or seven feet from the road. Only one neighbor had a property survey.

CEO McDougal stated he received three emails: two in support, one not in support.

The chair asked for public comment. Finding none, Acting Chairman Justh closed the floor.

In response to a board member's question, the CEO said in regard to subsection C, the applicant met the standard. In general we have considered 10 feet as the number.

The majority of homes in the RC Zone are nonconforming on nonconforming lots. Stonybrook is a unique neighborhood due to many different building styles, lot sizes; however, the burden is on the applicant to prove the standard.

The road is not aligned and the Board cannot survey everyone's property. The Board has used a range-of-reasonability test for distances. Economic injury is a difficult test. Some houses are close to the road — the Board needs the data for no fewer than the 10 closest houses. Practical difficulty, defined in statute and ordinance, is difficult to overcome. Appraiser's property cards have the square footage of houses.

The Board would like in spreadsheet format the data of at least the closest 10 houses. No fewer than 10 nearest principal structures need to be identified. A good faith estimate. The Board would like some extra diligence of the applicant. The applicant can work with CEO.

There were questions concerning the deed restriction of "No building shall be erected closer than 15 feet to the street." from the 1912 Plan. The CEO will reach out to the town attorney for interpretation.

Mr. Tadema-Wielandt moved to table the request 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. Powers seconded. All were in favor. Vote 6 - 0.

Agenda Item 2: To hear the request of Alexander Herbert, owner of the property at 37 Eastman Road (Map R04 Lot 12), to expand his house based on Section 19-4-3.B.4 of the Zoning Ordinance.

Acting Chairman Justh asked CEO McDougal for the background. The CEO stated he saw Mr. Herbert a few months ago concerning an addition and reconstruction of portions of his house. He has a funky property line on the back that jogs inward towards the house that prevents him from doing an addition on the rear with setback requirements. It is a nonconforming lot in the RB Zone. If this is approved he would go on town sewer. The site plan submitted is an excerpt from a survey that surrounding properties have done. The property lines are survey quality but he does not have a formal survey of this property.

Mr. Herbert said his family continues to grow this is something he'd like to pursue. He bought the house five or six years ago. There is a very interesting rear property line and comes into the back of his garage. That is really the main issue. The garage is detached from the house and there is an alleyway between garage and house. The current garage is on a slab which is on a lower grade then the structure of the house. There are issues with the sides of the house. Water also comes from the street down the driveway, so water flows into the house. He has been pumping it out with two sump pumps. He talked with site work folks about mitigating the grade. The current living space is quite small for a growing family. For that reason he'd like to move the garage over and put an addition on between the house and the garage to connect it all and correct the water drainage issue. The existing garage is eight feet from the back point. His proposal is to increase the distance from the point to the structure — it would be a larger setback than what it is. He plans to tie into the town sewer. This would be economically better than buying a larger home.

In response to board member's questions Mr. Herbert said the garage will be demolished. There would be some excavation to pour a new foundation. Mr. Mike Backman, Waterhouse Builders, LLC, Designer, answered that the required setbacks are 25 feet on the sides and 20 feet rear. He explained the plans. The right side is nonconforming but nothing is being done there and nothing is changing in the front.

The CEO said that if the little triangle was not there and the line went straight across the back, this would be in his jurisdiction; but because of that triangle its impossible to do anything on the rear.

The CEO said he did not receive any public comment for this application.

The chair asked for public comment.

Ellen Brewer, 35 Eastman Road, lives next door, and agreed the crazy triangle thing is a problem. Her one concern is about drainage. They also have a sump pump and don't need more water going onto their property.

Finding no additional public comment, Acting Chairman Justh closed the floor.

Mr. Herbert said no trees will be removed as part of this project, no views are affected. They talked about drainage, which is a huge concern. Mr. Herbert has consulted Murray. Their plan is to only make it better which should also help their neighbor. He described the slope of the land and current drainage. The current gutters run into rain barrels. The end of driveways looks like a beach due to drainage from the road.

There was Board discussion concerning the potential to add to drainage problem. There will be added roof surface, however, the patio is being removed. The applicants are working with their neighbors. It was suggested that the applicant call Public Works to assess road rain drainage issues and that Mr. Herbert redirect the sump pump drainage off their neighbor's property.

Mr. Foster-Webster moved to approve the request of Alexander Herbert, owner of the property at 37 Eastman Road, Map R04 Lot 12, to expand the house and garage based on 19-4-3.B.4 of the Zoning Ordinance; Mr. Barbieri seconded. All were in favor. Vote 6 - 0 .

Findings of Fact:

1. The property is a nonconforming lot in the RB Zone. The property contains a nonconforming single family dwelling.

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 expansion 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 applicant agrees as a condition of this approval to redirect sump pump discharge.

Mr. Tadema-Wielandt moved to approve the Findings of Fact and Additional Findings of Fact; Mr. Foster-Webster seconded. Vote: 6 - 0 in favor

E. Communications: None.

F. Adjournment: Acting Chairman Justh adjourned the meeting 9:26 p.m.