

**Town of Cape Elizabeth
Minutes of the September 22, 2015
Zoning Board of Appeals Meeting**

Present:

Matthew Caton
Michael Tadema-Wielandt

Aaron Mosher
Michael Vaillancourt

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

A. Call to Order: Acting Chairman Michael Vaillancourt called the meeting to order at 7:00 p.m. The Chair declared a quorum present.

B. Approval of Minutes: Approval of the minutes of July 28, 2015 was postponed until the next Zoning Board of Appeals meeting.

C. Old Business: None.

D. New Business: To hear the request of Stephen and Ann Misterovich for a variance to construct an addition on the front of their home at 10 Beacon Lane, Map U15, Lot 64. The new construction is proposed to be 17' 8" from the front property line while the Zoning Ordinance requires 25 feet.

Stephen Misterovich came to the podium and stated they have lived there since 2000. Because of the placement of the house next to theirs they are not able to see the working lighthouse. They would like to build this addition to be able to do so. In order to build, they need a variance of 7 feet, 2 inches.

Mr. Misterovich said only one house on the street meets all the zoning requirements as far as lot size and setbacks. The west side of the road is only ten feet wide; the east part is 18 feet wide. This area was planned in 1949; however, houses were not built on the private way until 1960's. There are two different road associations for maintenance of each section. The west part was unpaved until five or six years ago.

There is a Right of Way, that neither Mr. Misterovich nor the surveyor could find record of; however, the location is noted on the survey. The development of the east side was called Wind Whistle Hill. He did not think the Right of Way applied to the east side or the private way. He spoke about restrictions and a judgment about west-side residents not having access to use the east side of the private way.

With this addition, their house would sit no closer to Beacon Lane than any other house there. He gave a couple examples.

CEO McDougal stated he had not received any correspondence concerning this request.

The board reviewed the Zoning Ordinance requirements with the applicant. Mr. Misterovich stated the existing house is set 45 feet, 8 inches from the road. It is the furthest setback house on the street. The area in front of the house is flat; the back yard drops off.

When questioned about the Right of Way, Mr. Misterovich stated he has no recorded information about it; he did not think it was mentioned in his deed. The surveyor was the one who noted the Right of Way. The Right of Way is mentioned on the plan for Wind Whistle Hill, from Two Lights Road to the lighthouse. There was not a copy of the deed in the application. The house is 35 feet 8 inches from the Right of Way and 45 feet, 8 inches from Beacon Lane.

The board members concurred that for the purposes of the variance, the property line, not the Right of Way, should be used. Mr. Misterovich assumed his property went to the middle of the road.

CEO McDougal was familiar with the numbers Mr. Misterovich provided. The numbers are accurate on the hand drawn plan. The house is 35 feet 8 inches from the property line.

Board members calculated that a variance of 7 feet 4 inches would be needed for the 18-foot addition. A 10 foot 8 inch addition would not need a variance.

Chairman Vaillancourt asked for public comment.

Dave Allen of 4 Beacon Lane (the 18-foot wide end of the lane) came to the podium. He has lived there for 30 years. Mr. Allen stated the Misterovichs' house was built in the late 1960's and the house that blocks the Misterovichs' view was built in 1983/4. Mr. Allen stated they should have the opportunity to see two lighthouses as was possible prior to the neighboring house being built.

Mr. Allen did not think the road would ever be widened. Both road associations try to limit traffic and access, at least from a tourist prospective. The Misterovichs have a large expanse of lawn in front of their home. From a sight perspective, this addition would not have any negative impact and would improve the value and appearance of their home and the overall appearance of the neighborhood. Mr. Allen asked for the Board's support for this application. In conversations he has had with neighbors there is a strong sentiment for allowing Steve and Ann to build this addition.

Chairman Vaillancourt closed for floor to public comment.

The Board discussed Ordinance Section 19-5-2.B. Variances. Practical difficulty and economic injury would be based on the ten nearest properties. More information was needed to make a decision. After discussion with the applicant, Mr. Mosher moved to table this discussion until the next meeting; Mr. Caton seconded. All were in favor. Vote: 4 – 0.

E. Communications: Joanna Tourangeau has moved to South Portland and has submitted her resignation.

F. Adjournment: Mr. Caton moved to adjourn; Mr. Vaillancourt seconded. All were in favor. Vote: 4 – 0. Chairman Vaillancourt adjourned the meeting at 8:08 p.m.