

Town of Cape Elizabeth  
**DRAFT** Minutes of the May 22, 2018  
Zoning Board of Appeals Meeting

Present:

Matthew Caton  
Aaron Mosher

Kevin Justh  
Michael Tadema-Wielandt

Timothy Lunney  
Michael Vaillancourt

The Code Enforcement Officer (CEO), Benjamin McDougal was also present.

**A. Call to Order:** Chair Michael Vaillancourt, called the meeting to order at 7:00 p.m.

**B. Approval of Minutes:** Mr. X moved to approve the minutes of March 27, 2018; seconded by Mr. X. All were in favor. Vote: 6 – 0.

**C. Old Business:** None.

**D. New Business:**

**Agenda Item 1.** To hear the request of Russ Doucette, representing Greg Otterbien, owner of the property at 42 Reef Road, Map U12 Lot 54A, to convert a portion of a house into an Accessory Dwelling Unit based on Section §19-7-5 of the Zoning Ordinance.

Chairman Vaillancourt asked the CEO to review this request. Mr. McDougal said 42 Reef Road is a nonconforming lot in the RA Zone. Mr. Doucette is in the process of doing a tear down/rebuild. The owner would like to have a small accessory apartment in the basement for a family member.

Mr. Doucette said the property was bought about 1 and 1/2 years ago. They are moving back to Maine and have extended family that enjoys coming to visit. With an apartment downstairs they would feel more comfortable to stay longer without bothering Greg and Marybeth Otterbien.

In response to board questions, Mr. Doucette replied that the house is almost complete. The CEO stated that this construction started as a single family home; the structure is not changing, just a small kitchenette will be added in the basement. Mr. Doucette described the exterior egress, parking, and garage space for the apartment.

Public comment: Connie Cochillo, 3 Reef Road, stated the 42 Reef Road property was across the street from hers. She read the sentence “No accessory dwelling unit is permitted where a variance is also required.” of Section §19-7-5 and requested that this Accessory Dwelling Unit be denied based on the Zoning Ordinance.

Mr. McDougal stated he did not receive any formal correspondence concerning this request. He did have a couple telephone conversations regarding it. No strong opinions.

Chairman Vaillancourt closed the floor to public comment.

The CEO confirmed, for the board, that a variance was not needed for the original structure of this request. Board members also cited Section §19-5-5D for Standards for Conditional Use Approval.

Mr. X moved to approve the request with an additional finding of fact to reflect the Standards cited in Section §19-5-5D for Conditional Use Approval. Mr. X seconded. All were in favor. Vote: 6 – 0. Proposed Findings of Fact and Additional Findings of Fact were discussed and amended as follows:

**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 42 Reef Road (Map U12 Lot 54-A).
3. The applicant is Russ Doucette, who is representing the owner of the property, Greg Otterbien.

**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 proposed Accessory Dwelling Unit will have no impact upon the external appearance of the existing building.

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

7. The applicant has complied with the Standards for Conditional Use Approval set forth within Section 19-5-5.D of the Zoning Ordinance.

Mr. X moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. X seconded. All were in favor. Vote: 6 – 0.

**Agenda Item 2.** Chairman Vaillancourt recused himself from this agenda item. Vice Chair, Aaron Mosher, proceeded. To hear the request of Stephan Blatt, representing Louis Kaucic, the owner of the property at 1122 Shore Road, Map U09 Lot 4B, to replace and relocate a small cottage on the property based on Section §19-4-3.B.2 and B.3 of the Zoning Ordinance.

Stephan Blatt stated this request concerns only the small cottage that is on the property. It is a small guesthouse, in very poor condition. It sits on posts, without much foundation and it is rotting. The owner has asked for demolition and redesign of the cottage. In doing so the site was carefully studied. The cottage is nonconforming in that it is closer to Shore Road than allowed and it is also closer to one of the side set backs and water. Mr. Blatt stated, we met with the CEO on site to discuss. We have designed a replacement cottage that is smaller in footprint by 90 square feet; we have relocated it on the site so that it partially sits on the old footprint. It moves slightly off of it, but in doing so we are able to make the set back from Shore Road less nonconforming and to respect the setback from the high water. So this request is to replace a nonconforming structure with something less nonconforming.

In response to board questions, Mr. Blatt stated the cottage was moved as far back from Shore Road as possible without impacting the mean high water. The septic system is the same one that the main house uses; it was inspected and found to be acceptable. The bedrooms in the primary residence will be reduced from four to three; the cottage will stay the same with one bedroom. The height of the new cottage is within inches of the existing cottage, though it may be slightly higher due to site improvement of the location. Orientation and views were also discussed.

Mr. Blatt continued with explanations about improved site work, grading, and plantings for esthetics. They are working with a landscape architect. Other possible locations options were discussed; no other site was feasible.

Mr. McDougal stated he did not receive any formal correspondence concerning this request. He did field a couple telephone conversations regarding it.

Public comment: Jake Bowey spoke on behalf of Kabocha Properties LLC, an adjacent landowner across the street at 1123 Shore Road. He was concerned about review of the project in accordance with Shoreland Overlay Standards, impact on views and

visual public access to the shore. He was wondering whether the building could be moved so that the cottage would be within the view obstructed by the main structure. He would like to see height renderings and inquired where the two trees that were to be removed would be replanted. Mr. Bowey stated not that they are not necessarily opposed to the project itself; they would just like additional information. He submitted a letter addressing these concerns, to be made part of the record, to each board member.

Mr. Blatt returned to the podium and stated that they had no idea there was an objection. The abutter across the street, who is challenging, sits about 10 feet above this property, so the obstruction of site line is not real. We sent a computer simulation of the proposed house and existing house to the abutter and that abutter's representative visited the site this week. (Mr. Bowey stated they had received it but were confused by the perspective.) Mr. Blatt said that sight line was done lower, because the lower you are the more you are impacted. E.g., anyone riding by on a bicycle would see an opaque fence before they deal with the house. Most of the property is shaded by the trees. We thought removal would also be benefitting the abutter. Mr. Blatt stated he was surprised by this objection (from the property that was previously his client). The cottage can be placed within the same footprint - it will be smaller, it will work. We tried to make it more respectful for the abutter to the north, reduce the nonconformance from Shore Road. The view corridors on this site are not narrow. To consider that the public has constricted views is conjecture. We have spent a lot of time on the property and have looked at it from all angles. Because we have the construction drawings from the house across the street, we know exactly what the height difference is and it is very difficult to consider that moving the proposed structure less than ten feet to the south changes his view alley.

In response to board questions Mr. Blatt said the new elevation would be about three feet higher. The roof ridge would be parallel to the fence.

Board members stated that the application was complete. The CEO commented that someone had come into the office a day prior to the drawings being available, but he did not know who it was to provide the copies to. Several board members felt that the relocation accomplishes a lot of the goals that the board tries to promote, while minimizing impact on views. Issues involving nonconformity, possible different location of the structure and driveway were discussed, as well as which Section of the Zoning Ordinance applies.

Mr. Tadema-Wielandt moved to approve the request of Stephan Blatt, representing Louis Kaucic, the owner of the property at 1122 Shore Road, Map U09 Lot 4B, to replace and relocate a small cottage on the property based on Section §19-4-3.B.2 and B.3 of the Zoning Ordinance with the following conditions:

1. Removed vegetation being replaced in accordance with Shoreland Zoning regulations.

2. The applicant demonstrates, to us, that the present of the subsurface sewage disposal system meets the requirements of State law and the Subsurface Wastewater Disposal Rules.

Mr. Mosher seconded. All were in favor. Vote: 5 – 0.

**Findings of Fact:**

1. The property is a nonconforming lot in the RA zone. There is a house and a small cottage 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, 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. X moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. Tadema-Wielandt seconded. All were in favor. Vote: 5 – 0.

**Agenda Item 3.** To hear the request of Christopher E. Small, owner of the property at 5 Rocky Point Lane, Map U14 Lot 14 & 22, to expand his nonconforming single family dwelling and garage based on Section §19-4-3.B.4 of the Zoning Ordinance.

Mr. Caton stated that he lives on Hannaford Cove Road; he does not know the applicant and believes he can be impartial. Board members did not feel there was a conflict.

Mr. McDougal stated that Mr. Murray saw him several weeks ago with the proposed addition. This is a relatively small lot and has an old house on it that does not meet setback requirements. They are proposing to expand the house into the side setback; therefore the CEO advised him that he would need a Zoning Board approval to do so.

Ben Murray of Coffin Engineering, Augusta, representing the Smalls, came to the podium and stated the Smalls want to increase the size of their existing residence with the additional of a bedroom, office space, and entranceway. They want to make the existing space more usable as well as replace the garage, which is in poor condition. They did a complete boundary survey of the two separate lots. The owner is in the

process, with the Assessor's Office, of merging the two lots. Mr. Murray explained several drawings: the existing survey drawing, showing the existing buildings and septic, and two options of proposed site plans. The existing building is two stories; the proposed is a single level; however, they propose an increase in height of the existing garage to correct several problem areas.

In response to board members' questions, Mr. Murray explained the slope of the existing site and the proposed grading changes to improve drainage. Mr. Murray described the location of the new septic system in relation to the Resource Protection Buffer, stating that it could be pulled back closer to the house and away from the wetlands if necessary. Elevation and topography of the applicant's property in relation to the neighboring property is shown on the grading plan. The septic is being replaced because it needs to be upgraded with the additional bedroom and the new driveway cuts through the existing system. The floor area of the garage will stay the same; the garage is in the same footprint. The pitch of the roof will result in an increase in height and is therefore an expansion. The existing garage is about 3 ½ feet from the property line. View corridors of abutters were described using additional photographs and site plans.

Public comment: Elaine Brassard, 3 Rocky Point Lane, submitted a letter of concerns and a request to deny the application as presented. Ms. Brassard's primary residence for the past 17 years has been 3 Rocky Point Lane. Rocky Point Lane is comprised of ten properties; of those properties her home and one other are occupied year round by owners, the remaining are seasonal.

Ms. Brassard received only one email of notification on May 5; that was the only communication she had received concerning the expansion on the lot. The property at 5 Rocky Point Lane has been used as a rental property since she has lived next to it. She stated that she was here to be a steward of her home, her property, and her community. She is a Maine Guide and has worked as a Park Ranger; this is relevant because she values her home, unique environments and ecosystems. She purchased this home because it provides privacy, ocean views from the back yard, and the connection to the perimeter wetlands (that have not been officially surveyed by the applicant.)

Ms. Brassard values her neighbor but communication is instrumental to progress. While she believes her neighbors have the right to improve their property values, it should not come at the expense of devaluing her property. She stated that the application violates Section 19-4-2.B4 and 19-4-3.B4 of the Zoning Ordinance, which she read. She stated she was referring to the applicant's Option 2 plan. A large portion of her view would be impacted, although the plans try to minimize the obstruction. Ms. Brassard discussed the images she submitted with her letter. Another area of her concern is the driveway, where vehicles parked there would also obstruct her views.

Ms. Brassard stated her property is the low point of the properties. The application does not address the drainage onto her property. The asphalt driveway is increasing by

60% so she questions where all the additional runoff would go. She feels the drainage would end up in her basement and elsewhere on her property. She referred to a photo taken of standing water on her property after a two-hour rainstorm. She mentioned measures she has taken to mitigate the water on her property, including a culvert under the road. She was concerned about vegetation loss and gave examples. She was concerned about construction impact on her property with drilling and blasting. Ms. Brassard said a wetland survey needs done, the leach field should be located appropriately and a drainage plan needs to be done as well as a reduction of asphalt on the driveway.

Ms. Brassard read a letter from X Peterson, who owns 2 Rocky Point Lane, which is across the street from her. In which she says she was shocked to learn of the plans and requests that the application not go forward.

Ms. Brassard addressed questions concerning the images from the board members.

Tana Leonhart, of 48 Hannaford Cove Road, which ties into Rocky Point Lane, said she was concerned about ground water even with the swale. She believes foundations would be seriously affected because of the ledge the properties are built on. She said property values at that end of the road would be affected due to loss of views.

Mr. Murray returned to the podium to address Ms. Brassard's comments and answer questions of the board members concerning slope and drainage. Due to a ridge, the water would flow back to the garage. The swales are proposed to mediate storm water runoff. The wetlands would not be an issue. Construction of the basement crawlspace, driveway design, and building within the setbacks was discussed. The CEO stated that the Assessor now considers the two lots one, but he was not sure if all the legal steps were complete.

Michael Howard, 15 Rocky Point Lane, stated that the two-lot arrangement was not unique to this property. There was a strip of land that was sold to all the property owners of most odd numbered lots. They were all separate arrangements years ago.

The CEO explained the front setback distance and stated this work is proposed and has not been permitted. Chairman Vaillancourt closed the floor to public comment. A couple of members recalled an application that did not have a view of the ocean down by the Lobster Shack. Similarities were discussed as to what gives your property value. Members commented on close proximity of the garage rebuild to the property line. The effort by the applicant to preserve views was noted. All members felt there was a better solution than what had been presented.

Mr. Lunney moved to deny the request of Christopher E. Small, owner of the property at 5 Rocky Point Lane, Map U14 Lot 14 & 22, to expand his nonconforming single family dwelling and garage based on Section §19-4-3.B.4 of the Zoning Ordinance. Mr. Justh seconded. Discussion continued talking about setbacks and nonconformity. Several

board members thought that a solution might be worked out with the neighbors to appease all. All were in favor of denying the application. Vote: 6 – 0.

**Findings of Fact:**

1. The property is a nonconforming lot 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 not in compliance with the setback requirement to the greatest practical extent due to 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.

Mr. X moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. X seconded. All were in favor. Vote: 6 – 0.

At 10:05 p.m. Chairman Vaillancourt called for a quick break before the last agenda item. The board reconvened at 10:09 p.m.

**Agenda Item 4.** To hear the request of Jeffery and Kendra Davis, owners of the property at 12 Beverly Terrace, Map U28 Lot 41, to expand their nonconforming single family dwelling based on Section §19-4-3.B.4 of the Zoning Ordinance. A similar Zoning Board application was approved on January 24, 2017, but they have changed their plans and they need to get the updated plans approved.

The CEO stated that the Davises previous application to add a second story to their house and expand horizontally was approved; however, due to building costs coming in a little high, they needed to change their building plans a little bit and made their proposal not consistent with their original approval.

Jeffery Davis stated they are expanding up from the original footprint. The original house was built in 1940. It is consistent with the neighborhood; several other houses have done the same to gain more space. They have letters from both abutting neighbors stating they approve of this project.

In response to members' questions, Mr. Davis explained what the changes were from the original plan. The new plan eliminates the need for excavating site work, the gable roof is consistent with the current gable, the ridge is consistent with the current ridge and it can rest on its current foundation. So it is less involved, but still provides for the extra bathroom and bedrooms they wanted. There is no increase in the roof size. Mrs. Davis said there was no impact on views and discussed views into neighboring houses. Both neighbors have approved of the project.

Mr. Justh moved to approve the request of Jeffery and Kendra Davis, owners of the property at 12 Beverly Terrace, Map U28 Lot 41, to expand their nonconforming single family dwelling based on Section §19-4-3.B.4 of the Zoning Ordinance. Mr. X seconded. All were in favor. Vote: 6 – 0.

**Findings of Fact:**

1. The property is a nonconforming lot in the RC zone. The Zoning Board approved a similar expansion on January 24, 2017, but the applicants have made changes to their plans that cause them to need a new approval.

**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. X moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. X seconded. All were in favor. Vote: 6 – 0.

**E. Communications:** None.

**F. Adjournment:** Chairman Vaillancourt adjourned the meeting at 10:19 p.m.

Minutes submitted by Recording Secretary, Carmen Weatherbie.