

Town of Cape Elizabeth  
**DRAFT** Minutes of the June 25, 2019  
Zoning Board of Appeals Meeting

Present:

Aaron Mosher  
Michael Tadema-Wielandt

Colin Powers  
Michael Vaillancourt

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

**A. Call to Order:** Chair Michael Vaillancourt called the meeting to order at 7:04 p.m.

**B. Approval of Minutes:** Mr. Tadema-Wielandt moved to approve the minutes of April 23, 2019; seconded by Mr. Mosher. The minutes were approved by of a vote of 4 – 0.

**C. Old Business:** None.

**D. New Business:**

1. To hear the request of Patti and Reed Gramse, owners of the property at 12 Cunner Lane, Map U14 Lot 32, for a variance to allow their house to expand an additional 5% in the RP-1 Buffer based on Section 19-4-5.A.5 of the Zoning Ordinance.

The CEO stated that several months ago Mr. Gramse come in to talk about connecting the garage to his house. This is an awkward lot because on one side is the ocean and on the other side of the lot is a PR-1 Wetlands, both different zones. The whole project is outside the Shoreland overlay. The DEP is fine with the application going through as a shoreland variance because is it actually a variance to the resource protection standards. Several years ago, about 12 or 15 years ago, Mr. Gramse expanded the house to 25% that the Code Officer is allowed to permit in the Resource Protection Zone. As they age, the Gramses have had issues getting from the garage to the house in the winter and they hope to have a weather tight connection.

Mr. Mosher said he was involved in a legal case involving the Gramses. It was over a year ago and has no bearing on this application. He felt there was no conflict.

Mr. Gramse said the changes were made 25 years ago. Mr. Gramse, his wife and Architect John Whipple (who was present), would like to add a 140 square feet addition to their home. Their goal is to have a covered walkway from the house to the garage, which is separate and elevated from the house. Due to the uniqueness of this lot the Zoning Ordinance is confusing and Mr. Gramse had several corrections to page 7 of his application. The total non-conforming expansion should be 40%. The remaining allowable nonconformity should be 15.7%; that would be 403.5 square feet. They were asking for 140 square feet.

Chair Vaillancourt said that the application does reflect those figures.

Mr. Gramse said they love where they live and would like to continue to live there as they age. The prior Ordinance allowed only 25% expansion. They have had problems getting to the garage in the winter due to the prevailing winds making the stairs either snowy or icy.

The garage is outside shoreland and wetland zones. All changes are between the house and the garage. Mr. Gramse explained the photos in the application. They want to change the direction of the stairs, cover the stairway, and enclose the front porch. Page 6 of the application shows the proposed changes. These are small changes, no neighbors' views are affected and this would bring the value of their house up to the neighborhood standard by having a connected garage, which would make garage access safer.

Mr. McDougal stated he had not received any formal comments.

Public Comment: Richard Berman, 58 Hannaford Cove Rd, spoke in support. Mr. Berman used to be a landscape architect and a developer so he knows about setbacks, wetlands and impacts. Mr. Berman said this project would have positive environmental impact due to less impervious surface. The Gramses would like to age in place and the couple is the heart of their community.

Board questions to the CEO: Mr. McDougal said the plain language of Ordinance allows the CEO to allow up to a 25% expansion. Section 19-4-5.A.5 allows an expansion from 25% to 40% with a variance from this board. Because part of this lot is in the Shoreland Zone there is a higher threshold, a heightened variance standard. No part of this project is in the Shoreland Zone. There is some leniency in the Zoning Ordinance to make a house accessible if someone has a disability. He did not mean to imply the Gramses have a disability. Disability is not defined in the Ordinance. Section 19-5-2.B.2, the final paragraph on page 61, applies.

This application/request is unique, another member asked CEO for clarification of Ordinance Section 9-4-5.A.5. The CEO stated that applied to just the wetland (not the buffer).

Finding no further public comment, Chairman Vaillancourt closed the floor to public comment.

There was a brief board discussion. The Chair interpreted the Ordinance, specifically the four criteria. The project makes sense on its merits, but it can't satisfy the variance standard of Section 19-5-2.B.2 – the last section of subparagraph B that: The property could not yield a reasonable return. Strict means of ingress or egress and the language of the statute and that section concerning disability were discussed.

Board members stated there are strong winds in that area. This is a safety issue, particularly with this property.

The CEO believed the ingress or egress language of the Ordinance would support this walkway. The Chair stated that this application is not for equipment for a disability; aging in place is mentioned but no disability. Therefore we must uphold the provisions of the Ordinance that apply.

Mr. Gramse requested to speak; the Chair apologized and said the floor was closed.

Mr. Tadema-Wielandt moved to deny the request of Patti and Reed Gramse, owners of the property at 12 Cunner Lane, Map U14 Lot 32, for a variance to connect their garage to their house. Mr. Mosher seconded. Vote: 3 – 1.

**Findings of Fact:**

1. 12 Cunner Lane is a non-conforming lot in the RA district. The lot is also in the RP-1 district and the house is a non-conforming structure as it relates to the RP-1 district.
2. A portion of the lot is in the Shoreland Overlay District but no part of the proposed project occurs within the Shoreland Overlay District.
3. This house was expanded by 25% already and now the applicant would like to expand the house by an additional 5%. Zoning Ordinance Section 19-4-5.A.5 allows up to a 40% expansion if a variance is granted.
4. The board concludes that the criteria for exception for a variance due to a disability pursuant to Section 19-5-2.B.2. was not met.

**Additional Findings of Fact:**

1. The land in question can yield a reasonable return regardless whether a variance is granted.

Mr. Tadema-Wielandt moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. Powers seconded. All were in favor. Vote: 4– 0.

Mr. Gramse requested to speak to the board; the Chair said the application was concluded.

**New Business cont'd:**

2. To hear the request of Stephen G. Tsopeles, owner of the property at 21 Ocean Avenue, Map U17 Lot 34A, to replace and relocate a single family dwelling based on Section 19-4-4.B.2 of the Zoning Ordinance.

The CEO stated he had been working with Mr. Tsopelas for a year or two on the reconstruction of this house. He has two lots and two houses; he is combining the lots and building one house in place of two legally nonconforming houses. In the original plan, Mr. Tsopelas would have been able to complete this without coming to the Zoning Board by building on the grandfathered footprint; however, when getting his plans drafted, a neighbor's addition was put in a place that causes Mr. Tsopelas to want to adjust his house a little bit to capture the original planned views. He is still building what he would have with a building permit; however, he would like to slide the footprint five feet back on the lot, which takes him off of his original nonconforming footprint.

Mr. Tsopelas pointed out a correction on the bottom of the first page of the application: The house is moving to the North not the West. They have owned the two homes since the late 1980's.

7:54 The Chair recessed due to excess noise.

7:57 Reconvened.

Mr. Tsopelas said 21 and 23 Ocean Avenue were separately held titles, with separate utilities, and separate lots. In 1991, number 23 was renovated for his parents. Mr. Tsopelas moved here about a year and a half ago. A surveyor was hired with the intent to combine the two lots. An architect helped design the new structure within the setbacks. A new septic system was designed to comply. In April, the lots were officially merged into one lot. Construction plans were prepared to submit and begin building in May. Over the winter, the neighbor to the East put on a substantial addition that blocks some view.

Mr. Tsopelas stated he was requesting to move the same building footprint back five feet. As the application states for overall coverage, the front setback goes from 23 feet to 20 feet; side setbacks from 21.5 and 22.5 feet to 25.5 and 36 feet; and rear setback goes from 5.5 to 8 feet. So technically the building is getting away from all the neighbors and improving the nonconformity. This also puts the new home in a bit more favorable situation by moving it back from the septic system. Mr. Tsopelas described the shape of the lot. Most neighbors' homes are setback 20 feet from his property line, except for the house directly to the west; their house is only 6 feet from his property line – Mr. Tsopelas's house will be 36 feet away from that property line. Mr. Tsopelas explained the diagrams in the application. He met with each neighbor and they support this project. Power lines have been buried.

CEO stated that he received two emails in support and one letter in support; all from neighbors.

In response to questions, Mr. Tsopelas' architect sent him the colored overlay drawing from the survey. Mr. Tsopelas actually colored it. The board noted that the pictures were helpful. The structure that is blocking the view was identified. Mr. Tsopelas could build on the grandfathered footprint but he wants to shift five feet to regain some view.

This would also put the house five feet further away from the new septic, and makes the house less non-conforming.

Cynthia Doucette, 43 Richmond Terrace, to the west, stated her primary concern is the rear setback. Bringing this house north would bring it closer to her house. Ms. Doucette questioned about steps or hardscape being permitted and becoming part of a house structure in the future.

The CEO and board members explained that the new house is further away from all property lines. The current existing house 5.5 feet from Ms. Doucette's property line and the new proposed stairs are 8 feet away and the porch slightly more. Mr. McDougal explained the site plans in the application to Ms. Doucette.

With no further public comment, Chairman Vaillancourt closed the floor to public comment.

There was a brief board discussion. This application was based on a new issue – a neighbor's addition. Mr. Tsopelas is decreasing the nonconformity. The appropriate Ordinance Section (reconstruction or relocation) was discussed. Views have been taken into account.

The Chair noted the correction was received to change direction from westerly or northern in the last paragraph of the Replacement Structure Relocation ZBA Request.

Mr. Tadema-Wielandt moved to approve the request of Stephen G. Tsopelas, owner of the property at 21 Ocean Avenue, Map U17 Lot 34A, to replace and relocate a single family dwelling based on Sections 19-4-3.B.2 and 19-4-3.B.3 of the Zoning Ordinance. Mr. Mosher seconded. All were in favor. Vote: 4 – 0.

### **Findings of Fact:**

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

### **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.

4. The building reconstruction meets the setback to the greatest practical extent based on Section 19-4-3.B.2 in the Zoning Ordinance.

Mr. Mosher moved to approve the Findings of Fact and the Additional Findings of Fact; Mr. Powers seconded. All were in favor. Vote: 4 – 0.

**E. Communications:** None.

**F. Adjournment:** Chair Vaillancourt adjourned the meeting at 8:35 p.m.