

Town of Cape Elizabeth  
Minutes of the February 28, 2017  
Zoning Board of Appeals Meeting

Present:

Josh Carver  
Michael Tadema-Wielandt

Matthew Caton  
Michael Vaillancourt

Aaron Mosher  
Stanley Wisniewski

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:** Mr. Mosher moved to approve the minutes of January 24, 2017; the motion was seconded. Vote 4 – 0 in favor. Mr. Tadema-Wielandt and Mr. Vaillancourt abstaining.

**C. Old Business:** None.

**D. New Business:** To hear the request of Brian and Marianne Harrington for a variance to add a garage to their house at 5 Bayberry Lane, Map U19 Lot 58.

Chairman Carver asked CEO McDougal for an introduction of the case. Mr. McDougal said the on October 28, 2014, Mr. Harrington appeared before the Zoning Board of Appeals to request a variance to turn a one-car garage into a two-car garage. That variance was approved to be 17' 4" from the side property line. Mr. Harrington had a survey of his property that did not show his house on it. He also had a mortgage inspection plan – a mortgage survey – which did show his house on it. He interpolated those two documents together in order to do the addition and a mistake was made. The garage was built, it received a certificate of occupancy, and it is 16.1 feet from the side property line, which has been demonstrated with a standard boundary survey. The CEO advised Mr. Harrington to submit a completely new variance application. Which is one way for the board to look at it – as a new variance – another way, would be to look at it is an amendment to the prior variance and consider whether that variance would have been permitted on October 28, 2014, for 16.1 feet versus 17.33 feet.

Brian Harrington said only 10 feet was added to the garage, but it did go over the setback. The property line is at an angle on that side of the house. He used the two documents mentioned: the original town document from 1967, which is calculated to two decimal places and the mortgage survey from when he bought the house, which is rounded off. He used software downloaded to scale these documents together. The scale on the mortgage survey matched the town survey. The house on the mortgage survey lined up, too. But in hindsight the dimensions on that survey were rounded off, not to two decimal places. It went from the 17.33 feet from the software to actually turning out to be 16.1 feet. There is about 2 square feet on the corner of the garage

that is over the code line. He would like the requested variance to match to 16.1 feet as built from the corner of the garage.

A board member questioned the date of January 8, 2015, on the survey in the application. CEO said that was the date the variance from the 2014 ZBA was recorded. When questioned Mr. Harrington said a subcontractor built the garage, but relied on the paperwork Mr. Harrington provided.

There was no public comment.

CEO McDougal reported that he had fielded three inquires. There were no objections and no issues with the space between houses; there is a drain easement on Lot 44. The owner of Lot 44 spoke with the CEO and was okay with the garage.

Mr. Caton voiced concern over the practical difficulty condition. The board discussed considered an amendment to the original variance or a new variance as in the pre-built condition. Similar cases in the history of the board were discussed. The board was cautious in ways to approach the issue knowing precedent would be set as a lot of applications without surveys had come before the board. CEO McDougal reported that surveys are now required per a recent Ordinance change. The board contemplated that Mr. Harrington had a survey without the house, which could be considered a de minimis paperwork error. If the original application had asked for a 16.1 feet side setback variance members considered whether it would have been approved in 2014.

Mr. Vaillancourt moved to approve the request of Brian and Marianne Harrington for a variance to add a garage to their house at 5 Bayberry Lane, Map U19 Lot 58. Mr. Tadema-Wielandt seconded. The variance was approved by a vote of 5 – 0. Mr. Caton abstaining.

#### **Findings of Fact:**

1. Variance Request for Map U19 Lot 58, 5 Bayberry Lane, Applicants: Brian and Marianne Harrington.
2. Brian and Marianne Harrington are the owners of record of the subject property.
3. 5 Bayberry Lane is a non-conforming lot in the RA district. The required setbacks are 25 feet from the front property line, 25 feet from the side, and 20 feet from the rear property line.
4. On October 28, 2014 the Zoning Board approved a variance for a two-car garage to be constructed 17.33 feet from the side property line.
5. A new boundary survey shows the new garage addition to be 16.1 feet 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.

**Conclusion:** 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.

The Findings of Fact, Additional Findings of Fact and Conclusion were approved by a vote of 5 – 0. Mr. Caton abstaining.

**F. Adjournment:** Mr. Tadema-Wielandt moved to adjourn. All were in favor. Chairman Carver adjourned the meeting at 7:55 p.m.