

Town of Cape Elizabeth
Minutes of the October 25, 2022 Board
of Zoning Appeals Meeting

Present:

Adam Foster-Webster
Michael Tadema-Wielandt

Kevin Justh
Michael Vaillancourt

Katherine Kerkam

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

A. Call to Order: Chairman Vaillancourt called the meeting to order at 7:00 p.m.

B. Approval of Minutes: Approval of the Minutes for August 23, 2022: A motion to approve the minutes was made by Mr. Justh; seconded by Ms. Kerkam. All were in favor. Vote: 5 – 0.

C. Old Business: None.

D. New Business: To hear the request of David Lawser, owner of the property at 19 Orchard Road, Map U21 Lot 125, to expand the front porch based on 19-4-3.B.4 of the Zoning Ordinance.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated that Mr. Lawser came in for a building permit for a porch, similar to what several of his neighbors have. They had some discussion of where the front property line was and if he met the set backs. His sketch plan of an 8-foot porch did not meet setbacks. His sketch plan shows the existing deck attached to his stairs is 17.8 feet from the front property line. Mr. Lawser decided to shrink his farmers porch to get no closer to the front property line than he is with the existing deck. That would be 17.8 feet from the front property line. This is a nonconforming lot in the RC Zone; most of these houses were built in the 40's and 50's.

The CEO did not receive any comments or correspondence concerning this application.

David Lawser said he was ready to build and has a builder. He purchased the property July 14, 2020. He's been coming to Maine for 30 years. Stated he wanted a farmers porch to visit with neighbors. The existing deck needs to be replaced.

CEO McDougal mentioned two conditions must be met:

1. The percent of lot coverage needs to be answered; it was not addressed in the application. The maximum building coverage of the lot is 25%. That needs to be confirmed prior to the issuance of a building permit.

2. The proposed deck appears, according to the sketch plan, to be 5.84 feet out from the house and the front property line tapers slightly in that direction. So the farmers porch needs to be a little less than the existing deck so it is no closer to the front property line.

Mr. Lawser said he thinks the surveyor measured from the outside of the siding because he measured 6 feet. Which is a difference of two inches.

We just have to insure we legally approve this stated Mr. McDougal. It is possible the measurement was taken from the siding but even so, the porch can not come out as far as the existing deck and continue that along the front of the house because that would be closer to the front property line than it is now. The existing deck was measured to be 17.8 feet from the property line. It must be verified that the 17.8 feet from the property line is respected.

Board members questioned where the boundary lines came from on note #4 on sketch plan. How do we ensure that we are 17.8 feet from the property line if we don't have an accurate front property line?

Mr. Lawser said the pins could no longer be found in this older housing area. There was a discussion about property surveys, who's responsible for obtaining them, and why the board needs accurate boundaries versus a sketch plan. The possibility of a condition was mentioned of the surveyor, doing an as-built survey, stating the resulting construction is no closer than the porch was before.

The chair asked for public comment.

Benson Dana of 17 Orchard Road stated he has lived there for 38 years. He stated that at their bank closing, he and his wife were told that they didn't own part of their driveway and a neighbor owned part of their property's back yard. They liked the house and bought it anyway. He stated in Elizabeth Park they did what they needed to do to fit the houses in. His house is on an eighth of an acre. So people in the Park have limits on what they can do and how they can do it, that a lot of Cape residents don't have. Mr. Dana is in favor of the Lawser's farmers porch.

Finding no additional public comment, Chairman Vaillancourt closed the floor.

Board comments: As long as the amount of nonconformity is not increased this application makes sense. The Board needs to know where front property line is. The 1940's were not long ago. This is a typical issue throughout New England. A land surveyor needs to delineate the boundaries of this property accurately relative to the existing structure to give us those exact measurements. We hold applicants to this standard all the time. Board members expressed concern about having a title issue or having to remove a porch not constructed to zoning requirements.

Mr. Lawser wanted to know what his time frame was for providing a survey. The CEO replied the next Board Zoning of Appeals Meeting was December 7.

The Board continued their discussion.

Chair Vaillancourt advised Mr. Lawser that he needs a Boundary Survey with metes and bounds and suggested pins on corners.

Mr. Vaillancourt moved to table the application of David Lawser (owner of the property at 19 Orchard Road, Map U21 Lot 125, to expand the front deck into a covered porch based on 19-4-3.B.4 of the Zoning Ordinance) pending a Boundary Survey. Mr. Foster-Webster seconded. The motion carried. Vote: 4 – 1.

Chairman and CEO responded to questions from Mr. Lawser.

E. Communications: None. Due to the holidays, the next meeting is Wednesday, December 7.

F. Adjournment: Chairman Vaillancourt adjourned the meeting 7:45 p.m.