

Town of Cape Elizabeth  
Minutes of the February 26, 2019  
Zoning Board of Appeals Meeting

Present:

Matt Caton  
Colin Powers

Kevin Justh  
Michael Tadema-Wielandt

Aaron Mosher

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

**A. Call to Order:** Vice Chair Aaron Mosher called the meeting to order at 7:00 p.m. and welcomed new member Colin P. Powers.

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

1. Aaron Mosher nominated Michael Vaillancourt for Chair; Kevin Justh seconded. All were in favor. Vote: 5 – 0.
2. Michael Tadema-Wielandt nominated Aaron Mosher for Vice Chair and Secretary; Matt Caton seconded. All were in favor. Vote: 5 – 0.

**C. Old Business:** None.

**D. Approval of Minutes:** Mr. Justh moved to approve the minutes of October 23, 2018; seconded by Mr. Caton. The minutes were approved by of a Vote of 4 – 0. Members abstaining were not present at the October meeting.

**E. Review 2019 meeting calendar:** Mr. Justh moved to approve the meeting calendar; seconded by Mr. Caton. The meeting calendar was adopted. Vote of 5 – 0.

**F. New Business:**

1. To hear the request of Thomas Wolff, owner of the property at 102 Delano Park, Map U7 Lot 8, for a Conditional Use Permit to create an Accessory Dwelling Unit in the space above his garage based on Section 19-7-5 of the Zoning Ordinance.

The CEO stated he had received a letter from Thomas Wolff authorizing Peter Selfworth represent him at this meeting; Mr. Wolff had to be away on business. Mr. McDougal said Mr. Selfworth is a general contractor working for Thomas Wolff. He did a demolition/rebuilt of a single family dwelling at 102 Delano Park. In the process of the building project, Mr. Wolff decided that he would like a second kitchen above the garage for when in-laws came to visit. Mr. Wolff was advised that going before the Zoning Board was the process to do that.

Mr. Selfworth said the space above the garage is to be an in-law apartment, for elderly parents who come and stay periodically.

In response to board questions, Mr. Selfworth stated that the new chamber septic system would accommodate enough bathrooms and this new kitchen. This structure is in the process of being built.

The CEO stated that the little kitchenette was on the original plan, but could not be permitted. Mr. Wolff said okay, it would just be a bonus room with a bathroom. Then they decided they did want the kitchen; so they started this process. The size and shape of the house doesn't change – the eight-foot kitchenette is the only part of the project that has fluctuated.

Mr. Selfworth said the entry to the apartment is through the garage. There is also an elevator in the mudroom that allows entry through the second floor of the house.

There was no public comment. Chairman Mosher closed the floor to public comment.

Mr. McDougal stated he had a full-sized copy of the survey. He received only one phone call about the application but they didn't express any concerns.

Board members agreed that the application met all requirements of Section 19-7-5.B.

Mr. Tadema-Wielandt moved to approve the request of Thomas Wolff, owner of the property at 102 Delano Park, Map U7 Lot 8, for a Conditional Use Permit to create an Accessory Dwelling Unit in the space above his garage based on Section 19-7-5 of the Zoning Ordinance. Mr. Justh seconded. All were in favor. Vote: 5 – 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 102 Delano Park (Map U7 Lot 8).
3. The owner of the property is Thomas Wolff.

### **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 design and external appearance of any proposed building will constitute an attractive and compatible addition to its neighborhood, although it need not have a similar design, appearance or architecture.

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

Mr. Tadema-Wielandt moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. Caton seconded. All were in favor. Vote: 5 – 0.

2. To hear the request of Frank and Sheryl Orzel, owners of the property at 7 Crescent View Avenue, Map U16 Lot 63, to replace and expand a garage and mudroom based on Section 19-4-3.B.3 of the Zoning Ordinance.

The CEO met with Mr. Orzel several months ago to tear down his existing garage, expand it and add a mudroom and a section of porch. The lot is a nonconforming lot in the RA Zone; the side setback is 25 feet. Therefore he didn't meet the 25-foot setback, but he is able to replace the garage without making it more nonconforming per this section of the Ordinance.

Christopher Stein, a resident of Cape Elizabeth, came to the podium to represent Frank and Sheryl Orzel, his in-laws. Mrs. Orzel was in attendance. The Orzels bought the home in 2010. It has a nonconforming detached garage. The garage has been there for decades; it is in dilapidated condition and not suitable for storing a vehicle or much else. They hope to replace it with a deep garage, 1 car wide, 2 cars deep. The new garage would be the same distance from the property line. Space that is currently a deck between the house and the garage would be used to create a mudroom/ breezeway to attach the garage to the house, and put a small porch on the front for aesthetics on the approach to the house. The Orzels would like approval to put on the new structure, keeping the same nonconforming setback that is there now.

In response to board questions, Mr. Stein explained that there would be no impact on views with the new garage. Mrs. Orzel has spoken with the neighbor on that side about the proposal. The current garage has a shed roof the height might be 9 or 10 feet. The new garage will be a little taller, but shorter than the house. Preliminary plans and photos were discussed. The garage roof will change pitch from the West to North/South. There will be a gutter that will wrap around and drain where the existing one drains. The footprint of the new garage and setback distance was discussed. The nonconformity is being reduced.

Public Comment: Scott Irving, 27 Crescent View Avenue, stated the garage is old; there is no view that the new garage would interrupt. The new garage will be a nice addition to the neighborhood.

The CEO stated he had not received any correspondence concerning the application.

Chairman Mosher closed the floor to public comment.

Board members commented that the nonconformity is being reduced. There was no impact on views. Both the lot and the house are nonconforming.

Mr. Justh moved to approve the request of Frank and Sheryl Orzel, owners of the property at 7 Crescent View Avenue, Map U16 Lot 63, to replace and expand a garage and mudroom based on Section 19-4-3.B.3 of the Zoning Ordinance. Mr. Caton seconded. All were in favor. Vote: 5 – 0.

**Findings of Fact:**

1. The property is a nonconforming lot in the RA zone. There is an existing nonconforming single family dwelling on the property.

**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, location of the septic system, the impact on views, and the type and amount of vegetation to be removed to accomplish the enlargement.
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 applicant has demonstrated compliance with the requirements in Section 19-4-3.B.3 of the Zoning Ordinance.

Mr. Justh moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. Mosher seconded. All were in favor. Vote: 5 – 0.

3. To hear the request of Steven Pondelis, representing the owner of the property at 226 Bowery Beach Road, Map R09 Lot 40, to expand a single family dwelling by adding an attached garage based on Section 19-4-3.B.4 of the Zoning Ordinance.

Mr. Tadema-Wielandt stated, for the record, that he has worked professionally with Mr. Pondelis; they share common business clients. He did not feel this relationship created a conflict of interest.

The CEO stated he met with Mr. Pondelis on a number of occasions to discuss this property. He was trying to figure out a solution for the owners of this property to be able to get from their garage to their home and remain undercover. It is kind of a difficult property the way the barn is situated. The Route 77 Right-of-Way comes roughly 50 feet into the front yard of this property – it's an odd situation. So when you add that to the 50-foot setback line, the setback is almost 100 feet from the pavement. The CEO advised the only way would be to use this zoning provision.

Steven Pondelis stated he was an architect from Yarmouth. He is representing Dick and Cate Gilbane, who couldn't be there. They wanted covered parking attached to the house. This plan creates a new entrance on the side of the house that they use all the time. The proposed addition will cover where they park now and existing walkways. This structure will answer most of the issue they have with the property. If this doesn't make the property more nonconforming, they would like permission to continue in this direction.

Mr. Justh clarified with the CEO that the existing nonconformity is the 26 feet at the bottom of the stairs, so as long as the solution stays within that line the nonconformity will not be increased. In response to board members questions, Mr. Pondelis discussed other options that had been considered. This plan allows for a mudroom entrance and provides a block from the weather coming directly into the kitchen. This was the best option. They want this to be compatible to the farm's character; therefore, this is an open parking structure. It was a process of elimination to come to this location.

Mr. McDougal stated having no doors does not factor into the zoning. The CEO stated that he sent Mr. Pondelis back to the drawing board several times on this. He really did try to meet setbacks. There were obvious road blocks; he did put the effort in.

Mr. Pondelis said they would be adding gravel to the barn side but removing gravel elsewhere. The septic was discussed – it has no bearing. This is the best solution with other benefits.

There was no public comment.

The CEO did not receive any comments or feedback.

The board commented that they liked the application.

Mr. Justh moved to approve the request of Steven Pondelis, representing the owner of the property at 226 Bowery Beach Road, Map R09 Lot 40, to expand a single family dwelling by adding an attached garage based on Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Mosher seconded. All were in favor. Vote: 5 – 0.

### **Findings of Fact:**

1. The property is a conforming lot in the RA zone. There is an existing nonconforming single family dwelling on the property.

### **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, location of the septic system, the impact on views, and the type and amount of vegetation to be removed to accomplish the enlargement.

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 applicant has demonstrated compliance with the requirements in Section 19-4-3.B.4 of the Zoning Ordinance.

Mr. Tadema-Wielandt moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. Caton seconded. All were in favor. Vote: 5 – 0.

4. To hear the request of Lisa Cotter, owner of the property at 14 Woodland Road, Map U1 Lot 13, to add a second story to a single family dwelling based on Section 19-4-3.B.4 of the Zoning Ordinance.

The CEO stated he has been working with Ms. Cotter for several months (if not years now) on the new home she purchased, trying to get a little more space in the house. She considered several different horizontal expansions and has finally settled on going upward on the house as the most practical way to go. It is a very small lot in the RC Zone. Three sides of the house are nonconforming to the setbacks. This application is relatively straight forward, going straight up on the existing based on Section 19-4-3.B.3 and B.4 of the Zoning Ordinance. As a small part of the home, a few square feet, is in South Portland, the board should make a condition that he cannot issue a building permit until South Portland approves the plan.

Ms. Cotter stated she had been in touch with Matt, the Code Enforcement Officer for South Portland. The builder gave Matt copies of the surveys and he has requested to review the plans for the house once she has a ruling from the Cape Elizabeth Zoning Board of Appeals. There is not a full second story on the South Portland corner; but the roof pitch will change in that area.

In response to questions from the board, Ms. Cotter replied no views would be obstructed. The neighbors are all supportive; they just want to know when she is going

to get started. There are no current drainage issues. There are gutters now and on the new addition. They will drain to the same location.

The board complimented Ms. Cotter on the well-prepared application.

There was no public comment.

Mr. McDougal stated he did not receive any comments or feedback.

Mr. Caton made a motion to approve the request and withdrew his motion due to an error in of the Section cited.

Mr. Tadema-Wielandt moved to approve the request of Lisa Cotter, owner of the property at 14 Woodland Road, Map U1 Lot 13, to add a second story to a single family dwelling based on Section 19-4-3.B.4 of the Zoning Ordinance. Mr. Caton seconded. All were in favor. Vote: 5 – 0.

**Findings of Fact:**

1. The property is a nonconforming lot in the RC zone. There is an existing single family dwelling on the property.

**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, location of the septic system, the impact on views, and the type and amount of vegetation to be removed to accomplish the enlargement.

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 applicant has demonstrated compliance with the requirements in Section 19-4-3.B.4 of the Zoning Ordinance.

**Condition:**

Prior to issuing a building permit, the Code Enforcement Officer shall receive assurance from the Code Enforcement Officer of the City of South Portland that the portion of the project within South Portland is compliant with its zoning ordinance.

Mr. Justh moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. Caton seconded. All were in favor. Vote: 5 – 0.

Mr. Justh moved to approve the Condition; Mr. Mosher seconded. All were in favor.  
Vote: 5 – 0.

**E. Communications:** None.

**F. Adjournment:** Vice Chair Mosher adjourned the meeting at 8:13 p.m.