

Town of Cape Elizabeth Minutes of the December 10, 2014 Zoning Board of Appeals Meeting

Present:

Matthew Caton
Michael Vaillancourt

Michael Tadema-Wielandt

John Thibodeau

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

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

B. Approval of Minutes:

1. A motion to approve the minutes of October 28, 2014, was made by Mr. Thibodeau seconded by Mr. Vaillancourt. All were in favor. Vote: 4 – 0.

C. Old Business: None.

D. New Business:

1. To hear the request of Jeanne G. Rand and Maria Cervantes Rand to construct an Accessory Dwelling Unit above the existing garage at 1152 Shore Road, (Map U10, Lot 53).

Attorney Robert Danielson of Portland came to the podium on behalf of the Rands. He said Jeanne Rand is a widow in her 80's and is wheelchair bound. She just purchased the property in October. She would like to have some live-in help for daily activities. They have designed an Accessory Dwelling Unit, which meets the requirements of the Cape Elizabeth Zoning Ordinance. The lot lies in three different districts: the RA district, the Shoreland Protection district and in the RP3 district. An Accessory Dwelling Unit is permitted as a conditional use in the RA district. It is a nonconforming structure in the Shoreland district because part of the existing building lies within the 75-foot setback as revised most recently by the Zoning Ordinance as amended September 11.

The application contains some calculations, a survey of the existing conditions and plans showing the proposed improvements. Mr. Danielson reviewed how the project met each of the requirements as set forth in the Ordinance, reviewing Sections 19-5-5, 19-4-4B and that for an Accessory Dwelling Unit (ADU).

The septic system is being revised (Al Frick Associates proposal is included in the package.) and has plenty of capacity for the additional bedroom. Mr. Danielson stated there would not be a separate front entrance and it would not have an adverse effect on neighboring properties. The design is an attractive shingle-style house and additional money is being put into other property enhancements.

Mr. Danielson cited the following requirement calculations: Minimal lot size for an Accessory Dwelling Unit permit is 12,000 square feet; this is 86,000 square feet. Septic capacity is met. The existing floor area, excluding the garage, must be a minimal of 1500 square feet; it is 5005 existing square feet. The Accessory Dwelling Unit cannot occupy more than 25% of the resulting floor area; this will be 11.5%. The floor area of the ADU must be between 300 and 600 square feet; this will be 575. There must be an interior connection door; it is shown in the garage on the blueprints. The addition to the floor area cannot exceed 15%; this is 11.3%. There is sufficient parking area. It has a single-family appearance and there will be no business use. The unit and the single-family dwelling have the same ownership. The property is in a trust for estate planning purposes.

Since this is a nonconforming structure, which does not meet the required setback from the high water line, expansion is limited to 30% in accordance with Section 19-4-4B. This floor area will be 22.7% and volume will be 21.7%. Therefore all of the requirements in all three of the districts have been met.

The CEO stated that two abutters contacted him, one from the north and the one from the south. Both asked questions and seemed satisfied. They had no negative comments regarding the application.

In response to questions, Mr. Danielson said that the High Water Mark is identified on the survey. Most of the existing structure and all of garage lies within that 75-foot setback now. Dates on plans were discussed. The expansion is going straight up; so the footprint remains the same. (The CEO confirmed ordinance expansion language.) The enlarged septic is to be constructed as part of the unit.

Finding no public comment, Chairman Thibodeau opened board discussion.

Board members commented on the completeness of the application and presentation and that all standards were met.

Mr. Vaillancourt moved to approve the request for a Conditional Use Permit to create an Accessory Dwelling Unit above the garage of an existing single-family dwelling, subject property being at 1152 Shore Road. Mr. Caton seconded. All were in favor. Vote 4 – 0.

Findings of Fact:

1. This is a request for a Conditional Use Permit to create an Accessory Dwelling Unit above the garage of an existing single-family dwelling per Section 19-7-5 of the Zoning Ordinance.
2. The subject property is 1152 Shore Road (Map U10 Lot 53). Jeanne and Maria Cervantes Rand as co-trustees of the Jeanne G. Rand Revocable Trust are the owners of record.

Additional Findings of Fact:

1. The proposed use will not create hazardous traffic conditions when added to existing and foreseeable traffic in its vicinity.
2. The proposed use will not create unsanitary conditions by reason of sewage disposal, emissions to the air, or other aspects of its design or operation.
3. The proposed use will not adversely affect the value of adjacent properties.
4. The proposed site plan and layout are compatible with adjacent property uses and with the Comprehensive Plan.
5. The design and external appearance of any proposed building will constitute an attractive and compatible addition to its neighborhood, although it need not have a similar design, appearance or architecture.
6. The applicant has demonstrated compliance with the requirements in Section 19-7-5.B of the Zoning Ordinance.

All were in favor of the Findings of Fact and Additional Findings of Fact. Vote 4 – 0.

E. Communications: None.

Code Enforcement Officer McDougal noted that it was John Thibodeau's last meeting. He thanked John for his six years of valuable service on the Zoning Board of Appeals. Mr. Thibodeau made a few brief comments.

F. Adjournment: Mr. Tadema-Wielandt moved to adjourn; Mr. Caton seconded. Chairman Thibodeau adjourned the meeting 7:24 p.m.