

Town of Cape Elizabeth
Minutes of the August 27, 2019
Zoning Board of Appeals Meeting

Present:

Kevin Justh

Aaron Mosher

Colin Powers

Michael Tadema-Wielandt

Michael Vaillancourt

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

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

B. Approval of Minutes:

1. Approval of the Minutes for June 25, 2019: A motion to approve the minutes was made by Mr. Powers; seconded by Mr. Tadema-Wielandt. The motion passed.

Vote: 4 – 0. Mr. Justh abstained.

2. The Minutes for the July 23, 2019, meeting were deferred until the next meeting.

C. Old Business: None.

D. New Business:

1. To hear the request of Douglas Strout, owner of the property at 10 Robinhood Road, Map U6 Lot 110, for a Conditional Use Permit to create an Accessory Dwelling Unit within the existing house based on Sections 19-7-5 and 19-5-5 of the Zoning Ordinance.

Chairman Vaillancourt asked CEO McDougal for the background. The CEO stated that Mr. Strout saw him a couple months ago. He was considering a short-term rental for this portion of his house. The kitchen was there when he bought the property. The CEO told Mr. Strout he couldn't rent that portion because it was not a legal dwelling unit. His options were to take out the kitchen and rent it on a short-term basis or keep kitchen, seek approval of an Accessory Dwelling Unit, and rent it out on a long-term basis.

Douglas Strout said he and his wife Anna have lived at 10 Robinhood Road for 17 years and plan to stay there for many more years. When they bought the home in 2002 it had the existing in-law apartment, which was constructed by the original owners in 1987. Several years after moving in the Strouts put up an interior wall to make a home office and a separate guest bedroom space. The dedicated office space is no longer needed. The Strouts have aging parents, and have reconsidered how best to use that space. This year they reestablished the original format of the in-law apartment, reasoning that one of their four parents, grown children, or other family could use it. In the mean time it makes sense to rent it. Anna works for Maine Health and knows that visiting medical professionals are in need of temporary housing. Long-time rentals are permitted in an

ADU. Any rental agreement would be never be less than 30 days – but hope it to be considerable longer when appropriate. If and when they do rent the space it would only be to someone they fully trust and with whom they have established a close personal relationship. Although a door will separate the ADU from the rest of the house, they will still be living under the same roof and will carefully screen anyone invited to live in their home.

In response to questions, Mr. Strout described that the ADU is on the right side of the photograph included in the application. There is a rear glass entry door for ingress and egress, and a brick pathway. The connecting door to the house accesses a hallway in the home that also has a door into the garage. The parking spaces are set back about 50 – 60 feet off the road and about 20 feet on the side from neighbors with some buffering vegetation. The garage is in front of the hallway with the connecting door. They had installed an interior wall to separate the bedroom from the office, but they took the separating wall down, and put the space back to the original. The exterior is the same. No renovation is planned.

The CEO stated he received one anonymous phone call that had concerns and were opposed if they would be renting to non-family members. He received an email from Jim Toulouse that was forwarded to the board and one other email that felt the same way.

The chair asked for public comment.

Jim Toulouse, of 12 Robinhood, stated that he and his wife, Sandy, have lived there 33 years. The Sprouts have been excellent neighbors. He is against this, but keeping an open mind. He expressed his support to the Strout when he received the public notice because he thought that it was going to be for an immediate family member. The previous owners' elderly father had lived there, without having a permit, but there were no problems. When Mrs. Sprout explained that their intent was to rent it out and anticipated visiting nurses and physicians at MMC or students at UNE who wanted a nice furnished spot "for a month or a few," he withdrew his support. Section 19-7-5 states the purpose of an ADU is limited to one or two people, family or close friends. Mr. Toulouse did not feel that applied to yet unknown visiting nurses, physicians or students.

Mr. Toulouse stated this is a neighborhood of single-family houses; he did not want to see a revolving door of renters. On street parking is an issue as well as the safety of Kindergarten through grade 8 children in the neighborhood. He was concerned about the value of his and other homes on the street and about any approval conveying to future owners. He would like the application to be denied, but is keeping an open mind.

Finding no additional public comment, Chairman Vaillancourt closed the floor.

In response to board members questions the CEO said if approved there would not be any ongoing compliance inspections; if he received a compliant, he would follow up. If the ADU is not used for a year the permit expires. With a short-term vacation rental, less than 30 days, it would be impossible to have a close personal relationship, and

would not be in compliance with the Ordinance. CEO has not seen this scenario before. He was not aware of any ADUs in that vicinity.

Board members discussed the language of the Ordinance, including close personal relationship, access to the home, and traffic conditions. The home was built with this unit, but it was not permitted. There will be no external changes to the house. It is an appropriate conditional use and meets all the requirements of a Conditional Use Permit. If not used for a year the ADU approval expires. The enforcement issue of short-term rental was a sensitive consideration.

Mr. Moser moved to approve the request of Douglas Strout, owner of the property at 10 Robinhood Road, Map U6 Lot 110, for a Conditional Use Permit to create an Accessory Dwelling Unit within the existing house based on Sections 19-7-5 and 19-5-5 of the Zoning Ordinance. Mr. Justh seconded. Vote 4 – 1. Mr. Powers dissented.

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 based on Sections 19-7-5 and 19-5-5 of the Zoning Ordinance.
2. The subject property is 10 Robinhood Road (Map U6 Lot 110).
3. Douglas Strout is the applicant and owner of the property.

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

2. To hear the request of Julie S. Barnes, owner of the property at 84 Ocean House Road, Map U25 Lot 5, for a Conditional Use Permit to create a Home Business based on Section 19-5-5 of the Zoning Ordinance.

Chairman Vaillancourt asked Mr. McDougal for the background. The CEO stated that a few weeks ago Ms. Barnes called him about starting a business at her house. He asked a few questions to determine if this was a home occupation or a home business. She said she wanted two to four clients per day to visit her house. That makes it a home business and moves it to the ZBA for approval.

Julie Barnes said she was looking to have some additional office hours at her home. She has been a registered dietician, certified diabetes educator, for 25 years. She would like to test going into business for herself and be able to meet some of her clients outside the hours of her office, which aren't always convenient for those working full time. She is not planning any construction. The office would be located in her front parlor room using the front entrance. She has blocked off the other part of her house with a couple of French doors. She believed her parking meets the requirements of the Ordinance.

The CEO confirmed that the conditions in the application apply, no more than four appointments per day between the hours of 7 a.m. and 6 p.m. Ms. Barnes was comfortable with that.

In response to questions, the CEO said he had received one email submission, from an abutter who owns three lots next door and nearby, which was supportive.

Seeing no one for public comment, Chairman Vaillancourt closed the floor.

A motion was made by Mr. Justh to approve the request of Julie S. Barnes, owner of the property at 84 Ocean House Road, Map U25 Lot 5, for a Conditional Use Permit to create a Home Business based on Section 19-5-5 of the Zoning Ordinance; Mr. Tadema-Wielandt seconded. All were in favor. Vote: 5 – 0.

Findings of Fact:

1. This is a request for a Conditional Use Permit to have a Home Business in an existing single-family dwelling based on Section 19-5-5 of the Zoning Ordinance.
2. The subject property is 84 Ocean House Road (Map U26 Lot 5).
3. Julie S. Barnes is the applicant and owner of the property.

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. Based on the application, the proposed use is consistent with the definition of Home Business in the Zoning Ordinance.

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

E. Communications: None.

F. Adjournment: Chairman Vaillancourt adjourned the meeting 7:58 p.m.