

Town of Cape Elizabeth
Minutes of the February 23, 2016
Zoning Board of Appeals Meeting

Present

Josh Carver, Chair

Aaron Mosher

Matthew Caton

Stanley Wisniewski

John Craford

Michael Vaillancourt

Code Enforcement Officer (CEO), Benjamin McDougal was also present.

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

B. Approval of Minutes: The minutes of the January 26, 2016 meeting were approved 5-0.

C. Old Business: none

D: New Business:

1. To hear the request of Holly Ready, owner of the property at 91 Two Lights Road, Map R3 Lot 45 for a conditional use permit for home business to run a studio/gallery in a detached barn.

Holly Ready is a local artist who has lived in Cape Elizabeth all her life. She bought this property about a year ago. She has had a studio and gallery in Portland. She wants to have the gallery on the first floor of the barn, and her studio in the top of the barn.

Mr. Carver asked how she arrived at the estimate of 0-8 vehicles per day.

Ms. Ready said it is because it is more of a working studio and it is rare to have anyone come in. It is all by appointment. She would like to be able to have someone come in to see her work if they call. She might have a small group of artists come in if she were to give lessons. She doesn't keep hours and this is not a tourist attraction type art.

Mr. Vaillancourt asked about the parking and turnaround.

Ms. Ready said there is a lot of room there. It was built as a lobster pound and it is easy to turn around on the property.

CEO McDougal said there have been no objections from the abutters.

There was no one of the public wishing to comment.

Mr. Vaillancourt made a motion to grant Ms. Ready's request for a Conditional Use Permit for a Home Business at 91 Two Lights Road, Map R03 Lot 45.

The motion was passed, 6-0.

Findings of Fact:

1. This is a request for a Conditional Use Permit for a Home Business at 91 Two Lights Road, Map R03 Lot 45.
2. Holly Ready is the applicant and an owner of record of the subject lot.
3. The proposal is consistent with the definition of *Home Business* found in Section 19-1-3 of the Town of Cape Elizabeth Zoning Ordinance.
4. The proposed use will not create hazardous traffic conditions when added to existing and foreseeable traffic in its vicinity.
5. 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.
6. The proposed use will not adversely affect the value of adjacent properties.
7. The proposed site plan and layout are compatible with adjacent property uses and with the Comprehensive Plan.
8. There are no proposed external alterations to the building or site.

Conditions

1. Sign must comply with Sign Ordinance.

The findings of fact and condition were approved, 6-0.

2. To hear the request of Whitney & Scott Liston, owner of the property at 204 Two Lights Road, Map U15 Lot 16 to reconstruct and expand the existing house on their property based on Section 19-4-3.B.3 of the Zoning Ordinance.

Dustin Roma a civil engineer of D. M. Roma Consulting Engineers spoke as representative for Scott Liston. There are two items on the agenda and he may take part of them together. Mr. Carver said he wants them taken as two separate items..

Mr. Roma said the parcel at 204 Two Lights Road is in Residential A zoning district. The total area of the parcel is 9,495 sq. ft. they propose to expand the building in the rear to add a screened in porch and an elevated two story deck. They will construct a driveway and parking in the back. They will also do a 5ft. by 10 ft. porch addition onto the front of the building and add chambers onto the septic system in the back to make this a legal 4 bedroom structure. Total impervious coverage including the garage in our next proposal maintains under the 20% requirement for the lot. We are not further encroaching on the side or front setbacks. We do not feel this negatively impacts the neighborhood at all.

Mr. Vaillancourt asked if the expansion would increase the floor area.

Mr. Roma said the expansion is the covered porch area on the back of the house and a deck in the front. The actual footprint of the building will be enlarged by about 240 sq. ft. The setbacks are not changing along the sides. They have a lot of room in the rear.

Mr. Caton wanted clarification of what is on the plan. He asked about what the foundations are of the garage and shed.

The public comment was opened.

Robert Norton of 202 Two Lights Road objects to both proposals. In 2011 Bruce Smith, the former CEO told them that 204 Two Lights Road could not support any further additions. This house will put a huge house on a small lot and change the image of the neighborhood. He gave out copies of a report he had made. He said the application says there is no obstruction of the view. He said they have a beautiful view from their windows. They can see the lighthouse, the waves crashing and a stone wall. When they add a second story on the house at 204 Two Lights Road, that takes out 50% of our ocean view. If you look at where the garage is being located, and going up to a second story, that takes out the remaining 50% of our view.

They also have an additional concern over water flow. They already have problems with water flowing from that property.

Chris Bond of 198-200 Two Lights Road does not think the Board should grant variances that allow the property to be developed more intensively than you would be allowed to do while living within the variance requirements. It is very congested in the front of the lot. It will have an undue impact on the neighbors. He feels improvements should be encouraged, but only within the requirements in place.

Mike O'Brien of 8 Woodcrest Road is here to support Mike and Carrie Norton. He said Mike Norton had told him what the CEO had told him when he was considering buying the property at 204 Two Lights Road. Carrie and Mike have made a significant financial commitment based on the direction of that Code Officer. He thinks the Town has a moral and ethical obligation to consider that as you review the case.

Mr. Craford had a question for the Nortons. He wants to know if they are objecting to the footprint, or just to the height.

Mr. Norton said the addition of the second story is what they are objecting to. It will cover much of our view. When you add the covered porch and the deck, it covers over more of the view and infringes on our privacy. When you move the garage and put on a second story on it, you remove the rest of our view.

There was no further public comment.

Mr. Roma said the addition to the home is within the allowable limits. The lot coverage is there. It is important to allow people to improve their property.

Mr. Caton asked Mr. McDougal if he had checked the file to see if there was anything from the prior CEO in there as far as any discussions.

Mr. McDougal said there was nothing that he is aware of. He did check the file and there was no prior documentation in there.

The Board then entered into a discussion of what the standards were and what factors they needed to address. If the setbacks are not changing, how does this come into the greatest practical extent. The Board made the determination that

greatest practical difficulty does apply and therefore the obstruction of the views and the slopes and drainage need to be considered.

Mr. Carver said the obstruction of the views will be considered and will make it difficult to approve.

Mr. Vaillancourt said the former Code Officer's remarks cannot be taken into consideration. What we must consider is the size, slope, drainage, erosion and impact on views. We cannot approve the application.

Mr. Vaillancourt made the following motion:

To deny the request of Whitney & Scott Liston, owner of the property at 204 Two Lights Road, Map U15 Lot 16 to reconstruct and expand the existing house on their property based on Section 19-4-3.B.3 of the Zoning Ordinance.

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Mr. Craford seconded and it was approved, 6-0.

Mr. Carver read the Findings of Fact

Findings of Fact:

1. This is a request of Whitney and Scott Liston, owners of the property at 204 Two Lights Road, Map U15 Lot 16, to reconstruct and expand the existing house on the property based on section 19-4-3.B.3 of the Zoning Ordinance.
2. The subject lot is a nonconforming lot in the RA Zone.

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 location of the septic system and other on-site soils suitable for septic systems, the impact on views, and the type and amount of vegetation to be removed to accomplish the relocation.

2. The proposed structure will not increase the nonconformity of the existing structure.
3. The proposed structure is not in compliance with the setback requirement to the greatest practical extent and therefore the application is denied.

The Board approved the Findings of Fact 6-0.

3. To hear the request of Whitney & Scott Liston, owner of the property at 204 Two Lights Road, Map U15 Lot 16 to relocate and replace garage on their property based on Section 19-4-3.B.3 of the Zoning Ordinance.

Mr. Roma thinks they lumped the two projects together (the house and the garage). He wants to know how the view of one neighbor is able to stop someone's right to expand their lot within the confines of the ordinance.

Mr. Carver said they considered all 6 of the factors and there is a neighbor whose view is impacted. The initial finding of the Board was with respect to the house.

After a brief discussion of the plans, and the pictures of the views, Mr. Liston asked the Board to withdraw consideration of the garage for now.

4. To hear the request of Richard Stark, who has a purchase and sale agreement for the property at 5 Birch Knolls Road, Map U5 Lot 15 to replace and expand existing nonconforming structure on the property based on Section 19-4-3.B.3 and 19-4-4.B-3.

Aaron Mosher recused himself for items 4 and 5.

Richard Stark said he hopes 5 Birch Knolls is his retirement home. It is an L shaped lot about 37 ft. wide on the ocean. About 30 ft wide and 80 ft. long on the back end. His architect will describe the proposed structure which uses the existing footprint and decreases the nonconformity slightly. We simply want to build a new home on the existing site. We have stayed within the requirements on lot coverage, impervious surface coverage, volume and square footage. We intend to build a home that is consistent with the character of the neighborhood.

Kevin Brown of Kevin Brown Architecture showed pictures of the proposed structure. They are staying under the limit for impervious surfaces. They will remove the asphalt driveway and putting in 2 pavers with grass planted in between. They are proposing a future garage which is another agenda item. They want to keep the house where it is now for several reasons. One of the biggest reasons is that from the back of the site to the ocean side, there is a 17 ft. drop. Just from the front of the house to the ocean side of the house, there is a 10 ft. drop. From the driveway side you see a 2 story house, but from the ocean side you see a 3 story house. If we moved the house to a more level part of the land it would be a much taller house and would obstruct the neighbor's view.

Mr. Caton wanted to know how they can account for going over 35 ft. high.

Mr. Brown said they used the midpoint to calculate the height.

Mr. Craford noted that that the existing house is already 10 ft. taller than the rest of the houses. The new construction would be taller than that.

Mr. Brown said it would be another 8 ft. taller.

Mr. Carver opened the public comment period.

Ken Piper of 3 birch Knolls said this is beautiful. He likes the layout that he is seeing and he has no views over the house. He is more concerned about the garage.

Bob Davis said he was told when he built his house that he could not go any higher than what was existing at the time.

Mr. McDougal said that the houses in that area are deed restricted, but not restricted by the Town.

There was no further public comment.

Mr. Craford said this is in the Shoreland Zone. Why aren't we in the same position as we were in a recent application. Could you make it conforming? There has been no effort to move it back. Any change to the footprint would require you to make it conform to the setbacks as closely as possible.

The statute 19-4-4-B-3 says if there is a change, the new structure must conform to the setbacks in the Zone. We would be voting only on this application, not approving a relocation of this building.

Mr. Craford said that Shoreland Zoning is intended to be strict, and we need to be consistent with the ordinance and with our prior decisions.

The applicant chose to withdraw the application of items number 4. and 5.

The Board voted unanimously to adjourn at 9:00 pm.

Respectfully submitted,

Hiroshi Dolliver

Recording Secretary