

Town of Cape Elizabeth  
**DRAFT** Minutes of the April 26, 2016  
Zoning Board of Appeals Meeting

Present:

Josh Carver  
Aaron Mosher

Matthew Caton  
Michael Vaillancourt

John Craford  
Stanley Wisniewski

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

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

**B. Approval of Minutes:** Approval of the minutes for March 22, 2016, was tabled until the next meeting.

**C. Old Business:** None.

**D. New Business:** To hear the request of Timothy and Kathryn Martin for a variance to build a 35 feet by 28 feet garage on the left rear corner of their nonconforming lot at 13 Thrasher Road, Map U32 Lot 6-10. This lot is outside of a Shoreland overlay district. The request is to build the garage 10 feet from the rear property line instead of 15 feet required in the Zoning Ordinance.

Timothy and Kathryn Martin came to the podium. Mr. Martin stated they had lived in Cape Elizabeth for over 17 years in their three-bedroom raised ranch. They are still working on it. They would like to include a garage for their personal vehicles as well as an abundance of sport and other equipment. The main reason for the variance request is because of the way the house is situated on the lot. There is ledge on the left side of the house. The sewer line runs out of that side of the house, along the left side and out to the street. Part of the sewer line runs under the driveway. They would like to mitigate further exposure of that sewer line to possible freezing; there have been no issues to date. The other issue is cost. If the structure could be moved back five feet their cost would drop considerably.

In response to board members questions the Martins said their current driveway runs down the right side of the home and loops around the house. There is a one-car garage that is underneath about 1/3 of the house; it does not fit today's vehicles well. There is also a shed for overflow storage. The propane and electric lines will be moved to the outside wall (back left corner) of the new garage. The only issue is the cost of blasting or hammering out the rock and staying away from the sewer line to prevent damaging it. The rough estimate for moving the sewer line could be as much as \$2,000 to \$3,000; cost would not be known until work was started. Mr. Martin said they didn't build the home on that side of the property because of the ledge. They did blast to put the new sewer line in and out to the street.

Mr. Martin replied to further questions saying the proposed garage is a three-bay garage. A two-bay garage may fit within the setbacks but he is concerned about room to store everything that is currently in the shed. The shed would be removed. Board members pointed out that there still is the one-bay garage under the house. Mr. Martin also wanted workspace in the garage. The location and encroachment of the current shed was discussed.

Mr. Martin stated his concerns are that the corner of the garage would be on the sewer line if the garage were built within the setbacks and the cost of hammering the ledge to get the foundation in. Mr. Martin stated today's family need larger garages for all their additional gear. Photo of where the sewer line is located was discussed. The Martins stated they do not want to move the sewer line. Mr. Martin did not know how deep the ledge was in that location; there has been no digging or boring to verify. Mr. Martin described his property and the basement that includes the one-car garage; discussion followed. Photos of other garages submitted were discussed. Location of the shed and its encroachment into the setback was discussed.

Chairman Carver asked for public comment.

Mr. John Demarco, 16 Cheverus Road, directly behind the Martins, come to the podium and voiced his objection to the zoning variance the Martins are seeking to add a detached three-car garage to go along with their current garage. He believed they have failed to provide both a practical difficulty and a significant economic injury. As for the significant economic injury, Mr. Demarco believes there is only one property in the surrounding neighborhood, off Columbus Road, that has a four-car garage. Overwhelmingly the houses have two-car garages or less. As for the practical difficulty, the excavator needed to move some depressed PVC piping would be on site. Mr. Demarco talked about not seeing the location of the sewer line on the Martins' application; he relayed information about the sewer lines at his home.

Mr. Demarco said in Section B of their application the Martins state the abutting neighbors would not lose any sight lines. Unfortunately that is false due to the elevation difference between the two properties being significant. He does not see how replacing a small shed and a two-story building could be thought of as having no lost sight lines. Mr. Demarco stated the majority of the photos submitted with the application are outside the 10 house neighborhood guidelines - most are in adjoining neighborhoods - two houses are on Mitchell Road. He believed about five, perhaps all, were on conforming lots.

As for Section D, the Martins regularly leave a commercial vehicle running outside overnight with their outside lights on as well as in the winter when there is a storm.

Mr. Demarco believes the building of this structure would decrease his property's value.

Chairman Carver closed for floor to public comment.

The board discussion began with Mr. Caton stating that the size of the garage would not be an issue if it were within the setback requirements. If other neighbors have only one

and two-car garages this is pushing the boundary a little further. He was troubled by the practical difficulty; in the past other applicants have been denied for personal convenience issues – and this is a personal convenience issue. There are requirements in the ordinance that would be hard to get past.

Chairman Carver agreed, stating that there was not a significant economic injury. You could build a two-car garage within the setbacks and a three-car garage if you did some excavation, which isn't going to cost an exorbitant amount of money. The test for Practical Difficulty is: "...strict application of the ordinance to a property precludes the ability of the property owner to pursue a use permitted in the zoning district in which the property is located resulting in significant economic injury..." Significant economic injury is: "Placing the applicant for a variance at a disadvantage in the neighborhood by applying Zoning Ordinance standards, which would prevent the applicant from having a structure or accessory structure comparable in size, location and number to those of other lot owners in the immediate neighborhood, but in no case fewer than 10 of the nearest property owners."

There were not even ten comparable photos submitted. There are a couple three-car garages and possibly a four-car on one property. However, there are plenty of two-car garages that have been submitted, which could be constructed within the required setbacks. That would give them the equivalent of a three-car garage, because they already have a one-car garage.

Board members agreed that the application did not meet the ordinance criteria and there are reasonable alternatives for the applicant.

Mr. Vaillancourt moved to deny the request the request of Timothy and Kathryn Martin for a variance to build a 35 feet by 28 feet garage on the left rear corner of their nonconforming lot at 13 Thrasher Road. Mr. Mosher seconded. All were in favor. Vote: 6 – 0.

**Findings of Fact:**

1. Timothy and Kathryn Martin are the owners of record of the property located at 13 Thrasher Road, Map U32 Lot 6-10.
2. The subject property is a nonconforming lot in the RC Zone.
3. The Zoning Ordinance Section 19-4-3.A requires the rear setback to be 15 feet.

**Conclusion:** There is substantial departure from the intent of the Ordinance and a literal enforcement of the Ordinance would not cause a practical difficulty as defined by 30-A.M.R.S.A. Sec. 4353, 4-C.

All were in favor of the Findings of Fact and Conclusion. Vote: 6 – 0.

**F. Adjournment:** Mr. Craford moved to adjourn; it was seconded. All were in favor.  
Vote: 6 – 0. Chairman Carver adjourned the meeting at 7:37 p.m.