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Town of Cape Elizabeth Minutes of the January 28, 2014 Zoning Board of Appeals Meeting

Members Present:

Josh Carver	Barry Hoffman	John Thibodeau
Joanna Tourangeau	Michael Tadema-Wielandt	Michael Vaillancourt

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

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

B. Approval of Minutes:

1. Approval of the Minutes for December 11, 2013 - A motion to approve the minutes was made by Mr. Carver; seconded by Ms. Tourangeau. All present at that meeting were in favor. Vote: 4 – 0. Mr. Vaillancourt and Mr. Tadema-Wielandt abstaining.

C. Old Business: None.

D. New Business:

1. Chair Thibodeau introduced and welcomed two new members of the Zoning Board: Michael Vaillancourt and Michael Tadema-Wielandt.

2. Chairman Thibodeau announced that Josh Carver had agreed to be the new board chairman. Ms. Tourangeau made a motion to nominate Josh Carver as Chairman; seconded by Mr. Hoffman. All were in favor. Vote 5 – 0. Mr. Carver abstaining. Mr. Carver continued the meeting as Chairman.

Ms. Tourangeau volunteered to be the new board secretary. Mr. Thibodeau motioned to approved Ms. Tourangeau as Zoning Board Secretary; seconded by Mr. Vaillancourt. All were in favor. Vote 5 – 0. Ms. Tourangeau abstaining.

3. To hear the request of Paula McNulty of 50 Market Street, Suite A #252, South Portland, Maine, for an approval to reconstruct/expand a nonconforming structure at 2 Beacon Lane, Map U15, Lot 45, per Section 19-4-3.B.3 of the Zoning Ordinance.

Chairman Carver asked Mr. McDougal for a brief update.

Mr. McDougal said the house had been uninhabited and dilapidated for the last couple of years due to water damage. Ms. McNulty would like to renovate and expand the house based on plans that are in the packet. A small section of the front of the garage encroaches into the front setback. The corner of the house encroaches into the side setback. No part of the proposed structure encroaches further into these setbacks so a

1 variance is not necessary, but there will be additional floor area in the setbacks, which
2 requires an approval under §19-4-3.B.3. In regard to questions Mr. McDougal replied in
3 the Zoning Ordinance deck space and floor area are different. Here the area of the two
4 spaces is roughly equivalent. The area on the garage side of the structure is being
5 reduced and the area on the deck side is being pulled back. The floor area is
6 increasing but the actual footprint of encroachment is probably decreasing.

7
8 Chairman Carver asked Ms. McNulty to step to the podium.

9
10 Ms. McNulty came to the podium with architect Hiroko Lindsey, of Lindsey Architects,
11 Wells, Maine. Ms. McNulty stated they have owned the house since 1998. While they
12 were living in New York and commuting to Maine for week-ends, pipes burst during a
13 cold spell and water ran for a couple of days. The mitigation company did a subpar job
14 and mold completely over took the entire house. That has been mitigated and she said
15 they are ready to return to the home they haven't been able to use.

16
17 In response to questions Ms. McNulty said the home was about 4500 square feet. The
18 floor space for the current house is approximately the same. There were five bedrooms
19 and three baths to start and that is also the proposed plan. The chimney is at thirty-five
20 feet; it is three feet higher than the roof. The house is going to remain. The roofline is
21 going to be made even, not much higher than it is now – just all one height. The original
22 structure was built onto many times resulting in about seven different roof levels. Which
23 has allowed all types of damage to occur in the eaves. The garage is the only tear down.

24
25 Mr. McDougal said he had a certified survey that was not included in the packet if
26 anyone wanted to see it.

27
28 Replying to more questions Ms. Lindsey said the deck on the west side is a little more
29 than ten feet from the property line; the new structure will be at 14 feet.

30
31 Mr. Thibodeau observed that the information on the application states current and
32 proposed footprints are the same. Mr. McDougal said that was an error on the
33 application. Based on his own measurements Mr. McDougal said the existing deck is
34 approximately six feet from the line and the proposed structure will be about nine.

35
36 Ms. McNulty said they are putting in a bigger septic system downhill further, beyond the
37 pool. Three trees will be removed: an elm and two pines. The area will be landscaped
38 again. The percentage of lot coverage for the new structure was not known.

39
40 Mr. McDougal recommended that if the board approves the permit to have a condition
41 that the maximal building footprint not exceed 20% as stated in the Zoning Ordinance.
42 He said 20% of the lot size would be a building footprint of 4878 square feet. The total
43 floor area is 4500. The building footprint includes steps.

44
45 Ms. Lindsey replied that the grade was not changing on the side of the abutting
46 property, however if the driveway changes to the Lighthouse Point Road side there
47 would be grading changes. Ms. McNulty said they would like to have the option to
48 move the driveway but the plans were not firm.

1 There was discussion about the garage bays orientation and driveway location
2 regarding grade changes and impact on views. Mr. McDougal said the Director of
3 Public Works would analyze the location for a new driveway in regard to traffic safety.
4 That would not be part of this action, there would need to be a separate permit to move
5 the driveway.
6

7 There was discussion about the square footage. Ms. Lindsey stated they were not
8 increasing the nonconforming area; they were expanding toward the backside of the
9 house, which is allowed expansion. Mr. McDougal said the section of this renovation
10 that triggers Zoning Board approval is the infill of the upper deck – the 12' X 9' area that
11 squares off that side of the house. The rest of the proposal complies with the Zoning
12 Ordinance for a building permit.
13

14 Ms. Lindsey cited the definition of Increase in nonconformity of a structure from the
15 Zoning Ordinance, Section 19-1-3. Infilling the structure is considered not expanding
16 the nonconformity.
17

18 Mr. McDougal agreed that they were not increasing the nonconformity of the structure
19 because they are not getting closer to the property line than they already are.
20

21 The profiles of the structure, ceiling height, total square footage and building plans were
22 discussed. Ms. McNulty reviewed the plans with board.
23

24 Chairman Carver asked for public comment.
25

26 Jim Johnson, 2 Lighthouse Point Road, across the street, came to the podium and
27 stated their house is in my view out of the office window. He said he was a distributor
28 for Lindal Cedar Homes for 25 years. He did not understand why there wasn't an exact
29 count of the square footage of living space if that is a factor in the zoning. He also
30 expressed concern about the driveway entering from Two Lights Road because there is
31 quite a rapid drop in grade. He guessed that it was a rise of about 15 feet from the curb
32 to the garage. He thought the driveway should be approved before a permit was
33 granted. He stated that the proposed house appears much bigger in the drawing.
34

35 Jackie Allen, 4 Beacon Lane, came to the podium and asked about the elevation of the
36 new roofline over the addition. She also expressed concern about the orientation of the
37 garage depending on where the driveway would be.
38

39 Ken Lane, 5 Beacon Lane, across the street, came to the podium and stated he thought
40 that it was unfortunate that the roofline was being raised and extended, blocking the
41 views of three families, in perpetuity, who live there year around for the four or five week
42 summer residence for a New York family.
43

44 David Allen, 4 Beacon Lane, came to the podium and stated they built their house 30
45 years ago. He thanked the town for being proactive with the notification for this project.
46 They live right next door and for a long time the McNulty house has been unlivable and
47 dilapidated and has become an eyesore for the neighborhood. So he appreciated the
48 McNultys doing something about it and are supportive of that. He appreciated that they

1 were sticking to the same footprint although the house is going to increase significantly
2 in size due to the addition of the garage and the addition over the nonconforming space.
3 It is still pretty much on the same footprint. He also stated he appreciated that
4 according to the plan the roofline was only going to go up one foot from the existing
5 roofline. The only negative with the expansion is that it has an impact on their view of
6 the lighthouse and the light keeper's house. He didn't know if anything could be done
7 about the impact on their views. But he restated he was in favor of the project.

8
9 Ms. McNulty returned to the podium and stated it is more likely that the driveway will
10 remain on Beacon Lane. She explained that this is not a temporary summer home, they
11 lived there for a time, children went to Cape schools, she is not from New York and she
12 plans to return to this home. She never wanted to obstruct any views with the redesign
13 and even thought neighbors would have a better view with the three trees removed.
14 She is just trying to make the house user friendly with higher ceilings and described how
15 the interior of the house would be configured.

16
17 Ms. McNulty pointed out the location of neighboring homes in relationship to hers.

18
19 Jackie Allen asked about the elevation of the roof on the garage. Ms. McNulty
20 explained that the roofline of the garage would be on the same plane as the house
21 roofline.

22
23 Chairman Carver closed the floor to public comment.

24
25 The board discussed the nonconformity and setbacks, the increase in the square
26 feet, the height of the roofline and how the language of the Ordinance applies to
27 this remodel. The board was mindful of the effect on views. It was determined
28 that the west side rebuilding needs Zoning Board approval, not the entire plan or
29 where the driveway will be located.

30
31 Mr. Tadema-Wielandt motioned to reopen public comment; Ms. Tourangeau
32 seconded. All were in favor. Vote 6 – 0.

33
34 Chairman Carver reopened the floor for public comment.

35
36 David Allen came to the podium to comment relative to the view on the westerly
37 side of the house. The view on the westerly side, where the nonconforming area is
38 the roofline will go up, the house will fill out, and the view might be impacted a few
39 months of the year when there are no leaves on the trees but other than that the
40 nonconforming side on their boundary, if the house goes up, it does not impact our
41 views. That's not what his first comment was relative to - it's the other end of the
42 building.

43
44 Ken Lane came to the podium and stated that the rising of the garage, by however
45 many feet it is, clips a portion of our view of the water, but giving the horrible
46 condition of the house now, almost anything would be an improvement. He urged
47 the board to approve this plan.

1 Susan Johnston, 2 Lighthouse Point Road, which is diagonally across from the
2 McNultys, came to the podium. Her question was not so much about the view
3 because this won't impact our view, as the driveway situation. She is concerned
4 about the grade and the big evergreen trees on that side. She wanted to know
5 where the driveway would be located. She commended the McNultys for redoing
6 the house because it looks awful.

7
8 Chairman Carver closed the floor for public comment.

9
10 Ms. Tourangeau motioned to approve the application; Mr. Thibodeau seconded. All
11 were in favor. Vote 6 – 0.

12

13 **Findings of Fact:**

14

15 1. This is a request to remodel and expand a single family dwelling per Section 19-4-3.
16 B.3. of the Zoning Ordinance at Map U15, Lot 45, at 2 Beacon Lane.

17

18 2. Paula McNulty is the owner of record of the property at Map U15, Lot 45 at 2 Beacon
19 Lane.

20

21 **Additional Findings of Fact:**

22

23 1. The Zoning Board of Appeals has considered the size of the lot, the slope of the
24 land, the potential for soil erosion, the location of other structures on the property and
25 on adjacent properties, the location of the septic system and other on-site soils suitable
26 for septic systems, the impact on views, and the type and amount of vegetation to be
27 moved to accomplish the relocation.

28

29 2. The proposed structure will not increase the nonconformity of the existing structure.

30

31 3. The proposal structure is in compliance with the setback requirement to the greatest
32 practical extent.

33

34 4. The shortest distance from the structure to the property line will be increased from
35 approximately six feet to approximately nine feet.

36

37 All were in favor. Vote 6 – 0.

38

39 **E. Communications:** None.

40

41 **F. Adjournment:** Chairman Carver adjourned the meeting at 8:58 P.M.