

Town of Cape Elizabeth  
Minutes of the January 24, 2017  
Zoning Board of Appeals Meeting

Present:

Josh Carver  
Aaron Mosher

Matthew Caton  
Stanley Wisniewski

John Craford

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

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

**B. Approval of Minutes:** Mr. Wisniewski moved to approve the minutes of December 27, 2016; the motion was seconded. Vote 4 – 0 in favor. Aaron Mosher abstaining.

**C. Old Business:** None.

**D. New Business:**

1. To hear the request of Jeff and Kendra Davis to expand a nonconforming portion of their house by adding a second story addition based on Section 19-4-3.B.4 of the Zoning Ordinance. The subject property is 12 Beverly Terrace, Map U28 Lot 41.

Mr. Craford asked CEO McDougal for a summary of the issues. Mr. McDougal said Jeff and Kendra Davis want to put a second story on their house. They have a relatively small lot and a portion of the house does not meet the setback requirement. This is basically a second story expansion.

Jeff Davis said they want to build a second story on their house to make it a little bigger - add more bedrooms and a second bathroom. The neighbors on both sides have expressed approval. Many people in the neighborhood have done the same thing.

Kendra Davis said they had a survey done, which is part of the application. The proposed expansion is not moving any closer to the setback – just straight up, within the same footprint. There are two letters of approval from owners of the adjacent properties in the package. The CEO said those two letters were the only correspondence received. Mrs. Davis said the other neighbors seem supportive. There will be two small dormers in the front and one shed dormer in the back.

There was no public comment.

The board discussed the application. All factors meet the requirements of the Ordinance. The type and condition of the foundation was found to be excellent. Mr. Wisniewski moved to approve the request of Jeff and Kendra Davis to enlarge a

nonconforming portion of their house by adding a second story addition. Their house is located at 12 Beverly Terrace, Map U28 Lot 41. That second story addition is in accordance with Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Mosher seconded. All were in favor. Vote: 5 – 0.

**Findings of Fact:**

1. Jeffrey and Kendra Davis are the owners of record of the property at 12 Beverly Terrace, Map U28 Lot 41.
2. The subject lot is a nonconforming lot in the RC 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 in compliance with the setback requirement to the greatest practical extent.

All were in favor of the Findings of Fact and Additional Findings of Fact. Vote: 5 – 0.

**New Business cont'd:**

2. To hear the request of Andrew Rinaldi to obtain a variance for an addition to his home at 12 Wabun Road, Map U12 Lot 24.

CEO McDougal said he began talking with Mr. Rinaldi and Ms. Davis about this project several months ago. Originally it seemed like this was going to be a nonconforming expansion, that they were to be holding the setback line on the side; but when the survey was looked at closely it became known it was moving slightly closer to the property line by three or four inches based upon the way the house is situated, slightly canted on the lot, which triggers the variance.

Mr. Rinaldi said he was requesting the variance to add one bedroom and one bathroom and expand the existing garage into a tandem two-car garage. He stated that the immediate neighbors are supportive.

Rachel Conly of Rachel Conly Design LLC, Peaks Island, presented the design to the board using plans contained in the application. Ms. Conly made a correction: on page

2 of the application it is noted that they are extending the West elevation – it is actually the East elevation that they are extending. The scope of the variance request is the addition of 644 square feet to add a master bedroom addition. They are also reorganizing the entry porch– a total of 91 square feet. With the addition the lot coverage would be 16% - maximum is 25%. The rear, West and front setbacks are conforming. The master bedroom addition would be above the garage. It is in keeping with the existing design and with the neighborhood. This design preserves the existing landscaping and a mature apple tree. They are seeking the variance because the house was built at a slight angle.

There was no public comment.

The board discussion started with a clarification for the record that the West setback is 24' 9" and is not changing. The East setback is currently 20' 2 ½" at its minimum will change to 19' 11" at it's minimum. So the variance requested is 3 ½ inches. Elevation, visual integrity of the yard, existing retaining wall and shifting the tandem garage and possible other designs were discussed. It was decided that no other feasible alternative would work.

Mr. Wisniewski moved to approve the request of Andrew Rinaldi to obtain a variance for an addition to his home at 12 Wabun Road, Map U12 Lot 24. Mr. Mosher seconded. All were in favor. Vote: 5 – 0.

**Findings of Fact:**

1. Andrew and Kathryn Rinaldi are the owners of record of the property located at 12 Wabun Road, Map U12 Lot 24.
2. The subject property is a nonconforming lot in the RA zone.
3. The Zoning Ordinance Section 19-4-3.A requires the side setback to be 25 feet. The East side of the house is currently setback 20' 2 ½". The proposed addition would be 19' 11" from the side property line.

**Additional Findings of Fact:**

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.
2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.
3. The practical difficulty is not the result of action taken by the applicant or a prior owner.

4. No other feasible alternative to a variance is available to the petitioner.
5. The granting of a variance will not unreasonably adversely affect the natural environment.
6. The property is not located in whole or in part within shoreland areas as described in Title 38, Section 435.
7. There is no substantial departure from the intent of the Ordinance and a literal enforcement of the Ordinance would cause a practical difficulty as defined by 30-A.M.R.S.A. Sec. 4353, 4-C.

All were in favor of the Findings of Fact and Additional Findings of Fact. Vote: 5 – 0.

**F. Adjournment:** Mr. Wisniewski moved to adjourn. All were in favor. Vote: 5 – 0. Chairman Carver adjourned the meeting at 7:50 p.m.