

Town of Cape Elizabeth  
Minutes of the March 27, 2018  
Zoning Board of Appeals Meeting

Present:

Matthew Caton  
Aaron Mosher

John Craford  
Michael Tadema-Wielandt

Kevin Justh

Timothy Lunney  
Michael Vaillancourt

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

**A. Call to Order:** Acting Chair Michael Vaillancourt, called the meeting to order at 6:59 p.m.

**B. Election of Chair and Vice Chair:**

1. Mr. Vaillancourt asked for nominations or volunteers for Chair. Mr. Tadema-Wielandt nominated Michael Vaillancourt for Chair; the nomination was seconded by Matt Caton. Vote: 5 – 0, in favor. Mr. Vaillancourt abstained; Mr. Mosher not present at the time.

2. Mr. Vaillancourt asked for nominations or volunteers for Vice Chair. Mr. Caton nominated Aaron Mosher for Vice Chair; the nomination was seconded by John Craford. Vote: 6 – 0, in favor. Mr. Mosher abstained.

**C. Approval of Minutes:**

1. Mr. Tadema-Wielandt moved to approve the minutes of December 6, 2017; seconded by Mr. Craford. Vote: 5 – 0. New members Kevin Justh and Timothy Lunney abstained.

2. Mr. Mosher moved to approve the minutes of December 26, 2017; seconded by Mr. Caton. Vote: 5 – 0. New members Kevin Justh and Timothy Lunney abstained.

**C. Old Business:** None.

**D. New Business:**

1. To hear the request of Daniel Sabin, owner of the property at 2 Locksley Road, Map U6 Lot 18A, to expand their nonconforming single-family dwelling based on Section 19-4-3.B.4 of the Zoning Ordinance.

Chairman Vaillancourt asked CEO McDougal for comments. Mr. McDougal stated Mr. Sabin was doing some interior remodeling and during an on-site inspection, they began discussing how to expand the house over the garage. The CEO told Mr. Sabin he would need a survey to determine how the house sat on the property. The survey

showed he was closer to the side property line than the current required 10-foot setback; therefore he needs Zoning Board Approval. In response to questions, the CEO said that there was not any previous variance on file.

Daniel Sabin stated that they bought the house in 2016. It had been neglected for a while, especially the kitchen and bathroom. They started removing sheetrock and drywall and replacing the electric, plumbing and heating in part of the house. They found a problem over the garage where the water was leaking and caused two beams to rot. The flat roof over the garage collects debris and snow; which melts and leaks inside the garage. Instead of trying to fix it, we'd like to tear it down and rebuild it. If doing that, we decided having a single, high-pitched roof would be best. That was when Ben said they needed to file this application. We discussed this roof change with our neighbors, closest to the garage. They were supportive and stated they would rather have a nicer looking house in front of their property than the one existing. We then sent an email to the rest of the neighborhood. Not all responded, but the responses received were favorable.

The expansion is not large, less than 200 square feet added to the house living surface. The main point is to have a single roof over the garage to get rid of the possibility of leaking water and additional maintenance. The Sabins plan to retire here and would like the best solution now to minimize problems in the future.

In response to questions, Mr. Sabin replied the survey was a recent one. Pitch on the current and proposed roofs was discussed. The window will be in the same area. Between the two properties there are two large pine trees; that Mr. Sabin worries may fall at some point. The trees are actually on his neighbor's property; together, they will have them removed once the garage is demolished, making it easier to do. There is no concern about erosion there due to presence of ledge. Distance to the neighbor's property line was discussed.

CEO McDougal stated he did not receive any formal feedback relating to this request, just a few phone inquiries with general questions.

Mr. Sabin replied when questioned that the foundation footprint would be the same. The roof will be extended over both bays. The land slopes down from the house; gutters will be installed. There is ledge on the garage side so no erosion should occur.

Public Comment: Roger Rioux, of 5 Bridlepath Way (which is misnamed on the Map as Friar Lane), stated he supports everything that is planned and wanted to share some additional information. He reported that the one-car garage, on the right, was added about 30 years ago. To the right side is a V-shaped gully that runs back away from the road. He doesn't see anyone objecting; this is a significant improvement. Mr. Rioux stated he's lived in the neighborhood 44 years. Mr. Sabin has made good improvements thus far and the outcome of this should be consistent.

The Chair and other board members commented that Mr. Sabin's application was complete and well prepared.

Mr. Mosher moved to approve the request of Daniel Sabin, the owner of 2 Locksley Road, Map U6 Lot 18A, to expand a nonconforming single-family dwelling based on Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Craford seconded. All were in favor. Vote: 7 – 0.

**Findings of Fact:**

1. Daniel Sabin and Mihaela Sabin are the owners of 2 Locksley Road, Map U6 Lot 18A. 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 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, including the garage.

3. The proposed structure is in compliance with the setback requirement to the greatest practical extent.

Mr. Tadema-Wielandt moved to approve the Findings of Fact and Additional Findings of Fact; Mr. Craford seconded. All were in favor. Vote: 7 – 0.

**New Business cont'd:**

2. To hear the request of Christy and James Capistran, the owners of 68 Long Point Lane, Map R3 Lot 9A, to expand a nonconforming single-family dwelling based on Section 19-4-3.B.4 of the Zoning Ordinance.

Chairman Vaillancourt asked CEO McDougal for comments on the application. Mr. McDougal stated the Capistrans submitted a building permit to turn an existing deck into sunroom or den, a single story living space. When he had more information on the property lines, he found that the proposed expansion does not meet the setback requirements. (25 feet side, and 20 feet rear setbacks) The existing deck cannot be expanded into living space without approval of the Zoning Board. It is similar to the previous case, based on the same section of the ordinance. He advised the Capistrans to seek Zoning Board approval to do this.

Christy and James Capistran came to the podium. Mrs. Capistran presented to the board, a letter of approval for this project from the Peabbles Cove Association, which

they had just received. In response to questions, Mrs. Capistran confirmed that the front of the lot was on Long Point Lane.

In response to questions, Mr. Capistran stated that the deck is built on ledge rock. There are flat spots, with notches, for the footings. The current deck posts will be replaced by 8" X 8" posts and re-joisted. There is a pretty good slope in that area – mostly ledge with little grass – erosion would not be an issue. Mr. Capistran said they wanted to turn the existing deck into a three-season room. There would be a sliding door and one window. There was a larger deck with a handicap ramp in this location when they purchased the house. The deck was rebuilt smaller, when they rebuilt the whole house. The old footings are still there, about 10 feet out from the existing deck. This new space will not be heated; there will be a door into this space from the house, which is a year-round home, heated with a Rinnai heater.

Mrs. Capistran continued by stating the house was purchased in 2011. They demoed the cottage and built an in-kind replacement house. It was finished in 2012. The original deck was 8 feet by 10 feet larger with a handicap ramp beside it. The building permit would be on file. The existing deck was shown on the reconstruction plans. These are non-ocean view houses; no other views would be impacted by this project. The neighbor at number 64 does not have windows overlooking the area. The existing deck is 18 feet from the side property line and 16 feet from the rear property line. There was discussion about where the stairs would be located because they are not included on the submitted plan.

In response to questions from the board, the CEO stated that setbacks would also apply to the steps. The deck is nonconforming, so it is grandfathered to be the distance it is from the property line. Those distances are being maintained; the building is not getting any closer to the property line. So the nonconformity is not being increased. There is a nonconforming structure being enlarged but it is not increasing the nonconformity because it is a vertical enlargement. Nonconformity is a horizontal, linear issue. The CEO cited the definition for *Increase in nonconformity of a structure* on page 17 and paragraph 4. *Enlargement* on page 47 of the new Zoning Ordinance to further explain. A lengthy discussion continued between the CEO and board members seeking understanding.

The board continued with questions for the Capistrans. Mrs. Capistran stated they had public sewer and water; no vegetation would be removed. The number of steps would be the same: three steps. There is an existing septic off to the side that will not be disturbed; they use public sewer. Mr. Capistran stated the footings for the entire house were built on ledge rock. The CEO assured the board that construction would be inspected for compliance.

Public Comment: Angela Berry of 64 Long Point Lane, the abutter to the property, stated she had no objections to this addition. Ms. Berry did question where the door would be located. Mr. Capistran replied that it would be a sliding door, flush with the

existing house; the existing stairs would be used. Mrs. Berry said she had no concerns.

Mr. McDougal stated he had received a couple of phone inquiries, but no formal correspondence.

Board discussion continued about construction, the location of the stairs (stairs will stay where they are currently), nonconformity, and setbacks.

Mr. Mosher moved to approve the request of Christy and James Capistran, the owners of 68 Long Point Lane, Map R3- Lot 9A, to expand a nonconforming single-family dwelling based on Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Craford seconded. All were in favor. Vote: 7 – 0.

**Findings of Fact:**

1. Christy Capistran is the owner of 68 Long Point Lane, Map R3 Lot 9A. The subject lot is a nonconforming lot, with an existing nonconforming single-family dwelling, in the RA 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 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.

Mr. Tadema-Wielandt moved to approve the Findings of Fact and Additional Findings of Fact; Mr. Caton seconded. All were in favor. Vote: 7 – 0.

**E. Communications:** None.

**F. Adjournment:** Chairman Vaillancourt adjourned the meeting at 8:29 p.m.