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

November 27, 2001

7 P.M., Town Hall

Present: David Backer, Chair
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 made note that the Board was still short of its full membership of seven due to the resignation of Joe Frustaci in September. Catherine Miller was absent at the opening of the meeting. Approval of the minutes for previous meetings was the first order of business. September minutes had not yet been accepted and Mr. Backer asked Board members for suggested changes. The following amendments were noted:

- Page 1; Line 37 – Correction to read “The motion carried 5 in favor 0 opposed 1 abstained.”
- Page 6; Line 25 – Correction to read “ Ms. Miller asked what lots...”
- Page 7; Line 2 – Correction to delete “and Mary” (in reference to Marian and Tom Peterson)
- Page 8; Line 10 – Reconstruct sentence to read “Reference was made to a copy of a letter dated September 19 and addressed to Maureen O’Meara.....”
- Page 8; Line 11 – Correction to read “Durward Parkinson”

Mr. LaPlante made a motion to accept the September 25, 2001 minutes. The motion was seconded by Mr. Kennealy and passed with a vote of 5 approved and 0 opposed.

Catherine Miller arrived as Mr. Backer was introducing discussion on the October 23,2001 minutes. The following amendments were requested:

- Page 1; Line 17 – Correct spelling “complement”
- Page 2; Line 42 – Correction to read “Mr. Backer”
- Page 4; Line 30 – Sentence added “Mr. Kennealy rebutted Mr. Frustaci by pointing out that the open space would not exceed what is allowed.”
- Page 1; Line 31 – Reconstruct sentence to read “...had both presented evidence at the previous meeting and it was time for Mr. Haddow to open with his rebuttal.”
- Page 1; Line 37 – Replace “They” with “He”
- Page 2; Line 4 – Correction to read “Durward” Parkinson

With changes noted, Mr. Kennealy made a motion to accept the October minutes. Mr. Tranfaglia seconded the motion which passed 6 approved and 0 opposed.

1 OLD BUSSINESS

2
3 **To hear the request of Julie Horr, 175 Fowler Road, Tax Map U19, Lot, 9, for a left side**
4 **property line variance of eight (8) feet from the required thirty (30) feet to construct a**
5 **garage.**

6
7 Julie Horr introduced herself as a relatively new member of the community but noted that she
8 had long term association with Cape Elizabeth through relatives. She had purchased the Fowler
9 Road property from her brother and had done research on the house and determined that at one
10 time there had existed a barn or type of outbuilding on the property. She had spoken with
11 neighbors about her intention to build a garage and found no opposition to her plans. She made
12 reference to pictures, which were submitted in her application packet, of properties along Fowler
13 Road that reflect similar characteristics of building structures and supported a claim of Practical
14 Difficulty. She also referenced pictures of her own property, which because of difficult terrain
15 and established landscaping, limits placement of the garage.

16
17 Mr. Backer requested that Ms. Horr remain at the podium so that she might field questions from
18 the Board.

19
20 Dr. Chatmas asked for clarification of where the property septic system was located. He also
21 questioned her reasoning for choosing the ten properties along Fowler Road, which Ms. Horr had
22 submitted in her packet. She responded that the locations most closely resembled her own
23 property and what she intended to build given the setbacks.

24
25 Mr. Backer requested the measurements of the intended garage and asked if there were drawings
26 available for the Board to review. Ms. Horr responded that the building measured 24X26 feet
27 and she provided a sketch.

28
29 Ms. Miller raised questions about the driveway and landscaping and other existing characteristics
30 of Ms. Horr's property. She also was concerned that the comparative property pictures which
31 Ms. Horr had selected were not a clear example of the immediate neighborhood. Mr. Backer
32 agreed and explained that what the Board needed in order to grant Ms. Horr's request for a
33 setback variance would be the existence of Practical Difficulty which is defined in the ordinance
34 as "significant economic injury." By its definition the applicant would be placed at an economic
35 disadvantage by being prevented from having a structure or accessory structure "comparable in
36 size, location, and number to those of other lot owners in the immediate neighborhood but in no
37 case fewer than ten of the nearest property owners." Because the comparable properties
38 submitted by the applicant were not the ten most approximate, the Board could not make a
39 determination on Practical Difficulty.

40
41 Ms. Miller initiated discussion regarding feasible alternative. Because the property has over two
42 acres of land, there exists a possibility of locating the structure within the existing setbacks and
43 eliminating the need for a variance. Ms. Horr explained that the leach field and property
44 wetlands would prevent placing the garage in any other location. Ms. Miller noted that neither of
45 these site conditions were shown on the material submitted. Discussion ensued among the Board
46 members with regard to the question of feasible alternative relative to Ms. Horr's application.

1 Submitted material did not offer clear representation of the site and Board members did not feel
2 they could make a determination. Mr. Kennealy felt the site sketch submitted by the applicant an
3 inadequate representation of the property setbacks and Dr. Chatmas concurred. Code
4 Enforcement Officer Bruce Smith felt that the Board should focus on the question of granting a
5 variance based on the considerations inherent of the appeal and not the particulars of a rough
6 drawn site plan. If a variance is granted, the applicant is then liable to adhere to the ruling and
7 should they not, then punitive action is enforced. Mr. Smith held that the Town Council had
8 ruled against requiring Zoning Appeal applicants having to provide surveyed site plans, and
9 although this raised issues of arbitrary points of measurement, property owners were held
10 responsible for submitting correct information and subsequently abiding by the Board's rulings.
11 Mr. Kennealy requested that Ms. Horr resubmit with additional information on her immediate
12 neighboring properties on Fowler Road, along with an adequate scale drawing of her property to
13 include the proposed garage structure and its distance from the adjacent property line.
14 Mr. Tranfaglia further requested other property features provided on the plan such as the septic
15 and leach field and driveway, so that the Board would have more information to make a
16 determination of feasible alternatives.

17
18 Mr. Backer recapped the general opinion of the Board that the material enclosed in the
19 application by Ms. Horr was inadequate to support a ruling with regard to her variance request.
20 He suggested that Ms. Horr resubmit her application at either the December meeting or some
21 future date, and provide the suggested information requested by Board members to facilitate a
22 ruling. Dr. Chatmas asked that the applicant also provide a building profile of the garage to
23 depict height, windows, and other characteristics, as well as, a front elevation drawing. Bruce
24 Smith concurred that an elevation drawing was mandatory if the structure was more than one
25 story.

26
27 Ms. Horr opted to resubmit her application at a date later in the next year, probably toward
28 spring. Motion was made by Ms. Miller to table indefinitely the application of Julie Horr until
29 she resubmits to Bruce Smith the additional material requested by the Board. Motion was
30 seconded by Mr. Kennealy and passed 6 in favor and 0 opposed.

31
32 Next order of business was to discuss the December meeting. Regular schedule date would fall
33 on Christmas day. It was decided that if an application should be submitted the Board would
34 meet on Monday, December 17th, otherwise the next meeting would fall within the regular
35 calendar for January 2002.

36
37 With no other business, motion for adjournment was made by Ms. Miller and seconded by Mr.
38 LaPlante. Motion was passed 6 in favor and 0 opposed.

39
40 Meeting was adjourned at 8:25PM.

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42
43 Respectfully submitted,

44
45 Barbara H. Lamson, Minutes Secretary
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