

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
50

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

April 22, 2003

7 P.M., Town Hall

Present: David Backer, Chair
Jay Chatmas
Steven LaPlante
Gib Mendelson

Absent: Joseph Guglielmetti
Jack Kennealy
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. The following corrections were requested:

Pg. 2, Line 22 – correct word “meets” to “metes”

With corrections noted and no further amendments, motion was made by Mr. Mendelson to accept the minutes as corrected. Motion was seconded by Mr. LaPlante 4 in favor and 0 opposed.

OLD BUSINESS

None

New Business

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

The applicant had made a request for continuance to the May meeting.

Mr. Backer moved on to the next order of business.

To hear the application of **Ann Kilby, 4 City View Road, Tax Map U03 Lot 53 for a conditional use permit to operate a home business, specifically as a holistic therapist.**

David Lourie, 189 Spurwink Ave, introduced himself as an attorney and friend of the applicants. He was representing the Kilbys who were on a vacation that had been planned months before and could not be cancelled or delayed. Mr. Lourie named the members of the Kilby family and explained the scope of Mrs. Kilby’s holistic healing practice and the proposal to perform some of the business from the home. Three children currently reside at the home, but two adult children would be leaving and Mrs. Kilby planned to use one of the bedrooms for the business. Mrs. Kilby usually has off-site visits with her clients but wanted the option of practicing at her home. The healing sessions take about two hours

1 and she schedules 2-3 per day. Overall the appointments involve about 20-30 hours per
2 week and no evenings. The driveway has parking for six vehicles. Day trips to and from
3 the house would increase, but Mrs. Kilby would combine off-site client visits with usual
4 household errands and therefore keep an increase of trips to a minimum. No signage
5 would be placed at the residence.

6
7 Mr. Backer stated that the Ordinance allowed for no more than a 2% increase in vehicle
8 trips for a home business. Six extra trips per day would already put the application out of
9 conformance. Mr. Lourie stated that the number of business related trips would be offset
10 by the necessary household errands. Mr. LaPlante didn't agree that a trade-off could be
11 construed as a qualified measurement. Mr. Lourie stated that Mrs. Kilby had no plans to
12 expand the business and preferred to limit her clientele. Most of her practice is done in the
13 clients' homes but some do not have a suitable space for her healing techniques.

14
15 Mr. Backer opened the public hearing.

16
17 Mark Zajkowski, 30 Forrest Road, opposed the home business. He cited problems with
18 vehicular activity from the Kilby residence stemming from too many cars parked along the
19 road, late night activity, and congested access into the neighborhood. He presented
20 photos to support his statements. Mr. Zajkowski was also concerned with safety issues
21 noting the large number of small children in the neighborhood and the difficulty of access
22 for emergency vehicles. He presented a signed petition from other residents of the
23 neighborhood who shared in his opposition of the home business. Residents felt the
24 business would put an unfair burden on the neighborhood.

25
26 Mr. LaPlante questioned Mr. Lourie with regard to the traffic activity referenced. Mr. Lourie
27 acknowledged that the Kilby's son was responsible for much of the excessive traffic and
28 late night activity, but stated that the son would be leaving home and the situation would
29 be alleviated.

30
31 Mr. Backer read correspondence he had received from other residents in the
32 neighborhood. He noted that the concerns echoed the issues raised by Mr. Zajkowski with
33 regard to the presence of small children, the congestion of the street, the increased
34 vehicular activity, and the hazard to access by emergency vehicles.

35
36 Mr. Lourie again explained that the situation would change once the son left for a job in the
37 mid-coast area. He made assurances that the Kilbys were cognizant of the neighbor's
38 concerns and would address the vehicular activity. Mr. Lourie felt that the business would
39 create no significant impact on the neighborhood and offered to do a traffic study to
40 support his argument.

41
42 Mr. Backer asked Mr. Zajkowski to comment on the measures presented by Mr. Lourie.
43 Mr. Zajkowski stated that there was no assurance that the son would not return to reside
44 with the parents and recreate the negative situation. He also felt that denying Mrs. Kilby a
45 permit to practice in her home did not present a burden to her business.

46
47 Peter Anderson, 45 Forrest Road, spoke in opposition to the application. He cited the
48 physical characteristics of the neighborhood with its close proximity of houses and narrow
49 streets as a major concern relative to the impact of increased traffic.

1 Mr. Backer closed the public portion of the meeting and asked the Board to vote on the six
2 standards relative to a home business.

3
4 Dr. Chatmas felt that the applicant could not comply with the standards required by the
5 Ordinance with regard to the allowable increase in destination traffic. Mr. LaPlante and Mr.
6 Mendelson agreed with that determination.

7
8 Board members voted on the following findings:

- 9
10 1. The proposed use will not create hazardous traffic conditions when added to
11 existing and foreseeable traffic in its vicinity.
12 0 in favor, 4 opposed, 0 abstained
13
14 2. The proposed use will not create unsanitary conditions by reason of
15 sewage disposal, emissions to the air, or other aspects of its design or operation.
16 N/A
17
18 3. The proposed use will not adversely affect the value of adjacent properties.
19 N/A
20
21 4. The proposed site plan and layout are compatible with adjacent property
22 uses and with the Comprehensive Plan.
23 N/A
24
25 5. The design and external appearance of any proposed building will constitute
26 an attractive and compatible addition to its neighborhood, although it need not have a
27 similar design, appearance or architecture.
28 N/A
29

30 Mr. LaPlante made a motion **to approve the application of Ann Kilby, 4 City View**
31 **Road, Tax Map U03 Lot 53 for a conditional use permit as written.** Motion was
32 seconded by Mr. Mendelson 0 in favor and 4 opposed.

33
34 Motion denied.

35
36 **COMMUNICATION**

37
38 None

39
40 Mr. Backer asked for a motion to adjourn. Mr. Mendelson made a motion which was
41 seconded by Mr. LaPlante 4 in favor and 0 opposed.

42
43 Meeting adjourned at 8:10PM.

44
45
46 Respectfully submitted,

47
48
49 Barbara H. Lamson, Minutes Secretary
50
51