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**Town of Cape Elizabeth, Maine
Minutes of Zoning Board of Appeals**

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March 26, 2002

7 P.M., Town Hall

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Present: David Backer, Chair
Penelope Jordan-Barthelman
Jay Chatmas
Jack Kennealy
Steven LaPlante
Catherine Miller
Michael Tranfaglia

Also present was Bruce Smith, Code Enforcement Officer

David Backer called the meeting to order and asked for approval of the minutes for the previous meeting of November 27, 2001. The following amendments were requested:

Page 1; Line 7 – correction to read “ David Backer, Chair ”

Page 2; Line 34 – correction to read “its”

Before a motion was presented, Mr. Backer introduced new Board member Penelope Jordan-Barthelman. As Ms. Jordan-Barthelman was not present for the November meeting, she abstained from voting on those minutes. Mr. Kennealy made a motion to accept the minutes of the November 27, 2001. Motion was seconded by Mr. LaPlante and was approved 4 in favor 0 opposed and 1 abstained (Jordan-Barthelman). Michael Tranfaglia and Catherine Miller arrived after the vote was taken.

Mr. Backer asked to address out of order Agenda item **E. Other Business**, so that the Board could complete the election of officers. No meetings of the Zoning Board had taken place since November 2001. The following nominations were made:

Mr. Kennealy made a motion to nominate David Backer for Board Chair. Motion was seconded by Mr. LaPlante and was approved 5 in favor 0 opposed and 1 abstained (David Backer). Catherine Miller arrived after the vote was taken.

Mr. LaPlante made a motion to nominate Jack Kennealy for Board Secretary. Motion was seconded by Ms. Jordan and was approved 5 in favor 0 opposed and 1 abstained (Jack Kennealy) Catherine Miller arrived after the vote was taken.

OLD BUSINESS

The first order of Old Business, **an administrative appeal by Cianchette Family, LLC**, had been withdrawn, and so the Board moved on to the next item.

Second item: **To hear a request from Mary Anne & John Doherty, 30 Hunts Point Road, Tax Map U38, Lot 1-32, for an accessory dwelling unit.** Mr. Backer asked the appellant to state his name and address and introduce his request.

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1 John Doherty, 30 Hunts Point Road, would like to finish off a basement area of 460 sq./ft to
2 accommodate a separate living area for an elderly relative. A bathroom currently exists in the basement
3 space and the existing footprint of the dwelling would not be changed.

4
5 Mr. Kennealy questioned egress from the living area and Mr. Doherty replied that there was a door
6 exit. He stated that a lift may eventually be installed to the upper floor.

7
8 Mr. Backer addressed the audience for their comments.

9
10 Bob Packer, 21 Hunts Point Road, voiced concerns about regulating accessory living space. Although
11 he had no objections to the Doherty's request, he questioned the use of that same space once the
12 elderly occupant was deceased or the property changed hands. He objected to the existence of
13 accessory dwelling units which might become potential rental situations.

14
15 Mr. Backer recognized Mr. Packer's concerns and explained that the ordinance addressed those issues
16 by being specific regarding relationship of homeowners to occupants and citing conditional use.
17 Should the property change hands, the conditional use remains.

18
19 Code Enforcement Officer Bruce Smith noted that a safeguard exists with realtors who check the status
20 of any accessory unit listed with a sale. He also noted that policing by the neighborhood is effective.

21
22 Mr. Backer explained that the process of amending an ordinance involved the Town Council and
23 Planning Board. He also referenced the fact that the Town notifies abutting properties in the event of
24 residential requests within their neighborhoods.

25
26 Public comment portion of the meeting was closed and discussion opened to the Board. Members
27 raised questions with regard to parking spaces, number of bedrooms, and septic considerations. None
28 of the items was of issue. Mr. Backer requested confirmation that the site plan evaluation was done by
29 a registered Maine surveyor and the plan was determined to be satisfactory.

30
31 With no further discussion, Mr. Backer asked to go through the elements of the findings. The first set
32 of findings Sec. 19-7-5, for the creation of an accessory dwelling, Paragraph B. Requirements, lists
33 eight requirements. Ms. Miller arrived late in the discussion and requested to abstain from voting. All
34 elements were approved 6 in favor 0 opposed and 1 abstained (Catherine Miller).

35
36 The second finding of facts, Sec.19-5-5, Conditional Use Permit, was addressed. All elements were
37 approved 6 in favor 0 opposed and 1 abstaining (Catherine Miller).

38
39 With all elements met, Mr. Tranfaglia made the following motion:

40
41 **That Mary Anne & John Doherty's conditional use application for the property located at 30**
42 **Hunts Point Road, specifically seeking a conditional use permit for 460 sq./ft as an accessory**
43 **dwelling unit to be located in the daylight basement area of the existing dwelling, be approved.**

44
45 Motion was seconded by Ms. Jordan and was approved 6 in favor 0 opposed and 1 abstained
46 (Catherine Miller).

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1 **NEW BUSINESS**

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3 **To hear the appeal of Andrew and Susan Dubuque, 586 Preble street, Tax Map U02, Lot 01, for**
4 **a front property line (Ottawa Street) variance of 10' from the required twenty 20' to construct a**
5 **two-story addition to the existing dwelling.**

6
7 Mr. Dubuque stepped forward to state his name and address and explain his request to the Board. He
8 would like to construct a one-car garage, 14'-6" X 24', with overhead living area to supplement the
9 existing living area of his home at 586 Preble Street. The property fronts two streets, Ottawa and
10 Preble Street, and therefore the Town requires both to meet front setbacks. Because the lot is small,
11 there exists no alternative to an addition without a variance. A concrete pad exists at the front of the
12 dwelling. That area would best accommodate a garage and create a feasible entry into the house. Mr.
13 Dubuque stated that the project would not alter any views in the neighborhood, create any fire hazards,
14 impact anyone's privacy, or alter any vegetation. The current distance from the street is 41' and the
15 proposed distance would be 26', which Mr. Dubuque felt compatible with many other properties along
16 the street. Provided to the Board was a site survey of the area depicting the proposed setback distance.
17 Also included were color-coded drawings of structures existing on surrounding properties to illustrate
18 comparable dwellings with and without garages and/or overhead living space.

19
20 With no Public comment, Mr. Backer opened discussion to the Board.

21
22 Board members asked for clarification of the setback distance from Ottawa Street. Mr. Dubuque
23 explained that the Town held a 16' right of way from the center of the street. With the ten feet he
24 proposed with the variance, his distance from the center of the street would actually be 26', much in
25 keeping with neighboring properties.

26
27 Questions ensued with regard to various points on the site plan and layout of the proposed structure.
28 The actual plan for the garage may change depending on funds but would encompass no more than the
29 dimensions conveyed within the setbacks.

30
31 Dr. Chatmas inquired about the sentiment of the neighbors and Mr. Dubuque replied that all had been
32 notified as to his intentions. Height of the building, obstruction of view, and disturbance of vegetation
33 did not present any issue.

34
35 With no further discussion, Mr. Backer proceeded to address the elements of the ordinance. All eight
36 items were found to be satisfactory and were approved 7 in favor and 0 opposed.

37
38 Mr. Backer asked for a motion **for the application for a variance of 10' from the required 20' on**
39 **the Ottawa Street side for the construction of the proposed addition.**

40
41 Ms. Miller made the motion which was seconded by Mr. Tranfaglia. Motion was approved 7 in favor
42 and 0 opposed.

43
44 Next order of business **to hear the appeal of Steven and Lauren La Plante, 1176 sawyer Road, Tax**
45 **Map U46, Lot 10, for a front property line variance of 13.42 feet from the required 40 feet, and a**
46 **right side property line variance 11.84 feet from the required 25 feet to add a second floor to the**
47 **existing 24'X42' dwelling.**

1 Mr. LaPlante excused himself from the dais as he was the applicant, and requested a three minute
2 recess before introducing his appeal. Recess was granted.

3
4 The meeting reconvened and Mr. LaPlante introduced himself, stated his address, and explained the
5 reasons surrounding their request. The property is a non-conforming lot in an RA district and the
6 footprint of the existing dwelling will not change with regard to current setbacks. The septic system is
7 located at the rear of the house restricting any construction in that location. The existence of wetlands
8 and subsequent cost would preclude relocating that system. Since purchasing the lot, changes in zoning
9 ordinances and a reconfiguration of the road impacted property setbacks. Sawyer Road is considered a
10 connector road and requires a forty-foot setback. Without a variance which would allow additional
11 construction, the living area would be capped out at the current square footage, which is significantly
12 less than other homes in the neighborhood. Feasible alternatives for increasing additional living space
13 were explored through several avenues and it was determined that a second story provided the best
14 solution. Mr. Laplante sited his growing family, and health considerations with regard to the basement
15 living area as reasons to pursue an upper story. He also felt strongly about remaining in his current
16 location because of the proximity of elderly parents who rely on his help.

17
18 Photos provided to the Board depicted neighboring properties. Several homes were converted single
19 story. An analysis provided a comparable square footage of neighboring homes, and their setback
20 distance from the centerline of the road. A letter of compliance with regard to the LaPlante's appeal
21 was also signed by several of the neighbors.

22
23 In conclusion, Mr. LaPlante re-emphasized the fact that the addition would not change the existing
24 footprint of the dwelling or number of bedrooms, nor compromise the current setbacks. It would not be
25 economically feasible to build an addition on the rear of the home because of the cost of relocating the
26 septic system and the additional cost of a foundation. Also there exists an issue of wetlands. The need
27 for the variance stems from factors beyond the applicant's control due to the action of the Town in
28 confiscating by eminent domain ten feet of front setback. Economic injury is incurred if the square
29 footage cannot subsequently be increased making the dwelling and property value comparable to the
30 surrounding neighborhood.

31
32 Mr. Backer opened the meeting to Public comment.

33
34 Mary-Robin Guthrie, 1174 Sawyer Road, supported the proposed addition by the LaPlantes, stating
35 that they maintained their house and property beautifully. She considered them wonderful neighbors
36 whose addition would enhance the value of the surrounding properties.

37
38 Brian Denison, 1169 Sawyer Road, had added a second story to his home. He approved of the project,
39 feeling that the alteration would have no negative impact on the neighborhood.

40
41 Martin Barry, 1155 Sawyer Road, was in favor of the appeal. He supported the request, which would
42 allow expanded living area to better accommodate a family.

43
44 With no further input from the audience, Mr. Backer opened discussion to the Board.

45
46 Mr. Backer made comment as to the various factors put forth by the applicant and made note that his
47 decision was based strictly in conjunction with the terms of the ordinance with respect to the

1 significant economic injury component of the practical difficulty definition. He felt that the evidence
2 established strong justification.

3
4 With no further discussion from the Board, Mr. Backer reviewed the elements. All items were
5 approved 6 in favor and 0 opposed.

6
7 All elements met, Mr. Backer asked for a motion **to grant front property line variance of 13.42 feet**
8 **from the required 40 feet, and a right side property line variance of 11.84 feet from the required**
9 **25 feet to add a second story to the existing 24' X 42' dwelling.**

10
11 Motion was made by Ms. Miller, seconded by Mr. Kennealy, and was approved 6 in favor and
12 0 opposed.

13
14 Mr. Backer requested the last item of business: **To hear the request of Michael Boucher**
15 **representing Christopher and Laura Lynch, 880 Shore Road, Map U02, Lot 51, to repair and**
16 **replace existing patios and landscape walls within 75' of the Normal High Water Line of the**
17 **Atlantic Ocean.**

18
19 Christopher Lynch introduced himself to the Board and stated his address as 545 Smith Ridge Road,
20 New Canaan, Ct. He and his family would take permanent residence in Cape Elizabeth in July, 2002.
21 He also introduced Michael Boucher of Michael Boucher Landscape Architecture based in Freeport.

22
23 The house at 880 Shore Road had not been occupied for several years and the exterior masonry,
24 retaining walls and landscape were in great need of repair. Because the cost of the project exceeded
25 50% of the existing property value, Code Enforcement Officer Bruce Smith advised that Mr. Lynch
26 would need Zoning Board approval.

27
28 The perimeter wall of the property would need to be rebuilt. An interior wall would be removed and an
29 interior patio replaced with similar stone. The grade would also be raised a bit to improve drainage and
30 make the grounds a more consistent level. The elevation at the most acute point would only be altered
31 a couple of feet. Two seating areas along the walls would be repaired. A parking area on the South side
32 of the property would be reduced by removing a large area of hardscape and replacing it with grass and
33 a walkway to the front entrance. Primarily the project would replace or repair the majority of exterior
34 walls and patios on the property. Approximately 2300 sq./feet of hardscape would be replaced by a
35 landscaping of grass, trees, and shrubs. The project would be contained relative to the 75' setback, and
36 the DEP was informed of the scope of the work.

37
38 Mr. Boucher stepped forward to further specify the extent of the grading and the relevant aspects of the
39 repairs. He explained that grading would be done primarily to level out the lawn area and provide a
40 consistent elevation for the masonry walls. Less than 100 yards of fill would be involved to include 50
41 yards being moved from an existing area.

42
43 Ms. Miller asked about concerns that the DEP might have with the project. Mr. Boucher replied that
44 they had had submitted a Permit by Rule with the Department and nothing had been brought to issue.
45 He explained that the DEP was primarily concerned with any new construction and issues of drainage
46 and erosion around shoreland. The alterations at the Lynch property would improve drainage by
47 replacing impervious hardscape with landscaping which would capture and filter stormwater. Water

1 will be discharged from the site through the same system of scuppers with no adverse impact either
2 towards the ocean or abutting properties.

3
4 Dr. Chatmas questioned the changes in elevation of the walls. Mr. Boucher stated that there would be a
5 reducing as well as heightening of the stone walls in order to create a consistent elevation. The greatest
6 increase would be in the range of a foot. Dr. Chatmas also wanted clarification on the proposed
7 parking area sited at the back of the dwelling. Although it would be asphalt, the total area of hardscape
8 after the landscaping would constitute a reduction of impervious surface.

9
10 Mr. Backer asked whether or not any alterations would be made to the foundation and Mr. Boucher
11 replied that no foundations were involved in the project.

12
13 Mr. Backer asked for comment from the Public. With no one coming forward, he closed the public
14 comment portion of the meeting and opened discussion to the Board.

15
16 Mr. Backer read the portions of the Ordinance that he felt governed the requirements to be determined
17 in granting the request. He felt that the project as presented by Mr. Lynch and Mr. Boucher satisfied
18 any questions with regard to the necessary elements to be considered. The Board concurred.

19
20 With no further discussion, Mr. Backer asked **for a motion to approve the application of Michael**
21 **Boucher on behalf of Christopher and Laura Lynch, as requested, having determined that the**
22 **reconstruction meets the water setback to the greatest practical extent, and having considered**
23 **the criteria in Sec. 19-4-4, B.2 & B.3, of the zoning ordinance.**

24
25 Mr. Kennealy asked that the motion be amended to include by reference, **attachment A: a letter**
26 **from Michael Boucher date March 5, 2002**, describing the scope of the project. Board members
27 agreed and the wording of the motion was amended.

28
29 Motion was made by Mr. Kennealy and seconded by Ms. Miller. Motion was approved 7 in favor and
30 0 opposed.

31
32 Next item on the agenda regarding Communications, Mr. Backer had handouts from a workshop
33 earlier presented by the Town Council.

34
35 With no other business, Mr. Backer asked for a motion to adjourn. Mr. Kennealy made a motion which
36 was seconded by Mr. Laplante. Motion was approved 7 in favor and 0 opposed.

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39 Meeting adjourned at 9:25PM

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43 Respectfully submitted,

44
45 Barbara H. Lamson, Minutes Secretary