

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

January 28, 2003

7 P.M., Town Hall

Present: David Backer, Chair
Jay Chatmas
Joseph Guglielmetti
Jack Kennealy
Steven LaPlante
Gib Mendelson
Michael Tranfaglia

Also present was Bruce Smith, Code Enforcement Officer.

David Backer called the meeting to order and welcomed new Board members. First item on the agenda was the annual election of Board Chair and Board Secretary.

Mr. Kennealy nominated David Backer for Board Chair. Nomination was seconded by Steven LaPlante and carried 6 in favor 0 opposed and 1 abstained (David Backer).

Mr. LaPlante nominated Jack Kennealy for Board Secretary. Nomination was seconded by Michael Tranfaglia and carried 6 in favor 0 opposed and 1 abstained (Jack Kennealy).

Next order of business was acceptance of the minutes from the two previous meetings. Mr. Kennealy moved to accept the minutes from the meeting held September 24, 2002. Motion was seconded by Mr. Tranfaglia and carried 5 in favor 0 opposed and 2 abstained (Mendelson, Guglielmetti)

Mr. Backer requested the following correction to the minutes for the meeting held October 24, 2002:

Page 1, Line 39 – percentage to read 1.8% instead of 1.1%

With the correction noted, Dr. Chatmas made a motion to accept the minutes. Motion was seconded by Mr. Backer and carried 2 in favor 0 opposed and 5 abstained (Mr. Guglielmetti, Jack Kennealy, Steven LaPlante, Richard Mendelson, Michael Tranfaglia)

OLD BUSINESS

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

NEW BUSINESS

Mr. Backer introduced the first order of new business **to hear the administrative appeal of David Wennberg & Anne Carney of the Code Enforcement Officer’s**

1 **decision to issue Certificate of Occupancy #030034 for a “structure addition” on**
2 **Lot 5 of Map U41, 133 Two Lights Road.**

3
4 Jonathan Brogan, an attorney with Norman, Hanson & DeTroy, LLC, stepped forward to
5 represent David Wennberg and Anne Carney. He reviewed the concerns stated in the
6 appeal application, namely the language applied by the Code Enforcement Officer
7 regards a building on the Evans/Sellers property. The argument is whether or not that
8 building can be justified as a structural addition to the existing dwelling. The applicants
9 feel that the unit is separate from the established dwelling and should be considered an
10 accessory structure.

11
12 Mr. Brogan referenced a letter sent to Town Attorney Mike Hill, laying out a timeline of
13 events with respect to the construction of the building and expressing the concerns of
14 his clients.

- 15
16 1. Initially the structure was presented as a 28’ X 36’ accessory building to be used
17 for storage or personal office space but not a business office.
18
- 19 2. A letter dated 12/3/02 from John Bannon, an attorney representing Ms. Evans
20 and Mr. Sellers, to the Code Enforcement Officer, states that the building will in
21 fact be attached to the existing dwelling. The original building permit describes
22 the building as an accessory structure. The letter made note that the structures
23 would be attached by a covered enclosed walkway.
24
- 25 3. A Certificate of Occupancy dated 10/22/02 was granted by the Code
26 Enforcement Officer for the new building stating the use as additional living
27 space for the single family dwelling.
28
- 29 4. Leslie Evans, after the fact, informed Bruce Smith that she was conducting her
30 graphic design business from the new living space. A conditional use permit was
31 issued to Ms. Evans in April 2001, allowing her to operate her graphic design
32 business in the original dwelling. Mr. Smith informed Ms. Evans that she would
33 have to reapply for the conditional use permit.
34
- 35 5. On January 14, 2003, Leslie Evans submitted an application for a conditional use
36 permit to conduct her graphic design business from the new structure.
37

38 Mr. Brogan explained that the sequence of events has lead his clients to appeal the
39 Code Enforcement Officer’s language with regard to the characterization of the new
40 structure. His clients believe that the building was originally designed as a separate
41 structure but with the intent of housing Ms. Evans business, a non-permitted use in an
42 accessory structure in the RA zone. Mr. Brogan stated that his clients felt that the
43 walkway linking the new building to the existing dwelling did not represent a structure
44 worthy to constitute the two units attached. Dr. Wennberg and Ms. Carney are of the
45 opinion that the buildings are separate and that the new structure should be considered
46 an accessory to the dwelling unit, and therefore a conditional use permit is
47 inappropriate.
48

49 Mr. Backer gave the floor to Atty. John Bannon of Murray, Plumb, & Murray, who is
50 representing Leslie Evans and Ronnie Sellers.

1
2 Mr. Bannon began by reviewing procedural process with regard to the appeal made by
3 Dr. Wennberg and Anne Carney. He noted that the appellants had not acted within the
4 30-day time period allowed to appeal the building permit as issued by the Code
5 Enforcement Officer. He explained that the jurisdiction of the Board was not to take
6 issue with the context of the building permit, but whether or not the structure as
7 completed 'materially differed' from the building permit that Mr. Smith issued to Leslie
8 Evans and Ronnie Sellers. Mr. Brogan stated that no evidence had been presented that
9 supported a discrepancy between the building permit as issued and the building as
10 completed. He contends that if the structure is consistent with the permit as issued, then
11 the certificate of occupancy is valid and stands.

12
13 Mr. Bannon suggested that, before addressing the substantive arguments of the appeal,
14 the Board wished to first resolve the procedural issue with regard to the issuance of the
15 certificate of occupancy. Mr. Backer opted to address the procedural argument and
16 asked Mr. Brogan to review the Salisbury vs. Bar Harbor case.

17
18 Mr. Bannon held that the determination of the character of the Evans/Sellers structure
19 was not an issue to be considered at all. He explained that the Salisbury decision
20 determined that an appeal of a building permit cannot be considered once a certificate
21 of occupancy has been issued. The time frame negates any challenge to the validity of
22 the building permit. A certificate of occupancy can be challenged only in a very limited
23 regard. The only challenge that can be made is whether or not the completed structure
24 differs from the permit as issued. He contends that the Board did not have jurisdiction to
25 determine whether or not the structure should be considered attached or unattached.
26 Those determinations were made by the Code Enforcement Officer and, because the
27 appellants missed the deadline to appeal the building permit, are no longer open to
28 consideration.

29
30 Mr. Backer asked whether or not the argument for the determination of the character of
31 the building should arise within the discussion for the conditional use permit. Mr. Bannon
32 stated that he considered the issue foreclosed on both accounts. In his interpretation of
33 the laws, once the building permit became final after the 30-day appeal period, all
34 issues became settled for all purposes even with regard to the conditional use permit.

35
36 Mr. Backer asked Mr. Bannon to confirm his position that, once the building permit has
37 been issued and the 30-day appeal time elapsed, the context of the permit stands and
38 argument is closed with regard to the determination of the structure. Mr. Bannon cited
39 the language of the building permit, which granted his clients permission to construct an
40 attached structure to be used for storage and personal office space, not to be used as a
41 business office. Mr. Bannon wanted to clarify the last phrase stating 'not to be used as a
42 business office.' He explained that, in the initial application for the building permit, the
43 intent for the additional space to be used for a home business was not specified. The
44 reason being was that his clients knew that they would have to go before the Zoning
45 Board to secure a conditional use permit. Mr. Bannon identified the building permit as
46 #020639 and went on to reiterate that his clients had met with the Code Enforcement
47 Officer prior to applying for the permit, had described the project, discussed the
48 purposes for the building and the structural walkway. Mr. Bannon took responsibility for
49 the discrepancy relating to the structural details of the walkway, and earlier brought
50 forward by Mr. Brogan. Regardless, he stated that Mr. Smith had determined the

1 buildings attached, and since no appeal came forward within the 30-day allotted period,
2 the context of the permit was deemed true and valid and not subject to debate.

3
4 Mr. Brogan asked to return to the podium. He disagreed that the determination of the
5 building as attached was closed to discussion. In his opinion, if Mr. Bannon held that the
6 context of the building permit could not be argued, then the language specifying “not to
7 be used as a business” should also stand and no conditional use permit be granted. He
8 contended that the building permit specified that the space would not be used as a
9 business office. If argument on the issue of the character of the building was foreclosed,
10 then he felt the issue of a conditional use was also foreclosed.

11
12 Town Attorney Mike Hill addressed the Board. He referenced a letter dated 12/11/02,
13 with a response to Atty. Bannon regarding the jurisdictional issues confronting the
14 Board. Mr. Hill agreed with Mr. Bannon that with regard to the administrative appeal,
15 the Board’s focus was limited to whether or not the structure as built complied with the
16 building permit as issued. If the Board agrees that no discrepancies occur, then the
17 certificate of occupancy was properly issued. The certificate of occupancy would only be
18 deemed inappropriate if the completed structure went beyond the scope of the building
19 permit. Mr. Hill stated that the appeal did not constitute a second chance to challenge
20 the building permit, however, the Board had jurisdiction to discuss with the Code
21 Enforcement Officer what he considered as the scope of that permit.

22
23 Mr. Hill also advised the Board on the legal significance of the language within the
24 building permit with regard to the word “attached”. He considered the determination of
25 “attached” not critical to the issuance of the permit. The permit would have been
26 approved in either case – attached or unattached. He therefore advised the Board to
27 base their determination on whether or not what was approved constitutes what was
28 constructed or whether the project went beyond the scope of the permit as granted. He
29 considered the issue of attached vs. unattached pursuant only with regard to the
30 conditional use application.

31
32 Mr. Kennealy asked Mr. Hill if Mr. Smith’s use of the word “attached” within the context
33 of the building permit was governing to the Board and liable to create an inconsistency
34 with regard to rulings on the related matters. Mr. Hill replied that Mr. Smith’s
35 determination was not legally significant in this appeal because it was not critical to the
36 issuance of the permit.

37
38 Mr. Backer returned to the case of Salisbury vs. Bar Harbor and the ruling based on
39 whether or not the building as completed meaningfully exceeded the authority contained
40 within the permit or otherwise violated the conditions of the permit. He questioned
41 whether Mr. Hill considered the wording “attached” to be a condition of the permit.
42 Mr. Hill did not consider that so. He stated that a more likely condition was the phrase
43 pertaining to the home business. Other conditions applicable would be the factual
44 criteria established in the ordinance such as setback and height regulations.

45
46 Mr. Backer asked Mr. Hill to confirm that the burden was on Dr. Wennburg and Ms.
47 Carney to prove that a violation had occurred. Mr. Hill replied in the affirmative, and
48 clarified once again that, for the purposes of the appeal, the Board need focus only on
49 the structure of itself and determine whether it did meaningfully exceed the approval
50 granted. The determination of attached vs. detached was not a factor in the issuance of

1 the permit nor the certificate of occupancy. He also stated that by upholding the
2 issuance of the certificate of occupancy, the Board was not foreclosing on the issue of
3 whether the building was attached or detached because that factor was not critical to
4 the granting of the permit.

5
6 Mr. Bannon expressed his respect for Mr. Hill's legal opinion but disagreed with his
7 position that the determination of the building as attached was insignificant to the
8 conditions of the permit. Because his clients had a clear intent to house a business on
9 the second floor of this structure, the determination of an attached becomes critical with
10 regard to allowing a conditional use. He stated that his clients had reviewed the project
11 with the Code Enforcement Officer and made known their intentions to eventually
12 operate Ms. Evans design business from the new structure.

13
14 Mr. Bannon stated that the law was clear with regard to an appeal period deadline
15 which was instated to protect property owners and to support determinations by Code
16 Enforcement. He again commented on the wording issued within the permit stating that
17 the structure would not house a business. Mr. Bannon explained that the condition was
18 simply a result of methodology. His clients knew that in order to have a home business
19 in the new structure, they would need to present an application to the Zoning Board.

20
21 In response to clarification of his interpretation of the Salisbury case, Mr. Bannon stated
22 that he is in agreement with Mike Hill in that the Board needed to determine if the
23 structure meaningfully exceeded the conditions of the permit. He also was of the opinion
24 that the Board needed to abide by the appeal deadline process. The Code Officer had
25 issued a permit granting an attached structure. No appeal was made within the allotted
26 timeframe regarding that determination; therefore, discussion in that matter is closed.

27
28 Mr. Kenneally asked Mr. Bannon if he was of the opinion that the Code Enforcement
29 Officer's determination of the building as attached was binding to all subsequent rulings
30 the Board may have to consider for this structure. Mr. Bannon responded that it was his
31 opinion that the word attached was binding to the structure; particularly since the use of
32 the word within the context of the permit was intentional. Mr. Bannon argued that the
33 intent behind using the word attached was the whole crux of the matter with regard to
34 the appeal and extremely significant to his clients when pursuing a conditional use
35 permit. He explained to Board members that he understood that by granting the building
36 an attached status, Mr. Smith was not granting an approval for a conditional use; that
37 was the jurisdiction of the Board. Mr. Bannons point was that, by zoning standards, a
38 home business cannot be conducted from an accessory building and therefore the
39 attached status is very relevant. He held that because no appeal to that building permit
40 nor the context of that permit had been submitted within the deadline period, all
41 discussion relative to the terms granted within that permit are foreclosed and no
42 argument can be raised with regard to the attached determination of the building.

43
44 Mr. Kenneally and Mr. LaPlante were not in agreement with Mr. Bannon in accepting the
45 language of the building permit as binding. They reserved the right to make their own
46 determination of the character of the building, citing the word attached as an adjective
47 and not necessarily factual. Mr. LaPlante asked for Mr. Smith's recollection of the
48 circumstances involved in the issuance of the building permit.

1 Mr. Smith stated that the initial permit applied for additional living space for the single-
2 family dwelling. The home business was not at issue. When the applicants approached
3 him regarding a conditional use intent for the building, Mr. Smith reviewed the ordinance
4 and realized the significance of deeming the structure attached. He understood that his
5 determination of the building as attached was not a guarantee that the Board would
6 make that same consideration for conditional use approval. He, however, did not want
7 to close the door for the applicants in pursuing a conditional use permit. By his
8 determination, the building is attached and not an accessory structure.

9
10 Mr. Hill advised the Board that Mr. Smith's determination of the structure with regard to
11 the building permit was not binding to any determination which the Board may wish to
12 make in consideration of the conditional use application. In his opinion, the Board
13 should make their own determination as to whether or not the application satisfies the
14 criteria necessary for approval. He stressed once again, that no legal significance
15 should be placed on Mr. Smith's use of the word "attached" within the context of the
16 permit. The wording was not critical to the issuance of the permit.

17
18 Mr. Backer invited Mr. Brogan to respond to any comments.

19
20 Mr. Brogan criticized the events surrounding the issuance of the permit and questioned
21 the process as being fair and just. He considered the initial building permit misleading in
22 that the wording specified "no home business" only to then open the way for
23 consideration for a conditional use. His clients saw no reason to appeal the initial permit
24 because its scope was not controversial to their interests. Mr. Backer asked Mr. Brogan
25 if, in his opinion, the structure meaningfully exceeded the authority contained within the
26 permit. Mr. Brogan replied that Ms. Evans had violated the conditions of the permit by
27 now conducting her business from that structure, and that fact had not been rebutted.

28
29 Mr. LaPlante asked Mr. Smith whether the new building housed Ms. Evans business at
30 the time the certificate of occupancy was issued. Mr. Smith replied that, at that time, the
31 space was used solely for additional living space.

32
33 Mr. Backer opened the floor to public comment.

34
35 Marion Holshouser, 137 Two lights Road, is an abutter to the Evans/Sellers property.
36 She criticized the building permit process in that she and her neighbors were never
37 notified about the particulars of the building permit, nor the timeframe in which they
38 could appeal.

39
40 Mr. Hill responded that the Town was not required by law to notify property owners with
41 regard to building permit applications. The burden was on property owners to stay
42 informed of projects within their neighborhoods.

43
44 Christie Harding, 10 Angell Point Road, referred to two conversations he'd had with
45 Bruce Smith at different stages of the buildings construction, regarding the use of the
46 new structure. In the initial conversation, the use was clear within the context of the
47 permit. A later conversation brought forward the intent that the use would be changed.
48 They discussed the implications of that change relative to the neighborhood. Mr.
49 Harding thought the walkway insubstantial to support a determination of attached.

1 With no further public comment, Mr. Backer closed the public forum.

2
3 Mr. Backer asked Mr. Hill to return to the podium and advise the Board on a
4 consideration for a motion. Mr. Hill agreed that the motion should entail whether or not
5 Ms. Evans and Mr. Sellers have meaningfully exceeded the authority contained in their
6 building permit or otherwise violated conditions of the permit. He suggested that the
7 Board also include in the motion a finding that the word “attached” as used by the Code
8 Enforcement Officer in the building permit and the certificate of occupancy, not be
9 binding to the Board. Relative to the administrative appeal, Mr. Hill thought it prudent to
10 disallow the legal significance of the word attached. Relative to the conditional use
11 permit, the determination of attached would become a consideration.

12
13 Dr. Chatmas asked the Code Enforcement Officer whether or not an accessory
14 structure could become considered attached should a connecting structure be built
15 linking it to the dwelling unit. Mr. Smith replied that, yes, the status of accessory would
16 change should a connecting structure be built. The connecting structure would require a
17 permit as would the structure linking the Evans/Sellers buildings if presented after the
18 fact. Mr. Smith would then consider the buildings attached because the connection
19 represented a continuation of structures. Dr. Chatmas wanted to make the point that the
20 word attached or unattached was irrelevant to the issuance of the Evans/Sellers
21 building permit. Dr. Chatmas asked Mr. Smith whether or not he connecting structure at
22 the Evans/Sellers property was represented on the original building plans and whether
23 the type of connection was relevant. Mr. Smith replied that the connection was detailed
24 on the plans and was unsure what Dr. Chatmas meant by relevant – structural
25 compliance or a consideration for attachment. Because the structure represented
26 substantive construction, it required a building permit. Because the structure was
27 connected to both buildings, Mr. Smith considered the structures attached. Mr. Smith
28 further responded that a stone walkway would not require a building permit and not
29 constitute an attachment. By his interpretation of the original plans submitted, the
30 building constituted an attached structure.

31
32 With no further discussion, Mr. Backer advocated approaching the appeal with two
33 separate motions. In the first instance, he requested the following motion:

34
35 **That the use of the word “attached” in permit #020639 issued by the Code**
36 **Enforcement Officer on 7/1/2002 for the property at Map U41, Lot 5 at 133 Two**
37 **Lights Road, was descriptive only and not a binding determination that the**
38 **structure was attached or detached for purposes of the Cape Elizabeth Zoning**
39 **Ordinance.**

40
41 Mr. LaPlante moved to accept the motion as stated. Motion was seconded by
42 Mr. Mendelson 7 in favor and 0 opposed.

43
44 Mr. Backer then requested a second motion:

45
46 **whether that Ms. Evans and Mr. Sellers, as the recipients of Building Permit**
47 **#020639 #030034, for Map U41, Lot 5, 133 Two Lights Road, issued by the Code**
48 **Enforcement Officer on 7/1/202, have meaningfully exceeded the authority**
49 **contained in the permit or otherwise violated the conditions of the permit.**

1 Mr. Mendelson moved to accept the motion as stated. Motion was seconded by Mr.
2 LaPlante 0 in favor and 7 opposed.

3
4 Appeal denied.

5
6 Mr. Backer introduced the next order of business **to hear the application of Leslie**
7 **Evans & Ronnie Sellers, 133 Two Lights Road, Tax Map U41, Lot 5 for a**
8 **conditional use permit to relocate an existing home business.**

9
10 Mr. Backer quoted from the Zoning Ordinance the definitions for conditional uses in an
11 RA district and the allowance of a home business as an accessory use. He suggested
12 first discussing the underlying issue of the character of the building as being attached or
13 detached. Mr. Backer called Mr. Bannon to present his clients application.

14
15 Mr. Bannon addressed the comments raised regarding the sequence of events relative
16 to the permit process. He made assurances that the permit was forthright and that no
17 subversive action was undertaken by his clients. Mr. Bannon stated the following:

- 18
19 1. At the time the certificate of occupancy was issued on 10/22/2002, Ms. Evans
20 was not operating her business from the second story of the addition.
21
22 2. A conditional use permit had previously been granted by the Board for a 224
23 square foot area within the initial dwelling.
24
25 3. Ms. Evans made known to the Code Enforcement Officer her intent to relocate
26 her business from the main house to the new space and asked of the
27 requirements from the Town.
28
29 4. Mr. Smith advised Ms. Evans to submit a letter of affirmation stating that the
30 business had been relocated to the second story of the new space. Ms. Evans
31 submitted the letter to Mr. Smith on 10/31/02.
32
33 5. Mr. Smith responded to Ms. Evans in a letter dated 11/18/2002, by stating that
34 after further study of the ordinance, he realized her letter was insufficient to
35 execute the move. He explained that because the area of square footage for the
36 business was expanding, she would need to reapply to the Zoning Board for new
37 approval. Although Mr. Smith knew that Ms. Evans had relocated the business,
38 he said he would waive punitive action and allow Ms. Evans to follow due course
39 with the Zoning Board.

40
41 Mr. Bannon read from the letter Ms. Evans submitted to the Zoning Board describing
42 the details for their business. The letter stated the fact that a conditional use permit had
43 been approved on 4/24/2001 for a home business. Ms. Evans wrote that the nature of
44 the business had not changed, a single assistant at times is present, and client
45 meetings occur most often off premises. She described the activity associated with the
46 business as low impact to the neighborhood and cited ample parking and little vehicular
47 traffic. The business area would expand from 224 sq/ft to 864 sq./ft, a total of 13% of
48 their total residence.

1 Mr. Bannon again addressed the issue concerning the determination of the character of
2 the new space and whether the status would be deemed attached or an accessory
3 structure. He agreed on the point that since the structure connecting the two buildings
4 required a building permit, it substantiated the attachment. He argued that the ordinance
5 has no definition for attached, but that it states should a word lack a specific definition,
6 the Board should consider its customary and usual meaning. Mr. Bannon referenced the
7 dictionary and noted the definition of attached as “joined, connected, or bound”.

8
9 Mr. Bannon anticipated that Mr. Brogan and his clients would argue that the connection
10 at the Evans/Sellers property was insufficient to constitute a structural attachment. He
11 reiterated the fact that the Ordinance does not have specific criteria with regard to a
12 definition of an attaching structure. He noted also, that the Code Enforcement Officer,
13 based on his experience and interpretation of the Ordinance, determined the structures
14 to be attached.

15
16 Citing examples of law cases with language pertaining to accessory buildings and
17 interpretations of “attached”, Mr. Bannon attempted to clarify that an accessory structure
18 was considered subordinate and incidental to the main house and not integral to the
19 living area. He noted that the first floor of the new building held the family library.

20
21 Mr. Bannon continued by reading the definition of dwelling unit as stated in the
22 ordinance. He noted that the definition does not require that all living area be contained
23 in a single building. He held that the Evans/Sellers addition was joined, connected, and
24 bound to the main house, and was integral to the living area of the residence.

25
26 Mr. Backer invited Mr. Brogan to respond. Mr. Brogan argued that the Evans/Sellers
27 addition was an accessory structure, separate and independent of the main dwelling.
28 He noted that the building had separate heating, plumbing, and electric service. He also
29 stated that in function, the building was not integral to the dwelling unit in that the space
30 was not used for the purpose of living, sleeping, cooking, and eating. He further argued
31 that the structure connecting the buildings did not substantiate the buildings being
32 attached and was put in place only to circumvent the criteria required for a conditional
33 use permit. Mr. Brogan accused the appellants of undermining the terms of the
34 ordinance by conducting a home business from an accessory structure in a Residential
35 A District, which is a non-permitted use.

36
37 Mr. Kennealy noted that a home business is a permitted use in the RA Zone. He asked
38 if Mr. Brogan’s clients objected to the nature of Ms. Evan’s business. Mr. Brogan replied
39 that his client’s did not object to the use itself, but rather the process undertaken to
40 obtain the use. His clients were of the opinion that the appellants were subversive in the
41 process of constructing a detached building and then, for their own interests, attempting
42 to disguise its true character. Mr. Kennealy asked what type of connecting structure
43 would satisfy Mr. Brogan’s definition of attached, and noted that many homes and
44 garages are “attached” by an unheated breezeway. Mr. Brogan responded that he
45 would be satisfied only if the addition was an attachment to the primary building. He
46 considered the Evens/Sellers building separate from the primary building. Mr. Kennealy
47 went on to ask Mr. Brogan if he had any legal precedent to help define what might be an
48 acceptable form of attachment. Mr. Brogan responded that in Maine there is no specific
49 definition. He cited a case in Connecticut where two buildings connected by an
50 enclosed walkway were deemed by the Supreme Court of Connecticut as separate. He

1 suggested that the Board may run the risk of setting a precedent for property owners in
2 the RA zone for building after-the-fact connections to accessory buildings wherein they
3 could establish a business.

4
5 Mr. Backer asked Mr. Brogan whether it would make any difference if the walkway was
6 drywalled and heated. Mr. Brogan still held the position that the applicants would be
7 circumventing the requirement. He would accept only an integral joining of the two
8 buildings into one unit. Mr. Kennealy noted that many Maine homesteads were
9 composed of more than one building, some connected less tenuously than the property
10 at issue. He also noted that half of the building was occupied by the appellant's library,
11 which he considered a significant function within a home. He questioned Mr. Brogan on
12 whether or not any amount of construction would substantiate an attachment and
13 reconcile his clients toward a business within the new building. He, once again, called
14 attention to the fact that a home business is an allowed use in the RA zone. Mr. Brogan
15 responded that he understood the permitted use, but still considered that the process
16 had been intentionally inverted for the purpose of undermining the zoning ordinance.

17
18 Mr. Kennealy made the case that Ms. Evans and Mr. Sellers had the option of
19 increasing the square footage of the home in order to accommodate additional space
20 for the business; thereby creating a "Goliath" building which might also disrupt the
21 aesthetics of the neighborhood. He considered the concept of the additional building as
22 functional and appealing and not necessarily beyond the scope of being attached.

23
24 Mr. Tranfaglia asked what objections were raised by the extended size of the business
25 area. Mr. Brogan replied that there was concern that the business would grow relative to
26 the increase in space and the neighborhood would be subsequently impacted.

27 Mr. Kennealy made note that no more than one employee is allowed as a condition of a
28 home business in the RA zone.

29
30 Mr. Backer wanted to resolve the issue of the determination of the buildings before
31 addressing the conditional use arguments. He invited Mr. Bannon to make a quick
32 response. Mr. Bannon requested that Ms. Evans and Mr. Sellers address the Board.

33
34 Ms. Evans presented pictures of the new building and expressed the significance of the
35 library. She explained the details of her graphic design business and described the
36 layout of the office and work area. She presented pictures depicting the walkway
37 connection and made assurances that the structure could be modified should any
38 requirements be deemed necessary.

39
40 Mr. Sellers addressed allegations made as to his intent to circumvent the regulations
41 with regard to the home business. He argued that every effort had been made to comply
42 with the Ordinance. He explained that Ms. Evans intent to relocate the business to the
43 new building was always known and stated that Mr. Smith would support those efforts.
44 He felt that he had been open with the neighbors with regard to the project and had
45 never been aware of any complaints.

46
47 Bruce Smith stated that the determination he made on the attachment at the
48 Evans/Sellers property was consistent with several similar rulings he'd made in different
49 towns over the past fourteen years. He explained that in consideration of setbacks and
50 other zoning regulations, many types of connecting structures have been ruled as

1 sufficient to make a determination of attached. He holds the position that if a structure
2 requires a building permit and is attached to both buildings, he deems them one
3 connected unit for the purposes of zoning. He argued that the definition of an
4 accessory building is a structure that is detached from the main structure, and the
5 Evans/Sellers new addition was clearly not detached.

6
7 Mr. LaPlante inquired whether or not the walkway would have required a building permit
8 had it been constructed after the barn was completed. Mr. Smith replied that a permit
9 would have been required, and subsequently he would deem the building attached and
10 subject to the same zoning requirements.

11
12 Mike Hill advised that it would be reasonable for the Board to assume that any structure
13 which would require a building permit could constitute a connection sufficient to
14 consider the buildings attached.

15
16 Mr. Backer stated that he considered the new building subordinate and incidental to the
17 main dwelling, however, he also considered it attached. He commented that the
18 ordinance doesn't allow consideration for intent, only structural fact and even then,
19 without a clear guideline or definition. Mr. Backer felt that in order for the Board to refute
20 the determination of the Code Enforcement Officer, a clear definition would have to be
21 established and that was the jurisdiction of the Town Council. Board members agreed
22 and discussed the necessity of a motion to confirm the finding.

23
24 Mr. Hill advised that the Board could move on with the consideration of the conditional
25 use approval but should include their determination of the buildings in the findings for
26 the motion.

27
28 Mr. Backer requested that Mr. Bannon present the facts involved with the home
29 business.

30
31 Mr. Bannon stated that since the initial approval in 2001, the business had not changed.
32 He assured the Board that there would be no increased impact on the neighborhood
33 with regard to vehicular activity. The change in the characteristics of the business and
34 property would not be altered and the increase in square footage for the business would
35 be only 13% when 20% is permitted. An appraiser was consulted and determined that
36 the operation of the business would have no negative impact on the values within the
37 area.

38
39 Mr. Backer opened the floor to public comment.

40
41 Thomas Mahalic, 18 Angel Point Road, chose the residential area for it's rural
42 characteristics. He is concerned about an increase in traffic and safety issues for
43 children and wants to preserve the rural characteristics of the neighborhood.

44
45 Anne Carney, 139 Two Lights Road, abuts the property of Ronnie Sellers and Leslie
46 Evans, and feels that the operation of the business in the new building impacts the
47 privacy of their property. She considers the building incompatible with the residential
48 character of the neighborhood and a detriment to the property values. Ms. Carney was
49 disappointed with the permit process with regard to the construction of the building and
50 the relocation of the home business.

1
2 Jean Fine, 21 Angel Point Road, was concerned that the ruling may set a precedent
3 within the RA district. She did not want to see the character of the neighborhood
4 change.

5
6 With no other persons coming forward, Mr. Backer closed the public portion of the
7 meeting.

8
9 Mike Hill advised that the ruling would present a new conditional use and with the
10 applicant's consent, the original approval would terminate.

11
12 Mr. Kennealy asked Ms. Evans, given the neighbors concerns for privacy, if she could
13 offer any concessions with regard to the operation of the business. Ms. Carney stated
14 that she had installed blinds for privacy and kept her work schedule to daytime hours.

15
16 Dr. Chatmas asked Ms. Evans why she found it necessary to relocate the business from
17 the main dwelling. She replied that the area previously used was too small and cramped
18 to accommodate the artwork which she used for her graphic design. She also could now
19 have additional storage space for items previously kept at a different location.

20
21 Mr. Backer asked to review the following **findings of facts**:

22
23 Upon the application of Leslie Evans for review of the Zoning Ordinance requirement of
24 19-6-1 in accordance with Section 19-5-5, a hearing was held on January 28, 2003.

25
26 The appellant seeks a conditional use permit to relocate an existing home business,
27 specifically an office/studio.

28
29 Leslie Evans & Ronnie Sellers are the owners of a property at 133 Two Lights Road.

30
31 The property is located in the Residential A District, Tax Map U41, Lot 5, containing 2.7
32 acres.

33
34 **CONCLUSIONS**

35
36 1. The proposed use will not create hazardous traffic conditions when added to
37 existing and foreseeable traffic in its vicinity.

38 7 in favor, 0 opposed, 0 abstained

39
40 2. The proposed use will not create unsanitary conditions by reason of
41 sewage disposal, emissions to the air, or other aspects of its design or operation.

42 7 in favor, 0 opposed, 0 abstained

43
44 3. The proposed use will not adversely affect the value of adjacent properties.

45 6 in favor, 1 opposed, 0 abstained

46
47 4. The proposed site plan and layout are compatible with adjacent property
48 uses and with the Comprehensive Plan.

49 5 in favor, 2 opposed, 0 abstained

1 5. The design and external appearance of any proposed building will constitute an
2 attractive and compatible addition to its neighborhood, although it need not have a
3 similar design, appearance or architecture.
4 7 in favor, 0 opposed, 0 abstained

5
6 **JUDGEMENT**

7
8 Mr. Backer requested a motion to approve the application of Leslie Evans ,133 Two
9 Lights Road, Map 41, Lot 5, for a Conditional Use Permit to relocate an existing
10 home business from the main home structure as previously approved by the
11 Board on 4/24/2001 to the upstairs portion of the attached structure built in
12 accordance with Permit #020639 with the condition that there be no signage
13 permitted on the exterior of the structure advertising the business.

14
15 Mr. Kennealy moved to accept the motion as stated. Mr. LePlante seconded 6 in favor
16 and 1 opposed.

17
18 Mr. Backer asked for a supplemental motion in that **the approval granted would**
19 **supersede the previous conditional use approval granted on 4/24/2001.**

20
21 Mr. LaPlante moved to accept the supplemental motion as stated. Mr. Kennealy
22 seconded 7 in favor and 0 opposed.

23
24 **Communications** was the next item on the agenda. Mr. Smith had received none.

25
26 Mr. Backer asked for a motion to adjourn. Motion was made by Mr. Kennealy and
27 seconded by Mr. Guglielmetti 7 in favor and 0 opposed.

28
29 Meeting adjourned at 9:55PM

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33 Respectfully submitted,

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35 Barbara H. Lamson, Minutes Secretary
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