

**Town of Cape Elizabeth
Minutes of the December 6, 2017
Zoning Board of Appeals Meeting**

Present:

Matthew Caton
Michael Tadema-Wielandt

John Craford
Stanley Wisniewski

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

A. Call to Order: Acting Chairman Tadema-Wielandt called the meeting to order at 7:06 p.m.

B. Approval of Minutes:

1. Mr. Craford moved to approve the minutes of September 26, 2017; the motion was seconded by Mr. Caton. Vote 3 – 0 in favor. Mr. Tadema-Wielandt abstaining.

C. Old Business: None.

D. New Business:

1. Agenda Item 5. To hear the Superior Court remand of 5 Birch Knolls, Map U05 Lot 15, originally heard at the Zoning Board on May 23, 2017. Acting Chairman Tadema-Wielandt stated that there were not four members present who were in attendance at that meeting. After consulting with both sides, he proposed to table this until a special session could be scheduled prior to the end of the year. Mr. Wisniewski moved to table this remand until a special session later this month; the motion was seconded by Mr. Caton. Vote 4 – 0 in favor.

2. Agenda Item 1. To hear the request of Rachel Lomas, co-owner of 61 Charles E. Jordan Road, Map R08 Lot 43, to create an Accessory Dwelling Unit within a single family dwelling based on Section 19-7-5 of the Zoning Ordinance.

Rachel Lomas stated she was requesting an Accessory Dwelling Unit for the 1868 home that was moved from Skowhegan. There was a small kitchenette in the second entrance that they would like to update so that her parents can fix their own breakfast when they stay there summers.

CEO McDougal said this was a very old house that has been moved here. There is an old kitchen. To have a second kitchen on a single family lot would require this type of approval.

Ms. Lomas said there would be no exterior changes. There are already two entry doors. Ms. Lomas stated the Accessory Dwelling Unit is held in the same ownership as the house and she acknowledged that this approval would go with the house and was only for the use of someone with a close personal relationship.

Mr. McDougal stated the Septic System has been designed and approved; but not constructed yet. Ms. Lomas stated there weren't many houses in the neighborhood, there's a farm, some woods, and a house down and across the road. It was an empty lot before the house was moved; there are parking spaces for four vehicles behind the house.

There was no public comment.

The CEO said no correspondence had been received.

Board members commented that all the applicable criteria of Zoning Ordinance Section 19-7-5.B were being satisfied by the applicant, except criteria 4 – because there is no addition. Mr. Tadema-Wielandt said this is also being looked at as a Conditional Use Permit. The septic once installed, needs to comply with all state and local codes.

Mr. Wisniewski moved to approve the request of Rachel Lomas for a Conditional Use Permit to create an Accessory Dwelling Unit within a single family dwelling. Mr. Craford seconded. All were in favor. Vote: 4 – 0.

Findings of Fact:

1. This is a request for a Conditional Use Permit to create an Accessory Dwelling Unit in an existing single family dwelling per Section 19-7-5 of the Zoning Ordinance.
2. The subject property is 61 Charles Jordan Road (Map R08 Lot 43).
3. The applicant is Rachel Lomas, who is a co-owner of the property.
4. Based on the application submitted, we make the following additional findings of fact.

Additional Findings of Fact:

1. The proposed use will not create hazardous traffic conditions when added to existing and foreseeable traffic in its vicinity.
2. The proposed use will not create unsanitary conditions by reason of sewage disposal, emissions to the air, or other aspects of its design or operation.
3. The proposed use will not adversely affect the value of adjacent properties.

4. The proposed site plan and layout are compatible with adjacent property uses and with the Comprehensive Plan.

5. The applicant has demonstrated compliance with the requirements in Section 19-7-5.B of the Zoning Ordinance.

Condition:

That the new wastewater disposal system be installed in compliance with the approved design.

Mr. Caton moved to approve the Findings of Fact, Additional Findings of Fact and Conclusion; Mr. Craford seconded. All were in favor. Vote: 4 – 0.

3. Agenda Item 4. To hear the Superior Court remand of 19 Cunner Lane, Map U14 Lot 26-1, originally heard at the Zoning Board on June 28, 2016.

CEO McDougal explained this was a remand from the Law Court with very specific instructions for the Zoning Board.

Acting Chairman Tadema-Wielandt read the CEO's draft decision: Based on the Law Court mandate dated September 19, 2017, we, the Cape Elizabeth Zoning Board of Appeals, have determined that the Code Enforcement Officer's approval of the building permit did not conform with the provisions of the municipal ordinance. The CEO should therefore deny the permit application.

Mr. Caton moved to approve the above decision as stated; Mr. Craford seconded. All were in favor. Vote: 4 – 0.

4. Agenda Item 2. To hear the request of Kevin Browne, representing Thomas and Nancy Ruddy, owners of 14 Lawson Road, Map U8 Lot 24, for a variance to construct a garage addition 15 feet 6 inches from the rear property line where the Zoning Ordinance requires a 20 foot setback. And

Agenda Item 3. To hear the request of Kevin Browne, representing Thomas and Nancy Ruddy, owners of 14 Lawson Road, Map U08 Lot 24, to enlarge an existing nonconforming single family dwelling.

Kevin Brown of Kevin Brown Architecture stated they were here to request a variance for a garage and request to expand a nonconforming house. We set out to add a two-car garage behind the house or somewhere on the property. The best location is behind the house, because the lot is a narrow 70 feet wide, we only have a 20 foot building envelope. If we put a standard 24' by 24' garage in front, it would take up the entire front of the house. It is a charming, historic house so our goal is to preserve that look. There are eight houses in the neighborhood that have two-car garages. We would like the garage to be placed behind the house, so that you could walk into the

house. If placed in front of the house you couldn't do that because there is no basement under the house, you would have to walk outside. Because of the angle of the house and slope of the land, the garage would go into the rear setback about four feet.

Mr. Brown said they are also requesting a vertical expansion on top of the existing footprint. On the West side closest to the property line, over the existing first floor where they would like to add bedrooms and a bath as they change the use from seasonal to year round. On the East side there is a shed/garage, we propose to remove the shed and add it on to the first floor of the house, pulling it away from the property line, making it less non-conforming. To preserve the view of the rear neighbor, we decided to build up on the other side of the house, outside the building envelope, creating the expansion.

The first floor of the garage is a little wider than the second floor of the garage and is tucked behind the house in order not to block the neighbor's view. The new structures appear darker, than the existing structures on the plans.

Mr. McDougal stated he received two emails in support and two emails with concerns about the project. He also had a standard Boundary Survey. The neighbors, Robin and Ted McCarthy across the road and Debbie Schmidt and Robert Warshaw at 10 Lawson Road, immediately to the West, support the project. There are two neighbors, Mr. and Mrs. Daniel Poteet, 1082 Shore Road and Jerry Cyr, 1084 Shore Road, with concerns about the project that could not be here.

Mr. Wisniewski noted information about how the project would effect the natural environment was not included in the application. Mr. Brown noted measures would be taken to avoid construction harm to the environment and that leveling for the driveway would attempt to improve present drainage issues. The foundation of the house is cinderblock; the shed is on a slab. The two foundations do not touch, therefore Mr. Caton noted, if the shed is removed it is like it was never there.

Instead of concurrent discussion, the board proceeded to discuss Agenda Item 2, the variance request. Ordinance Section 19-5-2.B applies. The board discussed each standard listed. Ordinance language concerning "practical difficulty" and "feasible alternative" criteria were discussed. Photos submitted by Mr. Cyr were viewed and discussed relative to the applicant's plans.

The logic of setbacks and encroachment upon neighbors was considered. The board examined the plans. Nancy Ruddy explained how the design interfaced with the interior of the house. It was determined the variance needed for the triangle of the garage that encroached into the rear setback was 10 – 12 square feet or 4 ½ feet.

Acting Chairman Tadema-Wielandt asked for public comment. Ted McCarthy, who lives across the street, stated he approved of the plans. The owner, Nancy Ruddy, stated they would really appreciate the board's consideration of the small triangle

variance so that they could have a two-car garage. She understood the board's criteria and if the variance were not granted they would build a 1½ car garage.

The CEO ensured all board members had read the correspondence received; it will be made part of the record.

Mr. Wisniewski moved to deny the request for variance to construct a garage at 14 Lawson Road, Map U09 Lot 24; Mr. Craford seconded. Vote: 3 - 1. Mr. Tadema-Wielandt was apposed to this motion.

Findings of Fact:

1. Variance Request for Map U09 Lot 24, 14 Lawson Road, Applicant: Kevin Browne, representing the owners of the property.
2. Thomas and Nancy Ruddy are the owners of record of the subject property.
3. 14 Lawson Road is a non-conforming lot is the RA district. The required setbacks are 25 feet from the front property line, 25 feet from the side(s), and 20 feet from the rear property line.
4. The applicant wishes to add a garage to the rear of the house, 15 feet 6 inches from the rear property line, where the Zoning Ordinance requires 20 feet.

Additional Findings of Fact:

1. The practical difficulty is the result of action taken by the applicant or a prior owner by the design that puts the garage into the rear setback.
2. Other feasible alternatives to a variance are available to the petitioner such as reducing the size of the garage or constructing the garage elsewhere on the property.

Mr. Craford moved to approve the Findings of Fact and Additional Findings of Fact, as amended; Mr. Wisniewski seconded. All were in favor. Vote: 4 – 0.

Agenda Item 3. To hear the request of Kevin Browne, representing Thomas and Nancy Ruddy, owners of 14 Lawson Road, Map U08 Lot 24, to enlarge an existing nonconforming single family dwelling.

The CEO asked the applicant if they wished to continue with the next request without the approval of the triangle portion of the garage over the rear setback. Mr. Browne stated they would like to proceed and they understood that the triangle portion would not be included, as it was not approved. The dark gray areas with the crosshatch on the plans are the areas being considered, excluding the area over the rear setback.

Mr. Browne said in consideration of neighbors' views they are not using their entire building envelope.

Owner, Nancy Ruddy, explained that they consulted neighbor, Jerry Cyr, and redrew the plans per his wishes in order not to obstruct his view; she wished Mr. Cyr could have been present tonight. Moving the shed is in everyone's best interest.

In response to questions Ms. Ruddy stated the house foundation consisted of pylons where the house is over ledge, and elsewhere cinderblock. The new structure will have a poured frost wall and will be most likely pinned into the ledge – the design hasn't gone that far replied Mr. Browne. The septic system has been designed for the front of the lot by a licensed designer. The CEO said the septic system had not been approved yet.

Acting Chairman Tadema-Wielandt reviewed the Ordinance Sections that applied especially Section 19-4-3.B.4. The locations of the neighbors with concerns were noted and discussed, as were the concessions of the owners with regard to views. The proposal will improve the nonconformities on the side of the property, making it less nonconforming.

Mr. Caton read from Daniel Poteet's email: "...the extension would obstruct our water views from the first floor of our home...." "(and we would otherwise wholeheartedly support removing the detached shed in conjunction with the proposed renovation)."

Mr. Caton read from Jerry Cyr's letter: "The Ruddys have been thoughtful in attempting to preserve my current view, however, it is unclear from their proposal that my view will remain fully intact and it appears that the garage location will alter the character of the neighborhood."

It was thought that the houses on Shore Road were elevated from Lawson Road. There was general consensus that this proposal's elevation drawings do not appear to have a big impact on views.

Mr. Caton moved to approve the application to remodel and expand a nonconforming single family dwelling at 14 Lawson Road, which is on the Agenda as Item 3; Mr. Craford seconded. All were in favor. Vote: 4 – 0.

Findings of Fact:

1. This is a request of Kevin Browne, representing the property owners, Thomas and Nancy Ruddy, to remodel and expand a nonconforming single family dwelling at 14 Lawson Road, Map U08 Lot 24 based on section 19-4-3.B.4 of the Zoning Ordinance.
2. The subject lot is a nonconforming lot in the RA Zone. The required setbacks are 25 feet from the front property line, 25 feet from the side(s), and 20 feet from the rear property line.

3. The structure on the lot is a nonconforming structure because the house is 2 feet 7.25 inches from one side property line and 6 feet 10 inches from the other side property line.

4. The applicant would like to expand the house within the 25 foot required setback but they will not be increasing the nonconformity because they are not proposing to get closer to the property line than the existing nonconforming structure.

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, 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. No structure is proposed within the 20 foot rear setback.

4. The Zoning Board of Appeals has considered the impact on views and reviewed information and photographs provided by neighbors and information and building elevations provided by applicant and determined the proposal will not have a significant impact on views.

Mr. Craford moved to approve the Findings of Fact, Additional Findings of Fact, as amended; Mr. Caton seconded. All were in favor. Vote: 4 – 0.

E. Adjournment: Acting Chairman Tadema-Wielandt adjourned the meeting at 9:16 p.m.