

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49

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

**June 25, 2002**

**7 P.M., Town Hall**

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

Absent: Penelope Jordan-Barthelman

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 May 29, 2002. With no amendments requested, Mr. LaPlante made a motion to accept the minutes. Motion was seconded by Mr. Tranfaglia 5 in favor 0 opposed 1 abstained - Mr. Kennealy absent at the May meeting

**OLD BUSINESS**

Mr. Backer addressed the request of **Steven & Sarita Soloman, 4 Kettle Cove Road, Tax Map U16, Lot 7A for a front property line variance of 9' - 0" from the required 25', a left side property line variance of 5' - 0" from the required 25', and a right side property line variance of 15' - 0" from the required 25'-0' replace the existing ranch with a 1½ story cape with attached porch.**

A packet had still not been received from the Solomans and Mr. Backer questioned Mr. Smith about the status of their request. Mr. Smith had not been informed by the Solomans as to when they would proceed with their business. The Board again tabled the item until the next month, when it would be determined whether or not to continue to carry the request.

**NEW BUSINESS**

To hear the request of **R. Alexander Miller and Holly Smevog, 58 Beach Bluff Terrace, Tax Map U10, Lot 16 for a right side property line variance of fourteen feet from the required twenty-five feet to construct a two-story addition at eleven feet from the property line.**

Alex Miller introduced himself and Holly Smevog and stated their address as 58 Beach Bluff Terrace. He also introduced abutting neighbors, Barbara Sheehan and Charlie Mayone. Another supporter, Paul Kindschy, was also introduced.

The appellants have two young daughters and have lived at their current address for about fifteen months. They are very happy with the neighborhood and their home except for the fact that the house having no basement and no garage has very limited storage space. They propose to build an attached garage with storage and a bedroom above as well as a

1 kitchen addition in the back. Mr. Miller hopes to substantiate his case for practical difficulty  
2 by presenting evidence that all of the other homes on the street have a garage and most  
3 have basement areas.

4  
5 The lot is considered non-conforming and even with a variance would require no less than  
6 a ten-foot setback. The appellant has negotiated a land swap arrangement with two  
7 abutting neighbors in order to give his lot the necessary space to meet those setback  
8 requirements. The size of each lot involved in the swap will remain the same. Mr. Miller  
9 understood that approval from the Board would be contingent upon receiving the deeds  
10 from those land transfers. The closest point of construction would be eleven feet from the  
11 property line.

12  
13 Mr. Miller referenced two letters of support sent out by neighbors. Mr. Backer confirmed  
14 that the Board had received letters from David Cluchey, 48 Beach Bluff Terrace, and Alice  
15 Grant and Matthew Faulkner, 61 Beach Bluff Terrace.

16  
17 Mr. Kennealy made reference to a prior Zoning Board proceeding in which circumstances  
18 were similar. At that time, the Town Attorney had advised against granting a variance to  
19 property of which the appellant had no title or interest. Mr. Kennealy was concerned about  
20 making a conditional ruling on a conditional land transfer. Mr. Backer responded that the  
21 Board had only to grant the 14' variance for the appellant, thereby reducing his setback to  
22 11' with respect to his property line. Where that property line was established would only  
23 impact the appellant with regard to his proposed construction and the other landowners  
24 involved in the land swap.

25  
26 Mr. Smith stated that approval would be subject to the site plan enclosed in Mr. Miller's  
27 packet and would cover only those specifications. If the Board granted a setback reduction  
28 it could not be construed to pertain to any random proposal involving the property.

29  
30 Dr. Chatmas was concerned that the ruling would be made using a sketch plan that was in  
31 fact slated to change. Also, the plan, drawn up by Northeast Civil Solutions, was marked  
32 "preliminary" and not dated. Mr. Smith responded that the plan was a legitimate  
33 submission but that the date should have been included. Mr. Miller explained that the  
34 reasoning for the preliminary status of the plan was because Northeast Civil Solutions  
35 would be finalizing the document after the land swap was completed. Mr. Smith stated that  
36 the plan was a more legitimate document than a Mortgage Inspection Plan which the  
37 Board will accept. Although not a full survey, Northeast Civil Solutions would stand behind  
38 that sketch plan. Mr. Smith felt the most important information with regard to the site  
39 location of dwelling footprint was provided.

40  
41 In response to questions from Dr. Chatmas, Mr. Miller responded that no blasting is  
42 anticipated, since a full basement is not planned. The driveway will not be moved and the  
43 street frontage will remain the same.

44  
45 With regard to the land swap, Mr. Miller explained that the three property owners will all net  
46 out with the same square footage. The lots will then remain non-conforming. The purpose  
47 for the swap is to allow the appellant to establish a property line that will allow him the  
48 space necessary to meet the setback requirements contingent upon a variance approval.

1 All documentation of the land transfers will be recorded and retained along with property  
2 deeds.

3  
4 Mr. LaPlante asked whether the increase of bedrooms would impact the septic. Mr. Smith  
5 stated that the plan was in substantial compliance with the code which allows one  
6 additional bedroom on the existing system as a one-time exemption.

7  
8 Mr. Backer requested comments from the audience.

9  
10 Paul Kindschy, 66 Beach Bluff Terrace, praised the appellants as the type of people he  
11 would like to keep in the neighborhood. He cited their willingness to improve upon their  
12 property and their value as Cape residents. He was concerned that without a variance  
13 approval, they would perhaps leave the area.

14  
15 Charles Mayone, 52 Beach Bluff Terrace, is involved with the land swap with the Millers  
16 and agrees that they are neighbors that he would like to keep.

17  
18 Barbara Sheehan, 62 Beach Bluff Terrace, enjoys the relationship she has with the Millers  
19 and is in total agreement with their proposed plans for expanding their home.

20  
21 With no one else coming forward, Mr. Backer closed the public portion of the meeting and  
22 re-opened discussion to the Board.

23  
24 Ms. Miller stated that she was familiar with the house and had noted that storage was a  
25 problem. She felt the existing home was very attractive and well manicured and approved  
26 of the proposed plans for the addition. She felt the project warranted favorable  
27 consideration by the Board.

28  
29 Mr. Backer made the observation that once again a potential “starter home” would be lost  
30 because of improvements which would increase its market value. Ms. Miller argued that  
31 granting a variance that might allow young homeowners to remain in their first homes was  
32 good for building neighborhoods. She applauded the show of support from the neighbors  
33 and their innovative solution to help the Millers achieve their expansion. Mr. Transfaglia  
34 agreed and felt it should be the intent of the Town ordinances to keep intact the spirit of the  
35 neighborhoods. Mr. LaPlante also gave credit to the idea of the land swap and felt the  
36 improvement to the lot quite modest while being very attractive.

37  
38 Mr. Backer stated that while the Board does not make a decision based on neighbor’s  
39 support or opposition, the Board does value that input. Any proposal before the Board  
40 must meet the elements required for the granting of a variance.

41  
42 Dr. Chatmas wanted to know how the Board should verify the outcome of the land swap  
43 and gain assurance that all considerations are met. Mr. Smith responded that he would  
44 take responsibility for those assurances before a building permit would be issued. The  
45 assessor would plot the new plans once the land transfers were recorded.

46  
47 Mr. Kennealy asked about the sequence at the courthouse with regard to registering the  
48 land swap and registering the variance. Mr. Smith stated that the land swap would need to

1 be recorded first. The variance would need to be recorded within 90 days of being granted,  
2 so the appellant would need to have the transfers completed. Book and Page numbers  
3 would be necessary to reference on the variance documents.

4  
5 Mr. Backer requested a show of hands on the eight elements as follows:

6  
7 **FINDING OF FACTS**

8  
9 The appellants are owners of a property at 58 Beach Bluff Terrace, Tax Map U10, Lot 16.

10  
11 The property is located in a Residential A District and contains 11,700 sq. ft. of land area  
12 with 90 ft. of street frontage, and is therefore a nonconforming lot of record.

13  
14 **CONCLUSIONS**

- 15  
16 1. The proposed variance is not a substantial departure from the intent of the  
17 Ordinance. 6 in favor, 0 opposed  
18  
19 2. A literal enforcement of the Ordinance would cause a practical difficulty.  
20 6 in favor and 0 opposed  
21  
22 3. The need for the variance is due to the unique circumstances of the property and  
23 not to the general conditions of the neighborhood.  
24 6 in favor, 0 opposed  
25  
26 4. The granting of the variance will not produce an undesirable change in the  
27 character of the neighborhood and will not unreasonably detrimentally affect the use  
28 or market value of abutting properties. 6 in favor and 0 opposed  
29  
30 5. The practical difficulty is not the result of action taken by the applicant or a prior  
31 owner. 6 in favor, 0 opposed  
32  
33 6. No other feasible alternative to a variance is available to the petitioner.  
34 6 in favor, 0 opposed  
35  
36 7. The granting of a variance will not unreasonably adversely affect the natural  
37 environment. 6 in favor, 0 opposed  
38  
39 8. The property is not located in whole or in part within shoreland areas as described  
40 in Title 38, section 435. 6 in favor, 0 opposed  
41  
42

43 Mr. Kennealy made a motion **to accept the variance request of Alexander Miller and**  
44 **Holly Smevog as written but conditioned upon the applicants completing the**  
45 **exchange of land as described in the sketch plan submitted with their application.**

46  
47 Motion was seconded by Mr. LaPlante 6 in favor and 0 opposed.  
48

1 Last item on the agenda was communications. Mr. Smith had nothing to bring forward.

2  
3 Motion to adjourn was made by Mr. LaPlante, seconded by Ms. Miller 6 in favor and  
4 0 opposed.

5  
6 Meeting adjourned at 8:15PM.

7  
8  
9 Respectfully submitted,

10  
11 Barbara H. Lamson, Minutes Secretary

12  
13  
14  
15  
16  
17  
18  
19  
20