

**Kennebunkport Zoning Board of Appeals**  
**HYBRID MEETING via ZOOM and IN Person**  
**Monday, August 8, 2022 @ 6:00 P.M.**  
**Village Fire Station, 32 North Street, Kennebunkport**

A hybrid meeting of the Kennebunkport Zoning Board of Appeals was held on Monday, August 8th, 2022 in person and via Zoom. The meeting convened at 6:00 p.m.

Members Present: Mr. Paul Cadigan (Chair), April Dufoe, Kevin McDonnell, Michelle Powell, Marybeth Gilbert

Mr. Cadigan called the meeting to order, performed a roll call, and confirmed a quorum of 5 members of the Board.

Mr. Cadigan thanked the following former Board members for their years of service: Gordon Ayer, Wayne Fessenden, and Jim Fitzgerald. Mr. Cadigan then welcomed the two new members to the Zoning Board of Appeals; Marybeth Gilbert and Michelle Powell.

**1. *Approval of Minutes from April 25, 2022 and May 23, 2022.***

Mr. Cadigan stated only himself, Ms. Dufoe, and Mr. McDonnell were eligible to vote on this agenda item.

Mr. McDonnell made a motion to approve the minutes from the April 25, 2022 Zoning Board of Appeals meeting. Ms. Dufoe seconded the motion, and the vote was unanimous (3-0).

Mr. McDonnell made a motion to approve the minutes of the May 23, 2022 Zoning Board of Appeals meeting. Ms. Dufoe seconded the motion, and the vote was unanimous (3-0).

Mr. Cadigan asked the Board members and Applicants in attendance for their permission to switch the agenda items. The Board members and Applicants agreed with Mr. Cadigan's request.

**2. *Patricia and William Dugan - applicant requests to void the Certificate of Variance recorded in the York County Registry of Deeds in Book 10975, Page 16, requiring that the front porch roof be removed prior to the sale or transfer of their property.***

Mr. Dugan addressed the Board stating he and his wife Patricia live at 14 Whittemore Lane at Goose Rocks Beach and this is an unusual application. The house has a north facing front door that gets no sun and allows ice to build up which is a hazard, Mr. Dugan explained. When they went to the Code Enforcement Office in 2000, Mr. Dugan continued, he was told they could not install a roof over the door unless there was a medical condition, so they went before the Zoning Board who granted their request on

the condition the roof be taken off if the property was either sold or transferred from their ownership. Mr. Dugan added to remove the roof would be unattractive and the rules have changed since to allow the roof so with that in mind they are requesting to have that restriction removed from their deed.

Mr. Cadigan asked the Code Enforcement Officer to provide some explanation.

Mr. Gilliam provided the following information:

- A variance being granted to a property owner requiring something be removed upon a sale of a home is not typical.
- The Code Enforcement Office does not have the authority to render a different decision based on something that was recorded and rendered by the Zoning Board of Appeals.
  - It is important to go before the same Board to release the restriction since it is a recorded document and could be found through a title search.

Mr. Gilliam also explained he discovered the following facts in his research of the building file and the history of the Ordinance:

- It is clear the home existed on the site for a very long time,
- The property is a typical Goose Rocks cottage that likely traced its lineage long before the creation of zoning,
- In 1992 a permit was issued for a substantial renovation that included the addition of a 2<sup>nd</sup> story on the house,
- In 1992 the town used to have a zoning designation called Critical Edge that was 150-foot zone adjacent to land that was owned by Rachel Carson,
- Even though the Dugan property is adjacent to the marsh that particular marsh area is not owned by Rachel Carson so any reference to Critical Edge in the early 90's is not applicable because the federal government didn't own that property,
- In 1993 Code Enforcement Officer Robert Brown noted an allowance for a set of steps on the house for access,
- In 1998 the 30% expansion language was added to the Ordinance that allowed 30% expansion in volume and area in homes,
- For many years there was this exclusion language for decks and porches in expansion calculations and language about original structure,
- Based on the minutes, the first ZBA hearing on this property took about 15 minutes as there was very little discussion.

Mr. Gilliam concluded his explanation by stating today the town would issue a permit over a non-conforming set of steps because in the current language the ordinance doesn't recognize that it is not an area expansion nor is it a volume expansion so given the change in the Ordinance and the current language, the town would have issued a permit for enclosure of this area.

Ms. Dufoe asked if the Applicants came to the Code Enforcement Office today to apply for this roof over the steps would they be granted a permit? Mr. Gilliam replied yes,

the town would grant them a permit and would request survey data to determine if it was non-conforming due to the setback. Mr. Gilliam also added it is his understanding that it is within the 75-foot setback.

Referring to Article 240-8.3.A.3. in the Land Use Ordinance Mr. Cadigan read the following: "Neither the addition of steps for access to the ground floor nor the addition of exterior stairs for access to the second floor of a building shall constitute an enlargement or expansion of an existing use." Mr. Cadigan then asked if the Code Enforcement Office has any issue with the landing and the set of steps. Mr. Gilliam replied no the 1993 language Officer Brown noted is very similar to the language that was just quoted for the addition of the set of steps.

Mr. Cadigan then asked if the Dugans came into the Code Enforcement Office today, they could get permit for the roof over the landing and stairs. Mr. Gilliam responded yes that is correct because it does not create any volume because there is no enclosure, and it does not create any area because the area underneath already exists.

The Board members, Applicant, and Mr. Gilliam had a lengthy and detailed discussion on how medical exemptions are currently handled and the proper method to rescind or void out the original variance granted.

Mr. Cadigan noted for the record the following two items: (1) this is not a reconsideration; and (2) this is not a request for a variance. If so inclined, Mr. Cadigan continued, the Board needs to draft some documentation to be recorded in the Registry of Deeds releasing the Applicant from condition #2 of the variance.

Mr. Cadigan also acknowledged for the record receipt of two letter from abutters; one from Todd Chisolm dated August 2, 2022, and one from Cheryl Jacobs, both in favor of the Board granting the Applicant's request.

Mr. Cadigan opened the Public Hearing portion of the meeting. There were no comments or questions from the audience in attendance or via Zoom. Mr. Cadigan closed the Public Hearing.

The Board members and Mr. Gilliam continued their discussion on the best course of action to grant the Applicants' request.

Mr. Cadigan made a motion the Board finds that the condition in the originally granted variance of 2001, specifically condition #2 that states "The approved structure must be removed, and the property restored to the original condition prior to sale or transfer of the property", is no longer necessary or required because the structure in question being the roof structure over the front landing and stairs, would be permitted without a variance from the Zoning Board of Appeals today under the current ordinance language via Article 11.2.M. Permit Required Disability Variance granted by the Code Enforcement Office or under section 8.3.B.1 which is the 30% expansion of a non-conforming structure rule in our ordinance though the roof structure does not

constitute an actual expansion of volume or area. Mr. Cadigan also stated in the interest of bringing the prior approval up to current standards it would impose an undue burden on the Applicant, therefore, the Board agrees to rescind and remove section 2 from the original variance. Ms. Dufoe seconded the motion.

The Board members and Mr. Gilliam discussed possible alternate language in Mr. Cadigan's motion.

Mr. Cadigan amended his previous motion to state after due consideration, the Board finds that the second condition imposed in the variance granted to the Applicants by this Board in 2001 which specifically stated "the approved structure must be removed and the property restored to the original condition prior to sale or transfer of the property", is no longer necessary because the subject roof structure would be permitted under several provisions of the existing ordinance including section 11.2.M. and section 8.3.B.1. and therefore, the condition is no long applicable and this Board votes to effectively rescind condition #2. Ms. Dufoe seconded the amended motion, and the vote was unanimous (5-0).

Mr. Cadigan made a motion that the Board allow the drafter of the decision to modify the language to the extent necessary to reflect this Board's decision. Ms. Dufoe seconded the motion, and the vote was unanimous (5-0).

Lastly , Ms. Dufoe made a motion the Applicant is required to file this Board's decision in the York County Registry of Deeds. Mr. Cadigan seconded the motion, and the vote was unanimous.

**3. Gaby Grekin** – *for approval to create residential rental accommodations within her existing single-family home at 38 Mills Road, Assessor's Tax Map 22, Block 9, Lot 55 in the Cape Porpoise East Zone.*

Mr. Cadigan introduced the agenda item and explained the order of the proceedings.

Ms. Grekin addressed the Board explaining she lives at 38 Mills Road and is applying for a roomer's license to rent a couple of bedrooms in her house for the travel nurse program. This is her first time applying for this use in her home, Ms. Grekin added.

Mr. Cadigan asked if the Applicant has reviewed the requirements and if she meets all the requirements. Ms. Grekin replied yes to both questions.

Ms. Dufoe asked how long the Applicant will be renting these rooms to visiting nurses. Ms. Grekin replied their contracts are set for 13 weeks so it would be two bedrooms for 13 weeks at a time.

There were no further questions from the Board members.

Mr. McDonnell suggested the Board review the 9 performance standards for a Residential Rental Accommodation as listed in the Land Use Ordinance.

Mr. McDonnell read each of the nine performance standards as listed in the Land Use Ordinance Article 240-7.14. Ms. Grekin responded and confirmed she has met each requirement of the Residential Rental Accommodation Performance Standards.

Mr. Cadigan noted the Applicant will be renting two rooms as part of the Traveling Nurse Program, but her Application with this Board is not contingent or specifically exclusive to that program.

Mr. Gilliam added the house was renovated in 2015 and he will schedule an inspection once approved and does not anticipate finding any issues.

There were no comments or questions from the audience in attendance or on Zoom.

Mr. Cadigan closed the Public Hearing.

Mr. McDonnell made a motion Ms. Grekin meets the 9 requirements of Article 240-7.14.B. Ms. Dufoe seconded the motion, and the vote was unanimous (5-0).

Mr. McDonnell made a motion to grant Ms. Grekin's request for approval to operate a Residential Rental Accommodation for 2 rooms at her property at 38 Mills Road, Kennebunkport, site location Map 22, Block 9, Lot 55 per Kennebunkport Land Use Ordinance 240-7.14 contingent upon a successful property inspection by the Code Enforcement Officer subject to subsection B in the Ordinance. Ms. Dufoe seconded the motion, and the vote was unanimous (5-0).

Mr. Gilliam introduced Mr. David Gilchrest, Kennebunkport's new Deputy Code Enforcement Officer.

**Adjournment:** A motion was made to adjourn; it was seconded, and the vote was unanimous.

**Submitted by:** Patricia Saunders, Recording Secretary