

Town of Cape Elizabeth  
Minutes of the April 25, 2017  
Zoning Board of Appeals Meeting

Present:

Matthew Caton  
Michael Vaillancourt

John Craford  
Stanley Wisniewski

Aaron Mosher

The Code Enforcement Officer (CEO), Benjamin McDougal, and Recording Secretary, Carmen Weatherbie, were also present. This session was not recorded on video.

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

**B. Approval of Minutes:** Mr. Wisniewski moved to approve the minutes of February 28, 2017; seconded by Mr. Mosher. Vote 5 – 0 in favor.

**C. Old Business:** None.

**D. New Business:** To hear the Administrative Appeal of Mary Otulakowski, residing at 172 Two Lights Road, regarding the Code Enforcement Officer's Notice of Violation and Letter of Denial for her property on Bacon Lane, Map U15 Lot 2.

Acting Chairman Vaillancourt asked CEO McDougal for an introduction of the case. Mr. McDougal said in response to a call he received about something being constructed on Beacon Lane he drove there and observed Hugh Mitchell, Mary's husband, and another gentlemen constructing what is shown in the pictures. He talked with them. Mr. Mitchell thought that this was exempt from zoning. Mr. McDougal said that he didn't think it was exempt; he talked with Ms. Otulakowski a few days later and explained that it was not allowed. The CEO followed that conversation with the Notice of Violation. Subsequently, Ms. Otulakowski submitted a building permit application and the CEO wrote a Letter of Denial. Essentially it is a plastic-tarp covered structure made of wood and metal as shown in the photos.

When questioned whether "grandfathering" was applicable Mr. McDougal replied no.

Mary Otulakowski stated she owns the 30' by 30' lot on Beacon Lane, behind her house at 172 Two Lights Road. Ms. Otulakowski emailed Ben McDougal on December 30, 2014, stating that she had a Shelter Logic 16' by 25' tarped shed that she would like to make bigger and extend. The CEO replied by email: "The town's definition of a structure is relatively all encompassing. Bruce (Smith) made a determination in the past that what he called "tarp garages" are not considered structures. However, if the siding or roofing is improved to a more permanent material it would become a structure and it would need to adhere to setback requirements. Is it possible for this to meet setback requirements? If so, it can be improved after a building permit is approved."

To which Mary replied, "it is on a 35' X 35' lot," which is actually a 30' by 30' lot. And that is why she was able to put the tarp structure there because you don't need a permit for it. She also replied in that email that she wouldn't be able to "meet setbacks" and she could "work with the tarp."

Ms. Otulakowski said in October 2016, they started taking the old one down and put the new one up. There is no concrete; the wood used is 2 X 4's for extra support. As the pictures show it is an Estabrook's greenhouse structure. The wood is put down on the base because you have to lock in the tarp part with a wiggle wire. Any greenhouse is structured like this. This new structure is 20' by 25' by 13' tall; it is four feet wider and three feet taller. On December 15, 2016, Ben spoke with her husband about using 2 X 4 wood spacers. Mr. Mitchell told him it was not a permanent structure, there was no concrete or rigid material on the sides or roof, just plastic sheathing. Ben said he would have to do some research. Ms. Otulakowski spoke with the CEO that afternoon and he replied with same thing. She assumed he would research their previous emails and realize it was the replacement 'tarp garage' that had been there for 14 years and get back to them. Not hearing from Ben, they finished the project before winter set in.

In January, Ms. Otulakowski stated, she received the Notice of Violation in which the CEO gave her the ultimatum to cease construction or obtain a building permit. She noticed that something had changed on the web site on November 5, 2016, but didn't know what. She thought greenhouse and tarp structures now needed a building permit, so she submitted a building permit because they weren't going to take it down. Shortly thereafter, on January 26, she received an email from Ben asking if she was going to submit a site plan and a snow load. She responded that she did not know what he was talking about because she was not familiar this. The last one (tarp-garage) that was there had not been a problem. Ben followed up with an email with basic code instructions.

On February 1, 2017, Ms. Otulakowski said she received a Letter of Denial for the building permit stating that setbacks were not met. Which Ben was aware of from the summer of 2014. In December 2014, Mary asked to replace the existing temporary structure with a larger structure on a grandfathered lot. She mentioned the 30' X 30' lot wouldn't meet setbacks requirements if it were a permanent structure. She asked the questions about what made it a permanent structure and adhered to that by not using any rigid material. It was her understanding that she was in compliance with all of this. She has owned the lot for 17 years; the old structure was there for 14. She received the cease work notice after the structure was completed. This became effective after everything was complete.

In response to board questions Ms. Otulakowski responded that the actual size of the structure 20' by 25' is different from the building permit size of 20' by 28'. The previous one was 15' by 25' – five feet wider.

The CEO said he had spoke to one gentleman on the phone who had some questions; didn't feel strongly one way or the other; he just wanted to know what was going on.

Bruce Munger, of 175 Two Lights Road, who has lived there for 22 years, stated he was a civil engineer and was pretty familiar with codes. It appeared to him that the structure was grandfathered because it was there prior to the new building code. If he was the contractor compensation would need to come from the town because the rules were changed half-way through the process. When asked, Mr. Munger stated he was here in support; he doesn't have a problem with the structure.

Ms. Otulakowski said the tarps would be redone, as they should have been put on in the spring so that they will tighten and look better. A photo of the completed structure was submitted.

There was no additional public comment. The floor was closed for public comment.

Matthew Caton advised the board that he had represented Ms. Otulakowski two years ago on a different matter; he no longer represents her. Mr. Caton said he could maintain impartiality on this matter. There was a brief discussion about recusal. Mr. Caton remained on the board.

The Chair asked Mr. McDougal about grandfathering and the Ordinance change. The CEO cited in the Notice of Violation the definition of Accessory Structure. That definition did undergo a minor change, which became effective November 5, 2016, but it does not effect this situation. Anytime there is a zoning change there is a notation made that the section of the zoning was changed. Ben explained the change added the sentence: "Any accessory building or structure that has plumbing shall not be used for overnight accommodations." The definitive of accessory structure was read by Mr. Wisniewski and discussed as not being applicable because this structure is on a separate lot from the house; therefore it is a principal structure.

The CEO referenced the 2014 email he sent to Ms. Otulakowski stating the definition of a structure is all encompassing. He tries to be sensitive to the fact that his predecessor determined that some temporary, soft-sided structures could be allowed. There is no documentation for this structure. Mr. Caton mentioned that the replacement structure has an increase in square feet from the size of the original. If the size had stayed the same we might not be here discussing this. A previous case concerning replacement of a bridge was mentioned and discussed; you can repair a structure but if you replace it you must essentially start the process anew.

There was discussion about the difference between temporary, seasonal and permanent structures. This structure is intended to act as a garage for decades to come. Per the Ordinance, lots with less than 10,000 square feet do not qualify for building permits. The Zoning Board of Appeals is bound by the language of the Ordinance.

Mr. Craford moved to deny the Administrative Appeal of Mary Otulakowski, residing at 172 Two Lights Road, regarding the Code Enforcement Officer's Notice of Violation and

Letter of Denial for her property on Beacon Lane. Mr. Mosher seconded. Discussion followed. Vote of 5 – 0 in favor.

**Findings of Fact:**

1. On January 11, 2017, the Code Enforcement Officer issued a Notice of Violation regarding the construction of a structure at 0 Beacon Lane, Map U15 Lot 2.
2. On January 25, 2017, Mary Otulakowski applied for a building permit, application #170273, to construct “A greenhouse frame with plastic sheeting.”
3. On February 1, 2017, the Code Enforcement Officer issued a Letter of Denial for building permit application # 170273.
4. On February 23, 2017, Mary Otulakowski submitted an Administrative Appeal for the Letter of Denial dated February 1, 2017.
5. The subject lot is a 900 square foot nonconforming lot in the RA Zone.

Mr. Wisniewski moved to approve the Findings of Fact, Mr. Craford seconded. Vote of 5 – 0 in favor.

The Code Enforcement Officer’s Letter of Denial dated February 1, 2017 was upheld.

**E. Communications:** None.

**F. Adjournment:** Having no other business to conduct, the Acting Chairman adjourned the meeting at 7:50 p.m.