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

**March 25, 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 asked for comments on the minutes from the previous meeting of January 28, 2003. The following corrections were requested:

Pg. 2, Line 13 – delete word “the” before “expressing”

Pg. 7, Lines 19 & 21 – correct “Mr. Chatmas” to “Dr. Chatmas”

Pg. 7, Line 46 – strike words “As to whether” in the motion and replace with “That”

Pg. 9, Line 47 – correct word “precedence” to “precedent”

Pg. 10, Line 1 - correct word “precedence” to “precedent”

With corrections noted and no further amendments, motion was made by Mr. LaPlante to accept the minutes. Motion was seconded by Mr. Guglielmetti 7 in favor and 0 opposed.

**OLD BUSINESS**

To hear the request of **Steven and Lauren LaPlante, 1176 Sawyer Road, Tax Map U46, Lot 10 for a one-year extension of their previously approved variance granted on March 26, 2002 as allowed under Article V, Section 19-5-4.E.**

Mr. LaPlante recused himself, and as the applicant, presented his request to the Board.

Mr. LaPlante requested a one-year extension of the variance granted the previous year. He explained that the contractor was unable to start the building project until too late in the previous year and the early and long winter had further delayed work. The project remains the same in scope and plan.

Mr. Backer stated that the Ordinance grants one extension for up to one additional year upon written request by the applicant.

Mr. Smith advised that the Board should question the applicant as to whether or not in the past year any changes have occurred which might influence the Board in granting an extension of the variance. Mr. LaPlante stated that no changes have occurred and the plans remain as first presented.

1  
2 Mr. Tranfaglia made a motion to approve the one-year extension as requested by the  
3 applicant. Motion was seconded by Mr. Mendelson 6 in favor 0 opposed 1 abstained.

4  
5 **NEW BUSINESS**

6  
7 To hear the request of Thomas S. Hill, Sr., 53 Cliff Ave., Tax Map U01, Lot 83 for a  
8 conditional use permit for an accessory dwelling unit.

9  
10 Thomas Hill, Sr., 53 Cliff Avenue, introduced himself and explained that he wished to  
11 create an in-law apartment in an addition on his home. His son's family currently resides  
12 in the main portion of the residence.

13  
14 Mr. Backer questioned Mr. Smith whether the applicant had met the plan and lot size  
15 requirement for an assessory dwelling unit. Mr. Smith replied that the sketch plan was  
16 more accurate than a mortgage inspection plan which the Board has accepted in the past  
17 He explained that although it was not as precise as a boundary survey plan, surveyors  
18 consider the measurement as fairly accurate.

19  
20 Mr. Kennealy raised a question with regard to the 12000 sq/ft lot requirement. The  
21 assessor's records determine the Hill lot to be just under 12,000 sq/ft. The sketch plan  
22 held a note indicating that although the metes and bounds of the plan were not entirely  
23 consistent with the deed, the lot was determined to exceed the requirement. An exact  
24 square footage of the lot would require a boundary survey. Mr. Smith stated that in  
25 determining their sketch plans, surveyors located rebar markers, used GPS and  
26 consulted deeds and assessors maps. Although he considered a sketch plan not as  
27 precise as a boundary survey, Mr. Smith felt the information was quite accurate. He  
28 explained that a sketch plan is less expensive to acquire than a boundary survey and has  
29 sufficed for Board approval in the past. He advised the Board to consider whether this  
30 application should require a boundary survey to determine the lot size, but felt the note  
31 on the sketch plan sufficient to ascertain that the requirement was met. Although a sketch  
32 plan is not a legal survey, it bears the surveyors stamp and bears a confident level of  
33 accuracy.

34  
35 Mr. Backer reviewed the status of the work for the addition and garage which will house  
36 the assessory unit. Mr. Hill explained that the project was finishing soon but not with  
37 respect to a kitchen which is dependent on approval with this hearing.

38  
39 Mr. Backer asked Mr. Smith whether or not a legal survey has been a requirement in the  
40 Ordinance. Mr. Smith replied that he considers it incumbent upon the applicant to provide  
41 an accurate site plan, but in some instances a precise determination is not necessary.  
42 The Code Enforcement Officer has the option of requiring a more definitive plan  
43 depending on the application.

44  
45 Mr. Mendelson was concerned that the language of the Ordinance might not allow the  
46 Board to use any discretion in determining whether or not the lot size requirement had  
47 been satisfied given the level of information of the sketch plan. Mr. Smith replied that he  
48 held a high level of respect for the information contained on a surveyors sketch plan and  
49 that in the past that information had satisfied rulings by the Board. Mr. Backer felt that an

1 interpretation of the Ordinance granted the Board latitude with regard to the survey  
2 documentation. Mr. Tranfaglia was comfortable with the sketch plan given the comments  
3 by the civil engineer and the considerations present in the note regarding the square  
4 footage of the lot. Mr. Kennealy was concerned that the sketch plan did not have the  
5 legal stature of a boundary survey and that the issue of the required square footage  
6 made a determination necessary.

7  
8 Dr. Chatmas asked Mr. Smith how the validity or legality of the survey sketch plan  
9 compared with a mortgage inspection plan. Mr. Smith replied that the sketch plan was a  
10 far more accurate document. He explained also that surveyors will not submit a sketch  
11 plan unless they can attain a certain degree of accuracy on a site plan. Otherwise, they  
12 will agree only to a boundary survey. A sketch plan is not recorded but is based on a  
13 recorded deed. Dr. Chatmas felt that the note on the sketch plan regarding the square  
14 footage lent credibility to the determination of the lot size.

15  
16 Mr. Kennealy asked what the assessor's maps listed as the square footage for Mr. Hill's  
17 lot. Dr. Chatmas commented that the assessor's maps are based on an aerial survey  
18 which is an approximate measurement only and not necessarily a true fact. The  
19 assessor's map gave a figure of 11,979 sq/ft. Mr. Smith again addressed the Board as to  
20 their option of requesting a boundary survey from the applicant. Mr. Kennealy asked  
21 whether or not there was a degree of accuracy with regard to the figures entered on a  
22 sketch plan. Mr. Smith replied that the surveyors stamp determined the factuality of the  
23 figures and was not aware of any percentages involved.

24  
25 Mr. Backer asked Board members to make a determination as to whether or not the  
26 sketch plan would suffice for their consideration of approval of the application. Board  
27 members agreed that they were confident with the level of accuracy of the sketch plan  
28 and gave merit to the specific note regarding the square footage being in excess of  
29 12,000 sq/ft.

30  
31 Mr. Backer reviewed the requirements and found the application met each of the  
32 standards.

### 33 **FINDING OF FACTS**

34  
35 Board members voted on the following findings:

- 36  
37  
38 1. Thomas & Marlee Hill are the owners of a property at 53 Cliff Ave., Tax Map U01,  
39 Lot 83 which is in the Residential C District containing at least 12,000 sq. ft.  
40 7 in favor and 0 opposed  
41  
42 2. The use is listed as a conditional use in that district, specifically an assessory  
43 dwelling unit use.  
44 7 in favor and 0 opposed  
45  
46  
47 3. The requirements of Sec. 19-7-5 (B) have been met.  
48 7 in favor and 0 opposed.  
49

1 **CONCLUSIONS**

- 2
- 3 1. The proposed use will not create hazardous traffic conditions when added to  
4 existing and foreseeable traffic in its vicinity.  
5 7 in favor 0 opposed 0 abstained  
6
- 7 2. The proposed use will not create unsanitary conditions by reason of  
8 sewage disposal, emissions to the air, or other aspects of its design or operation.  
9 7 in favor 0 opposed 0 abstained  
10
- 11 3. The proposed use will not adversely affect the value of adjacent properties.  
12 7 in favor 0 opposed 0 abstained  
13
- 14 4. The proposed site plan and layout is compatible with adjacent property  
15 uses and with the Comprehensive Plan.  
16 7 in favor 0 opposed 0 abstained  
17
- 18 5. The design and external appearance of any proposed building will constitute  
19 an attractive and compatible addition to its neighborhood, although it need not have a  
20 similar design, appearance or architecture.  
21 7 in favor 0 opposed 0 abstained  
22

23 Motion was made by Mr. Kennealy to approve the application of Thomas Hill, Sr. for an  
24 accessory dwelling unit consistent with the findings of fact voted upon by the Board.  
25 Motion was seconded by Mr. Tranfaglia 7 in favor and 0 opposed.  
26

27 Mr. Backer introduced the next order of business:

28

29 **To hear an administrative appeal by Cross Hill, LLC of the Code Enforcement**  
30 **Officers 2/04/03 decision to withhold certificate of occupancies for Lots 26 & 27 of**  
31 **Tax Map U58 and Lots 20,21, & 25 of Tax Map U59 until after the second floors are**  
32 **finished for use as additional bedroom(s).**  
33

34 Mr. Backer referenced a letter submitted on March 19, 2003 from Cross Hill LLC  
35 requesting a postponement of the appeal and a response from Bruce Smith granting that  
36 postponement until the April Zoning Board of Appeals meeting.  
37

38 **COMMUNICATIONS**

39

40 Mr. Smith explained that the Planning Board had requested the Zoning Board review  
41 Sec. 19-4-3.B.2 and Sec.19-7-10 of the Ordinance. The Planning Board wanted input  
42 from the Zoning Board. Mike Hill, the Town attorney, has advised that those sections are  
43 problematic in a legal stance.  
44

45 Mr. Backer didn't agree that the present meeting was a good forum for an analysis of the  
46 section's contents and thought the work should be done by the Town Attorney. Mr. Smith  
47 understood the hesitation but recommended that based on his understanding and  
48 experience, the Section 19-4-3.B.2 could be eliminated. He considered the standards  
49 which had to be met in the variance approval sufficient to cover the criteria represented in

1 this particular section. Mr. Smith explained that the elimination of this section would not  
2 disallow relief from the Ordinance with regard to non-conforming lots. The variance  
3 standards, however, would be more difficult to satisfy.

4  
5 Board members agreed by a general consensus to eliminate Sec. 19-4-3.B.2.

6  
7 Mr. Backer asked for discussion on Sec. 19-7-10, which allows the Zoning Board to  
8 waive standards to decrease setbacks. Mr. Smith felt that the section was an easier  
9 vehicle to attain the same relief from the Ordinance that a variance would grant. Mr. Hill  
10 was concerned that setback reductions granted per the criteria of this Sec. 19-7-10 would  
11 not hold up in court.

12  
13 Dr. Chatmas asked how the elimination of the section would impact standards with  
14 regard to assessory buildings. Mr. Smith considered that the criteria could be included in  
15 another section of the Ordinance. Dr. Chatmas felt that the standards reflected in Sec.  
16 19-7-10 (A) and (B) should be assigned to other sections within the Ordinance.  
17 Mr. LaPlante considered the importance of standard C of the section and asked that it be  
18 retained. Mr. Smith agreed.

19  
20 Board members agreed by a general consensus to eliminate Sec. 19-9-10 (A) and (B),  
21 but to retain subsection C.

22  
23 Mr. Smith said that he would write a memo to the Planning Board stating the  
24 recommendations voiced by the Zoning Board, and he would submit a copy of that memo  
25 to the Board.

26  
27 Mr. Backer asked for a motion to adjourn. Mr. LaPlante made a motion which was  
28 seconded by Mr. Tranfaglia 7 in favor and 0 opposed.

29  
30 Meeting adjourned at 9:07PM.

31  
32  
33 Respectfully submitted,

34  
35  
36 Barbara H. Lamson, Minutes Secretary  
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