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

**October 22, 2002**

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

Present: David Backer, Chair  
Penelope Jordan-Barthelman  
Jay Chatmas  
Catherine Miller

Absent: Jack Kennealy  
Steven LaPlante  
Michael Tranfaglia

Also present was Bruce Smith, Code Enforcement Officer

David Backer called the meeting to order and noted that two of the four attending Board members had not been present at the September meeting. Without the quorum necessary to approve the minutes of the previous meeting, the vote would be tabled until the next regular meeting. Dr. Chatmas made a motion to defer the vote to accept the minutes of September 24, 2002. Motion was seconded by Ms. Jordan 4 in favor 0 opposed.

**OLD BUSINESS**

With no old business to address, Mr. Backer proceeded to new business.

**NEW BUSINESS**

**To hear the appeal of Scott & Lorie Dorrance**, 10 Elmwood Rd. (U03-22), for a variance of 1.9% from the allowable 25% maximum building coverage to construct a 110 sq.ft. addition.

Mr. Backer advised Mr. Dorrance that since the Board had only four of its seven members present, the appellant had the option of tabling his appeal until the next meeting. In order for the appeal to be granted, the vote would have to be unanimous in favor. A larger compliment of Board members would give the application a better margin for approval. Mr. Dorrance declined the right to table and proceeded with his appeal.

Bruce Smith explained that although the advertisement for the appeal stated a variance of 1.9% from the allowable 25% maximum building coverage, the true amount would be .8%. The lot was considered non-conforming at the time the ordinance was adopted and 1.1% was subsequently grandfathered. For legal purposes, the advertisement had to state the full percentage.

The appellant introduced himself and stated that he resided at 10 Elmwood Road. He reiterated the fact that his property was grandfathered 1.1% above the allowable 25% maximum building coverage. His appeal therefore would actually only involve an additional .8% increase for a total of 26.9% building coverage to construct an addition on his home.

1 Dr. Chatmas inquired as to the number of stories on the house and Mr. Dorrance replied  
2 there was one. Dr. Chatmas then asked the appellant to clarify the property lines on the  
3 submitted plot plan and state the zoning. Mr. Dorrance explained the plan layout and  
4 stated that the property was in the Residential C zone. No setback violations were involved  
5 and no impervious surface would be increased. Dr. Chatmas asked whether any  
6 stipulations existed that would preclude adding a second story to the residence. Mr. Smith  
7 explained that the percentage was based on footprint coverage and therefore building up  
8 is of no issue with the ordinance.

9  
10 Ms. Miller asked of a building comparison with regard to other neighboring lots. Mr.  
11 Dorrance replied that of twelve properties considered, three on the street were over 25%.  
12 He then identified the comparable lots and stated the percentage of increase for each and  
13 explained how he arrived at his determinations. Mr. Backer asked whether Mr. Dorrance  
14 had considered for comparison the houses along Forrest Road to the rear of his property.  
15 Mr. Dorrance stated that he had and identified two properties that would apply. Mr. Backer  
16 asked how the square footage of the Dorrance residence compared with other house  
17 situated in the neighborhood. Mr. Dorrance replied that his residence would be on the high  
18 end of those considerations, however, he noted that his lot was small in comparison to  
19 many in the neighborhood

20  
21 Ms. Miller asked whether there was an alternative to increasing the living space of the  
22 house while still adhering to the ordinance. Mr. Dorrance stated that the 63 sq. ft. that  
23 would be allowed would not satisfy the demand for the space, while also costing as much  
24 as the 110 Sq. feet desired. Because the addition is wanted to increase the dining and  
25 living room area, building up would not provide a solution. Mr. Dorrance said that the  
26 basement was wet and so not an option.

27  
28 Mr. Backer questioned Bruce Smith whether the applicant had been versed on the  
29 standard for economic injury. Mr. Smith replied in the affirmative. Mr. Backer recognized  
30 that the request involved a minimal variance from the ordinance, but nonetheless had to  
31 meet the standards imposed by that ordinance. He specifically noted the findings with  
32 regard to economic injury, and Mr. Dorrance agreed that he had in fact not met that  
33 requirement. He stated that Mr. Smith had informed him of the criteria necessary to meet  
34 the standard for economic injury, but decided to pursue the appeal regardless.

35  
36 Mr. Backer closed the public comment portion of the discussion and requested further  
37 discussion from the Board.

38  
39 Board members were sympathetic to the minimal considerations involved in the appeal but  
40 agreed on their responsibility to abide by the standards of the ordinance. With no further  
41 discussion, Mr. Backer asked for a vote on the individual elements.

## 42 43 **FINDING OF FACTS**

44  
45 The appellants are owners of a property at 10 Elmwood Road, Tax Map U03, Lot 22.

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47 The property is located in a Residential C District and contains 6000 sq. ft. of land area  
48 with 60 ft. of street frontage, and is therefore a nonconforming lot of record.

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2 **CONCLUSIONS**  
3

- 4 1. The proposed variance is not a substantial departure from the intent of the  
5 Ordinance.  
6 4 in favor, 0 opposed  
7  
8 2. A literal enforcement of the Ordinance would cause a practical difficulty.  
9 1 in favor, 3 opposed  
10  
11 3. The need for the variance is due to the unique circumstances of the property and  
12 not to the general conditions of the neighborhood.  
13 4 in favor, 0 opposed  
14  
15 4. The granting of the variance will not produce an undesirable change in the  
16 character of the neighborhood and will not unreasonably detrimentally affect the use  
17 or market value of abutting properties.  
18 4 in favor, 0 opposed  
19  
20 5. The practical difficulty is not the result of action taken by the applicant or a prior  
21 owner.  
22 4 in favor, 0 opposed  
23  
24 6. No other feasible alternative to a variance is available to the petitioner.  
25 1 in favor, 3 opposed  
26  
27 7. The granting of a variance will not unreasonably adversely affect the natural  
28 environment.  
29 4 in favor, 0 opposed  
30  
31 8. The property is not located in whole or in part within shoreland areas as described  
32 in Title 38, section 435.  
33 4 in favor, 0 opposed  
34

35 Mr. Backer asked for a motion to approve the application as presented. Motion was made  
36 by Ms. Miller and seconded by Ms. Jordan. two of the elements did not carry, motion was  
37 denied 0 in favor and 4 opposed.

38  
39 **Communications** was the next item on the agenda. Mr. Smith had received none.

40  
41 Mr. Backer asked for a motion to adjourn. Motion was made by Ms. Jordan and seconded  
42 by Ms. Miller 4 in favor and 0 opposed.

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44 Meeting adjourned at 7:55PM

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47 Respectfully submitted,  
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1 Barbara H. Lamson, Minutes Secretary  
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