

Town of Cape Elizabeth
Minutes of the June 28, 2016
Zoning Board of Appeals Meeting

Present:

Josh Carver
Aaron Mosher
Stanley Wisniewski

Matthew Caton
Michael Tadema-Wielandt

John Craford
Michael Vaillancourt

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

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

B. Approval of Minutes:

1. Mr. Wisniewski moved to approve the minutes of February 23, 2016, seconded by Mr. Vaillancourt. The members in attendance at that meeting were in favor. Vote: 6 – 0.

2. Mr. Mosher moved to approve the minutes of March 22, 2016; Mr. Tadema-Wielandt seconded with the following changes: On the first page, A. Call to Order: delete “Acting” in front of Chairman Josh Carver. In the last line change Chairman “Vaillancourt” to Chairman “Carver” adjourned the meeting at 8:27 p.m. The members in attendance at that meeting were in favor. Vote: 4 – 0.

3. Mr. Vaillancourt moved to approve the minutes of April 26, 2016, Mr. Mosher seconded. The members in attendance at that meeting were in favor. Vote: 6 – 0.

C. Old Business: None.

Chairman Carver excused Aaron Mosher and members who were not in attendance at the initial Fissmer ZBA meeting on July 28, 2015. The following members were present for the remainder of this meeting: Josh Carver, Matthew Caton, Michael Vaillancourt and Stanley Wisniewski.

D. New Business: To hear the Superior Court remand of the request of Leslie Fissmer, owner of the property at 20 Cunner Lane, to appeal the Code Enforcement Officer’s decision to approve building permit # 150401 for a new single family dwelling at 19 Cunner Lane, Map U14 Lot 26-1. Specifically, the court is requesting that the Zoning Board create more findings of fact for the record.

The Board concurred with Chairman Carver that they did not need to open the floor to hear any new or additional evidence or public comment.

Mr. Wisniewski handed out his proposed additional Findings of Fact. Wording, language and other points were discussed.

Chairman Carver proposed the following:

Pursuant to the Superior Court May 17, 2016, order in Fissmer v. Town of Cape Elizabeth Docket No. CUMSC-AP-15-038 remanding this matter to the Cape Elizabeth Zoning Board of Appeals, the Board makes the additional Findings of Fact. These Findings are based on the record of July 28, 2015, Zoning Board of Appeals Meeting. The Board has not received or considered any additional evidence or argument. The Board's three Findings of Fact from the July 28, 2015, meeting remain unchanged.

Additional Findings of Fact:

4. The Board finds that the 1997 Public Access Waiver remains valid.
5. Notwithstanding the Cape Elizabeth Planning Board's grant of a Public Access Waiver in 1997, on February 23, 2010, the owner of 19 Cunner Lane was advised by the Code Enforcement Officer that he must meet the requirements of Section 19-7-9(A)(1) and Section 19-7-9(A)(2) of the Zoning Ordinance not in effect, to provide access to and street frontage for a residential lot, before a building permit would issue.
6. There is no dispute that the owner of 19 Cunner Lane has met the requirements of Section 19-7-9(A)(1) of the Zoning Ordinance.
7. By virtue of the Declaration of Covenants With Respect to Maintenance Individual, executed by the owner of 19 Cunner Lane and recorded in Cumberland County Registry of Deeds, Book 27717 Page 215 on April 20, 2010, the owner of 19 Cunner Lane has met the requirements of 19-7-9(A)(2).
8. Inasmuch as the owner of 19 Cunner Lane has met the requirements of Section 19-7-9(A)(1) and Section 19-7-9(A)(2) of the Zoning Ordinance, the Code Enforcement Officer did not err by approving building permit #150401 to construct a single family dwelling on a vacant lot at 19 Cunner Lane, Tax Map U14 Lot 26-1.

Mr. Vaillancourt moved to approve the Additional Findings of Fact. Mr. Caton seconded. All were in favor of the Additional Findings of Fact. Vote: 4 – 0.

F. Adjournment: Mr. Vaillancourt moved to adjourn; Mr. Wisniewski seconded. All were in favor. Vote: 4 – 0. Chairman Carver adjourned the meeting at 7:34 p.m.