

Town of Cape Elizabeth
Minutes of the December 6, 2023
Board of Zoning Appeals Meeting
A Hybrid Meeting

Present:

Joseph Barbieri
Adam Foster-Webster
Colin Powers

Doreen Blanc Rockstrom
Kevin Justh

Diana Chapman
Katherine Kerkam

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 Chair reviewed the procedures on how to participate remotely and the protocols based on the Maine Municipal Association Board of Appeals Manual. All members were present. A quorum was declared.

B. Approval of Minutes: A motion to approve the October 24, 2023, minutes was made by Mr. Barbieri and seconded by Mr. Foster-Webster. The motion carried.

C. Old Business: None.

D. New Business:

1. To hear the request of James McAuliffe, owner of the property at 8 Hermit Thrush Road (Map U04 Lot 143), to enlarge their house based on Section 19-4-3.B.4 of the Zoning Ordinance.

Chairman Justh asked CEO McDougal for the background. The CEO stated that the plans are to put dormers on their Cape Cod-style house. This is a conforming lot in the RC Zone. The side setbacks are 10 feet. One side of the house is a little less than 10 feet from the side property line. The rear dormer ends up being roughly 2 feet into that side setback. The front dormer meets the setback. The rear dormer is roughly 8 feet from the side property line. This will expand the upstairs. Currently, it's a 1 1/2 story cape; this will make it a 1 3/4 story cape.

Linda Bradley, of Bradley Designs, clarified that it's 2 feet 10 inches over the setback. There are two bedrooms on the second floor now, but the headroom is limited. The current setback is 7 feet 2 inches, with the modification it will be the same. The front is 20 feet, and the rear 20 feet; they are not being modified.

In response to questions, Ms. Bradley replied, that the dormers don't impact views. There are no water, field, or mountain views to be obstructed. The house sits high on the site; adjacent houses are lower. The foundation is staying the same. It is a poured concrete foundation in good condition.

The CEO stated he did receive a call and a walk-in inquiry on this application. There were no objections.

The chair asked for public comment.

Janet Smaldon, of 8 Arrow Point Road, asked which side of the property was changing. The CEO responded that it's the right side when facing the house on the side opposite the garage.

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

Mr. Powers moved to approve the request of James McAuliffe, owner of the property at 8 Hermit Thrush Road, Map U04 Lot 143, to expand the house based on Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Foster-Webster seconded. The motion carried by a vote of 7 to 0.

Findings of Fact:

1. The property is a nonconforming lot in the RC zone. The property contains a single-family dwelling and garage.
2. The existing house is 7 feet 2 inches from the side property line. The owner would like to expand the house by constructing second-floor dormers.

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. The home is on public sewer.
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.

Mr. Foster-Webster moved to approve the Findings of Fact and Additional Findings of Fact; Mr. Powers seconded. The motion carried with a vote of 7 to 0.

2. To hear the request of Phil Adams and Wendel Bruss. Wendel Bruss is the owner of the property at 4 Lindenwood Road (Map U04 Lot 161), to enlarge their house based on Section 19-4-3.B.4 of the Zoning Ordinance.

Chairman Justh asked CEO McDougal for the background. The CEO stated that Mr. Adams would like to remodel this house. Part of the remodel is expanding upstairs of the garage. Currently, it's about 1/2 story with some doghouse dormers on the front

and they want to do a full dormer on the rear. This is a conforming lot in the RC Zone and has 20-foot side setbacks. The house is about 11 feet from the side property line.

Phil Adams stated there is an existing dormer there. He wants to extend it to the existing footprint. The existing foundation is staying. They would like to get some better headroom. There is a screening agreement to offer their neighbor privacy from the new windows on the new dormers.

In response to questions, Mr. Adams and Ms. Bruss replied as follows: They will be planting new plants, mostly native, around the perimeter of the property. There is no vegetation being removed. The existing foundation is poured concrete with a slab, in good condition. The lot coverage is changing due to an expansion on the side closest to the house of the garage foundation. It is conforming and meets the setback. There is one window over the garage now; there will be two. The neighbors have a copy of the plans.

The CEO stated he spoke with a neighbor and answered questions. The neighbor has no objections.

The chair asked for public comment.

Richard Pike, of 6 Lindenwood Road, via Zoom, stated he's had constructive conversations with applicants. He just wanted some privacy screening. He has no objections.

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

In response to a board member's question, the CEO said the existing house is 11.1 feet from the side property line.

Mr. Foster-Webster moved to approve the request of Phil Adams and Wendel Bruss to expand the house based on section 19-4-3.B.4 of the Zoning Ordinance. Ms. Kerkam seconded. The motion carried by a vote of 7 to 0.

Findings of Fact:

1. The property is a conforming lot in the RC zone. The property contains a single-family dwelling.
2. The existing house is approximately 11 feet from the side property line. The owner would like to expand the house by expanding the second-floor dormer.

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 presence of public sewer.

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.

Mr. Powers moved to approve the Findings of Fact and Additional Findings of Fact; Ms. Chapman seconded. The motion carried with a vote of 7 to 0.

3. To hear the request of David Lawser to reconstruct and expand his front porch based on Section 19-4-3.B.4 of the Zoning Ordinance. This item was tabled at the October 24, 2022, Zoning Board meeting. The property is 19 Orchard Road (Map U21 Lot 125).

Chairman Justh asked CEO McDougal for the background. The CEO stated that last year Mr. Lawser came in to expand his front deck into a farmer porch. He did not have a survey at the time. We were not able to determine if he was increasing the nonconformity without a standard boundary survey because it was a matter of inches and he's on a slight curve of the road. The Zoning Board considered making the survey a condition but then in the end required it. Recently Mr. Lawser had Spurwink Surveying do the survey which shows the existing deck is 17.7 feet from the front property line. The proposed farmer porch is 17.8 feet from the front property line making it further away from the front property line than the existing deck, therefore becoming more conforming.

Mr. Lawser gave permission to Benson Dana to represent him. Mr. Dana stated that he was a next-door neighbor. He said he approved of the new porch. It will improve the neighborhood. There are lots of existing farmer porches there.

In response to a board member's question, CEO McDougal interpreted the statements Mr. Lawser made on his application as to distances from the right property line. He is building further away from the property line. It was also confusing that he included an old application, that the Zoning Board approved, in his package. The old deck posts were rotting. The new porch will be code-compliant with concrete footings and pressure-treated posts.

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

Both the Chair and the CEO commented that the boundary survey was beneficial to establish where the property line actually is.

Ms. Kerkam moved to approve the request of David Lawser, owner of the property at 19 Orchard Road, Map U21 Lot 125, to expand the front porch on the house based on Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Foster Webster seconded. The motion carried with a vote of 7 to 0.

Findings of Fact:

1. The property is a nonconforming lot in the RC Zone. The property contains a single-family dwelling.
2. The existing porch is 17.7 feet from the front property line. The owner would like to reconstruct and expand the porch 17.8 feet 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 presence of public sewer.
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.

Mr. Foster-Webster moved to approve the Findings of Fact and Additional Findings of Fact; Mr. Powers seconded. The motion carried with a vote of 7 to 0.

E. Communications: Mr. Barbieri suggested changes to improve the application format. The CEO stated he appreciated any feedback to make the application process clearer or easier. The Chair reminded the board, that as part of the first meeting of the new year, a Board Chair and Vice Chair must be chosen.

F. Adjournment: Chairman Justh adjourned the meeting at 7:50 p.m.