

Town of Cape Elizabeth  
Minutes of the May 23, 2017  
Zoning Board of Appeals Meeting

Present:

Josh Carver  
Michael Vaillancourt

Matthew Caton  
Stanley Wisniewski

Aaron Mosher

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

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

**B. Approval of Minutes:** Mr. Vaillancourt moved to approve the minutes of April 25, 2017; seconded by Mr. Wisniewski. Vote 4 – 0 in favor. Chairman Carver abstained.

**C. Old Business:** None.

**D. New Business:** To hear the request of Michael Skolnick, representing the owners of 5 Birch Knolls, Map U5 Lot 15, to replace and expand the existing nonconforming structure on the property based on Sections 19-4-3.B.3 and 19-4-4.B.4.

Jim Fisher, President of Northeast Civil Solutions, Inc. stated he was representing the homeowners, Alan and Mara DeGeorge. Their house is the last home of about a dozen in the Casino Beach area to be redone. This home was constructed in 1900; it has 115 plus years of wear and tear. When the DeGeorges purchased the property they did not think it would need to be replaced. They spoke to Ben McDougal, a home inspector, a structural engineer and contracted with a contractor. They got a building permit to replace the house in kind. The house is actually raised up now for construction. Mr. Fisher explained what goes into replacing a house in kind; it is not unusual to replace or augment the foundation. Once the house was raised up the contractor discovered something that they hadn't seen/weren't able to see until the house was jacked up and that is the incredible degradation of the foundation. It is beyond augmentation; it needs to be replaced. That is why we are here for a variance to take this house down and rebuild it in the exact same footprint. This house is in desperate need of repair and it would be much safer and effective if it were replaced completely.

As referenced in Ordinance Section 19-4-4.B.3 (Reconstruction or Replacement of Nonconforming Structures in the Shoreland Overlay District), a structure should be relocated beyond the required setback area. Moving/relocating the house to the rear of the property would violate the setbacks of three other sides of the property and the slope of the land would raise the elevation of the structure, degrading the character of the surrounding area and interfere with views. Ledge at the new site would need to be blasted and all utility, water, and sewer lines would need to be relocated. The most practical solution is to rebuild on the same location.

Mr. Fisher answered board members questions stating that the overall square foot footprint of the new house is slightly smaller, the usable floor area and building volume are increased due to an additional level in the new structure. The height also increases seven feet for the middle third of the house. Due to the slope of the land, the house would be 10 feet higher if moved to the back of the lot. The abutter on the right side reconstructed about a decade ago and did not put windows on that side of the house; if the house is moved back, it would interfere with natural light that homeowner receives from existing windows. Other views would also be affected.

The following is in response to additional questions: The existing front steps were not part the original foundation; the new ones would be. The new foundation will be at the same level as the old one. The cost to repair in place in significantly greater than rebuilding. On the East side on the plans a fireplace is labeled TBD – that is the site for a gas fireplace; no chimney would be necessary.

CEO McDougal reported abutters were notified. He received two emails: one from Lauren Springer with concerns which was forwarded to board members and another email which was more inquiry with some concerns and questions about the process.

Chairman Carver opened the floor for public comment.

Bill Dale, an attorney from Portland, representing Cape Shore House Condominiums on Shore Road, whose property runs down to Maiden Cove Beach, stated they object to the size of the building. Connie Jordan, President of the Cape Shore House Condominiums was also present. This proposal has been addressed as a variance – it is not a variance. From the second floor of the condominiums this building will greatly affect our views to Maiden Cove Beach. The applicant did not talk of them. The Ordinance states that the board must take into account affects on views. This negatively affects our views across the beach and out the Fort Scammel and Fort Gorges. Mr. Dale cited Zoning Ordinance Section 19-4-4.B.2 and Section 19-4-3.B.2. This basement and two-floor home is being replaced with a basement and three floors, which obstructs our views. The increase in floor area and volume is also prohibited by the Ordinance. Mr. Dale had a photo of the view on his cell phone. If the building were just being rebuilt, not expanded, they would not object.

CEO McDougal stated for clarification that there is not a prohibition on increasing in square footage; the Ordinance language cited is the trigger that sends this proposal to the Zoning Board. If there had been no increase in square footage, he could have issued the building permit.

Mr. Dale indicated on the map which property he was representing. The address is 960 Shore Road.

Ken Piper of 3 Birch Knolls, the abutter to the back end of the building stated the increase in height was not a big deal for them; what would be ideal would be to keep the existing footprint, existing volume and existing height. The house has been jacked up

for six months and has affected their views of Cushing Island from their upper floors. Moving the house back would annihilate our view; it would have a huge negative impact on the value of our home. Our home sits behind an array of houses.

Nancy Morino, 4 Birch Knolls, (which is not right next door, although this concerns number 5) has lived there since 1986 and their view has been the funny little house on the corner that has been a mess. So they are just thrilled with the DeGeorges plans, it will not affect her view and will be a beautiful home. The house, that they (DeGeorges) purchased was a hazard and should have been torn down a while ago. She approves of their design and hopes it goes forward.

Mr. Dale returned to show board members the photo of the view on his cell phone. He stated they are not entitled to add an additional story; the plan should be to replace what was there.

Mr. Fisher spoke on behalf of the DeGeorges, they have respect for their abutters. Northeast Civil Solutions has improved eight houses of the 14 properties in the area within the last 20 years. He understands the value of ocean views. Legally, the structure could be another five feet higher than proposed – but they don't want to do that. The new design is only seven feet higher for about one-half of the width of the house. The houses in the area are small, on tiny lots; this improvement would fit into the neighborhood. The Condominiums are about 200 – 250 feet back from the water, they have views and this design will not ruin those views.

Mr. Dale returned to discuss views. He questioned the height of the jacked-up house and the replacement.

Mr. Fisher stated the elevation of the building was shown on the plans. He believed the elevation to be 30 feet.

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

CEO McDougal referred to the plan that showed existing and proposed height comparison. Mr. McDougal stated he spoke with the architect extensively about the 35-foot height limitation. The board discussed the uniqueness of the property and the unique problem. Members considered view entitlements of abutters if the structure were moved and if built as proposed. The language of the Ordinance and definitions were extensively discussed. The structure meets the setbacks to the greatest practical extent where originally built. Mr. McDougal said the other email was from Dru Rowean, 2 Kenyon Lane.

Mr. Vaillancourt moved to approve the request of Michael Skolnick, representing the owners of 5 Birch Knolls, Map U5 Lot 15, to replace and expand the existing nonconforming structure on the property based on Section 19-4-3.B.3 and 19-4-4.B.4. Mr. Mosher seconded. Vote: 5 – 0, in favor.

**Findings of Fact:**

1. This is a request of Michael Skolnick, presenting the property owners, Alan and Mara DeGeorge, to reconstruct and expand a nonconforming single family dwelling at 5 Birch Knolls, Map U5 Lot 15 based on Sections 19-4-3.B.3 and 19-4-4.B.4.
2. The subject lot is a nonconforming lot in the RC Zone and it is in the Shoreland Performance Overlay District.

**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 soil suitable for septic systems, the impact on views, and the type and amount of vegetation to be removed to accomplish the reconstruction.
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.
4. The total amount of floor area and volume of the original structure cannot be relocated beyond the setback requirement for a new structure.

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

**E. Communications:** None.

**F. Adjournment:** Having no other business to conduct, the Chairman Carver adjourned the meeting at 8:29 p.m.