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

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**June 24, 2003**

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

Present: Jay Chatmas, Chair  
Gib Mendelson  
Steven LaPlante  
James Walsh

Absent: Joseph Guglielmetti  
Jack Kennealy  
Michael Tranfaglia

Bruce Smith, the Code Enforcement Officer, was not present for the meeting.

Dr. Chatmas called the meeting to order and asked for comments on the minutes from the previous meeting. The following amendments were requested:

Page 2, Line 45 – Correct spelling of Chatmas

Page 8, Line 27 – strike extra “s” in was

Page 8, Line 33 – correct reference to Zoning Board minutes in 1984

With no further corrections noted, motion was made by Mr. Mendelson to approve the minutes. Motion was seconded by Dr. Chatmas 2 in favor 0 opposed 2 abstained ( Mr. LaPlante and Mr. Walsh were not present for the May meeting)

**OLD BUSINESS**

None

**NEW BUSINESS**

To hear the appeal of **Mike & Jennifer Duddy, 11 Crescent View Ave., Tax Map U16, Lot 41 for a front property line variance of one foot from the required twenty five feet to construct a porch addition at twenty four feet from the front property line.**

Dr. Chatmas advised Mr. Duddy that a full quorum vote would be necessary in order to approve his variance request. With only four Board members present, that would mean a unanimous vote on each of the required elements. Mr. Duddy had the option to table his request to the next regular meeting when there might be more Board members present.

Mr. Duddy asked whether a decision obtained at the present meeting would foreclose any reconsideration should he return to the Board with his request. Dr. Chatmas stated that any decision made by the Board with regard to the appeal would be definite and not open for recourse. Mr. Duddy opted to pursue the appeal.

Before proceeding, Dr. Chatmas wished to disclose the fact that, although he had real estate dealings with one of Mr. Duddy’s co-workers, he did not know the applicant and felt there would be no conflict of interest in presiding over the appeal. Board members were not at issue with the disclosure.

1  
2 Michael Duddy, 11 Crescent View Drive, explained that he was pursuing a variance of  
3 one foot in order to construct a six-foot deep porch onto the front of his home. He  
4 described his neighborhood as an increasingly discovered location where the homes  
5 are being turned over from the original owners and altered to meet the needs of new  
6 families. He described several homes in proximity to his own that had undergone  
7 expansion projects similar to what he was proposing. He described his renovations as  
8 very consistent and in keeping with the current developments in the neighborhood. A  
9 second story and a porch are planned for his home, but the desired depth of the porch  
10 requires a setback variance. Mr. Duddy explained that he had done extensive research  
11 to determine the optimal dimension for the porch, and concluded that six feet provided  
12 the most sufficient use. He referenced a close neighbor who had been granted a similar  
13 variance request two years prior for a greater reduction of setback. The one-foot  
14 reduction would put his setback at 24 feet from the road, which he ascertains is  
15 comparable to six other houses in the neighborhood. Mr. Duddy presented a list of  
16 signatures from surrounding neighbors who supported his variance request.

17  
18 Dr. Chatmas opened discussion to the Board.

19  
20 Mr. Mendelson stated he, as a Board member, had to abide by the Zoning Ordinance,  
21 which requires straightforward proof of practical difficulty and a satisfaction of the  
22 elements which would constitute economic injury. He stated that he had visited the  
23 neighborhood and agreed with Mr. Duddy's assessment of activities there. He asked  
24 regarding the similar variance approval that Mr. Duddy had referenced.

25  
26 Mr. Duddy replied that an approval was granted for 7 Crescent Ave. which is one house  
27 removed from his and basically faces his home. He stated that the approved variance  
28 was formulated as a side setback, which is the same requirement as the front, but  
29 actually constitutes the front of the residence because of the orientation of the building  
30 to the curvature of the road.

31  
32 Dr. Chatmas stated from the records that the approval was in fact a 9-foot front variance  
33 from the required 25 feet, and a 2-foot left side variance from the required 25 feet.

34  
35 Mr. LaPlante asked Mr. Duddy what means he used to determine the 30' setback  
36 measurement from the road ROW. Mr. Duddy replied that he used a 100' tape and  
37 measured from the back property pins to the road and then also from the front corner of  
38 the building to the edge of the lawn. Mr. LaPlante asked whether he knew the width of  
39 the road ROW and Mr. Duddy replied that he did not.

40  
41 Mr. Duddy remarked that he was aware of a stipulation relative to the approval granted  
42 for 7 Crescent Ave. whereas the porch could never become enclosed. He was willing to  
43 abide by a similar stipulation should he be granted an approval. He presented an  
44 amended sketch of the porch design and stated that the porch would remain an open  
45 configuration with no railings.

46  
47 In response to questions from Dr. Chatmas, Mr. Duddy replied that he had lived in the  
48 house for four years. There were no plans to eventually build above the porch. The  
49 project had been discussed with neighbors who approved of the project and

1 encouraged the design as an asset to the building and the ambiance of the  
2 neighborhood. Mr. Duddy stated that a considerable amount of time and thought had  
3 gone into the size and design of the porch to insure the best return for the level of  
4 investment.

5  
6 Mr. LaPlante felt that the application fell short with regard to satisfying the requirements  
7 of the Ordinance and the criteria to support practical difficulty. In his opinion, there was  
8 not a good representation of the comparable characteristics of 10 approximate  
9 properties. Dr. Chatmas noted that, because of the orientation of the neighborhood, a  
10 consideration of side setbacks as well as front setbacks could be interchangeable and  
11 therefore satisfy a comparable determination.

12  
13 Dr. Chatmas opened the floor to public comment.

14  
15 Catherine Miller, 7 Crescent Ave., introduced herself as a neighbor of the applicant. She  
16 stated that as a former member of the Zoning Board she was familiar with the  
17 considerations for a variance approval, but that also, she had recently been granted a  
18 variance approval for a proposal similar to the appeal from the Duddys. Ms. Miller  
19 explained that her request was for a 6' variance to accommodate construction of a farm  
20 porch on the front of her house. By comparison, Mr. Duddy is requesting a one-foot  
21 variance and she considered the supporting criteria similar in both cases. She had, in  
22 her case, successfully explained to the Board why the requirement for practical difficulty  
23 standard had been met. In her opinion the farm porch increased the value of her  
24 property. A variance denial would have interfered with any consideration for renovations  
25 in the future and impact the sale of her home, thereby creating economic injury. She  
26 considered the setback afforded by the approval to be consistent within the  
27 neighborhood and held that, by her variance approval, a precedent had been set. She  
28 attested to the fact that the Duddys had done an extensive amount of consulting with  
29 regard to the neighbors' opinions, as well as the configuration of the porch.

30  
31 Dr. Chatmas asked Ms. Miller which of the variances granted her affected the  
32 construction of the porch. She replied that the 6' variance from the front setback was  
33 granted to accommodate the porch. The variance reduced the setback from the road  
34 from 22 feet to 16 feet.

35  
36 Ms. Miller stated that, in her opinion, the standard in both cases was the same and that  
37 a precedent had been set.

38  
39 With no other persons coming forward, Dr. Chatmas closed the public hearing.

40  
41 Mr. Walsh raised a question with regard to the exactness of the measurements  
42 involved. Dr. Chatmas agreed that by not having a standard boundary survey, which is  
43 not a requirement of the applicant, the measurements would not constitute an exact  
44 determination. The mortgage survey provided by the applicant depicted a 30-foot  
45 setback along the front but does not determine where the boundary exists relative to the  
46 road ROW.

47  
48 Mr. Mendelson agreed with the reservations voiced by Mr. LaPlante relative to meeting  
49 the standards for practical difficulty, but felt that the request did not conflict with the

1 flavor of the neighborhood and recognized the precedent set by the similar approval  
2 granted for the Miller property.

3  
4 Dr. Chatmas read the paragraph from the Ordinance constituting economic injury and  
5 considered that the application met a consistent comparison with neighboring  
6 properties. Mr. LaPlante agreed that with regard to the porch, Mr. Duddy could make a  
7 comparison to other properties within the neighborhood. He argued, however, that the  
8 Duddys could have a porch regardless of the variance ruling and so would not be put at  
9 a disadvantage. The porch could not be six feet in depth, but five. He maintained that  
10 with regard to the reduced setback requested, the applicant did not show the  
11 comparisons necessary to satisfy the standard. Mr. LaPlante stated that he felt it more  
12 pertinent to enforce the Ordinance as it should be interpreted and not simply follow a  
13 precedent.

14  
15 Dr. Chatmas agreed that the goal of the Board should be to enforce the Ordinance  
16 consistently, and recognized that the Board has reached a better understanding and  
17 interpretation of the Ordinance standards since the ruling for the Miller property. He felt,  
18 however, that the setback reduction was consistent with the neighborhood.

19  
20 Ms. Miller stated that although the Ordinance standard for undue hardship was fairly  
21 new when her variance request was presented to the Board, her case was not the first.  
22 She noted that no court rulings have challenged the interpretations made by the Board  
23 and she defended the arguments which she initially presented for her variance request.  
24 Ms. Miller felt that the precedent set by her approval and the similar facts constituting  
25 the Duddy request should render a consistent interpretation and ruling. She argued that  
26 the reduced size of the porch prevents its full sufficient use and therefore causes  
27 significant economic injury. She maintained that the comps were substantiated for the  
28 surrounding properties in the neighborhood when her application was approved and that  
29 the Duddys were submitting a better representation of those findings. Ms. Miller pressed  
30 the Board to deliver a consistent ruling with regard to the Duddy application.

31  
32 Dr. Chatmas asked Ms. Miller how she had obtained the measurements used in her  
33 application and subsequently, the submission by Mr. Duddy. Ms. Miller replied that she  
34 had taken some measurements directly from properties where she was allowed access.  
35 Other measurements were gleaned from Town documents and some from dead  
36 reckoning with respect to the layout of the lots within the neighborhood. She admitted  
37 that the front line setbacks were an estimation but noted that the Board does not require  
38 a full survey for application submissions.

39  
40 Mr. LaPlante was not satisfied with the vague determination for the road frontage. He  
41 questioned Mr. Duddy about the measurement determined for his property and  
42 presented the option of tabling the application until the next regular meeting in order to  
43 allow the applicant an opportunity to secure a more definite figure relative to the road  
44 ROW. Mr. Duddy was disinclined to table the request and considered that the Board  
45 had enough relative information to make a determination on his behalf. He held that his  
46 request was consistent with the character and nature of the neighborhood. Mr. Duddy  
47 stressed the fact that the size of the porch rested on the variance approval and its size  
48 was of significant import. He stated that without the variance, he most probably would  
49 not incur the cost involved in constructing a porch unsatisfactory in size.

1  
2 Dr. Chatmas was of the opinion that the measurements and documentation submitted  
3 for the neighborhood in general satisfied a comparable consideration. He opened the  
4 floor to parties in opposition to the variance request. No one came forward.  
5

6 Dr. Chatmas asked the Board to vote on the eight elements required for approval noting  
7 that a majority vote in the affirmative for each element was necessary for the approval  
8 to be granted. With only four Board members in attendance, the vote would have to be  
9 unanimous for each element.  
10

## 11 **FINDINGS OF FACT**

12  
13 The appellants are owners of a property at 11 Crescent View Ave, Tax Map U16, Lot 41  
14

15 The property is located in a Residential A District and contains 8600 sf of land area  
16 with 100 ft. street frontage, and is therefore a nonconforming lot of record.  
17

## 18 **CONCLUSIONS**

- 19
- 20 1. The proposed variance is not a substantial departure from the intent of the  
21 Ordinance.  
22 4 in favor, 0 opposed  
23
  - 24 2. A literal enforcement of the Ordinance would cause a practical difficulty.  
25 3 in favor, 1 opposed  
26
  - 27 3. The need for the variance is due to the unique circumstances of the property and  
28 not to the general conditions of the neighborhood.  
29 4 in favor, 0 opposed  
30
  - 31 4. The granting of the variance will not produce an undesirable change in the  
32 character of the neighborhood and will not unreasonably detrimentally affect the  
33 use or market value of abutting properties.  
34 4 in favor, 0 opposed  
35
  - 36 5. The practical difficulty is not the result of action taken by the applicant or a prior  
37 owner.  
38 4 in favor, 0 opposed  
39
  - 40 6. No other feasible alternative to a variance is available to the petitioner.  
41 3 in favor, 1 opposed  
42
  - 43 7. The granting of a variance will not unreasonably adversely affect the natural  
44 environment.  
45 4 in favor, 0 opposed  
46
  - 47 8. The property is not located in whole or in part within shoreland areas as  
48 described in Title 38, section 435.  
49 4 in favor, 0 opposed

1  
2 **JUDGEMENT**  
3

4 Whereas the Cape Elizabeth Zoning Board of Appeals has found that the applicant has  
5 failed to meet the applicant's burden of proof in establishing that all conditions specified  
6 in the Ordinance are met, the application for Michael and Jennifer Duddy for a front line  
7 property variance as written is denied.  
8

9 Dr. Chatmas introduced the next order of business:  
10

11 To hear the request of **Richard P. Barker, 4 Boathouse Lane, Tax Map R03, Lot 9H**  
12 **to reconstruct an existing structure within 75 feet of the high water line of the**  
13 **Atlantic Ocean.**  
14

15 Mr. Barker introduced himself and explained that he and his wife, Julie, are summer  
16 residents at 4 Boathouse Lane. He also introduced his building contractor, Donald  
17 Haynes. Mr. Barker stated that he had purchased his cottage the previous year and that  
18 the land where the cottage is situated in Peabbles Cove is leased. Mr. Barker said that  
19 after the purchase he had discussed with the landowner, several contractors, and the  
20 Town Officials what his options or restrictions would be with regard to renovations. He  
21 understood, as a result of these discussions, that because the cottage is within 75' of  
22 the high water mark, the existing footprint of the cottage or deck could not be changed.  
23 He also understood that any cubic increase of volume of the living area could not  
24 exceed 30%. Mr. Barker stated that any changes to the cottage would also have to be  
25 approved by the landowner and neighbors. Subsequently, the Barkers decided to  
26 replace the aluminum siding with cedar shakes, replace the roof shingles, a door and  
27 some windows, and rebuild a shed roof which was over the sun porch. The new roof  
28 would be trussed and the height and pitch would be consistent with the existing roof on  
29 the cottage. Mr. Barker stated that the plans did not change the footprint of the cottage,  
30 nor increase the volume beyond the Ordinance standard. The renovations were  
31 approved by the landowner and neighbors. Mr. Barker hired Donald Haynes who  
32 assessed the structure and advised that new roof trusses should be placed on another  
33 two thirds of the cottage, and an east wall rebuilt to provide better support. When Mr.  
34 Haynes applied for and was granted the original building permit, the full scope of the  
35 work was not anticipated. After the full assessment of the repairs, it was determined that  
36 the project had grown to a reconstruction level that would require a Zoning Board ruling.  
37 Mr. Barker apologized for submitting his application to the Board after the fact, but  
38 explained that he was unaware of the implications respective to expanding the project  
39 until after Mr. Smith had been called to the site for an initial inspection. He asked that  
40 the Board consider the application for the following reasons:  
41

- 42 1. The footprint of the existing cottage foundation and deck will not change.
- 43
- 44 2. The square footage will not increase.
- 45
- 46 3. The placement of the cottage on the lot is fixed.
- 47
- 48 4. The lot is on public water and sewer.
- 49

1 5. The improvements to the cottage are in keeping with the neighborhood at  
2 Peabbles Cove.

3  
4 6. All criteria are within the guidelines of Application C.

5  
6 Mr. Barker presented, at the request of a neighbor, a revised sketch plan to better  
7 delineate the placement of the deck respective to his assigned lot. For the record, there  
8 is no issue with his neighbor regarding the deck.

9  
10 Mr. LaPlante wanted clarification on the leased aspect of the property. Mr. Barker  
11 explained that the land has been in the ownership of one family for many years and they  
12 continue to hold title to the land. The cottages have been sold but are preserved  
13 through restrictions placed within the covenants of ownership.

14  
15 Mr. LaPlante asked for the determination of the high water mark. Mr. Barker stated that  
16 an existing ledge pin, which is depicted on the site plan, was an accepted reference  
17 point.

18  
19 Dr. Chatmas opened the floor to public comment.

20  
21 Donald Haynes, the applicant's contractor, stated that he was unaware of the 50%  
22 Ordinance rule with regard to reconstructing of a property. Given the location of the  
23 cottage, he assumed its assessed value was greater, and he did not know that the land  
24 was leased.

25  
26 Joagnes Pasquarella, 6 Boathouse Lane, is a neighbor and had requested Mr. Barker  
27 present the site drawing which depicts the placement of his deck. She explained that  
28 her only intent in having the site plan submitted was for an historical record should the  
29 deck ever require reconstruction. She approved of the renovations and hoped that the  
30 Board would consider granting an approval.

31  
32 Dr. Chatmas made comment that the Board in granting an approval would not be  
33 making a determination with regard to property lines. Ms. Pasquarella understood, but  
34 wanted to make use of the hearing to historically reference the site plan submission.

35  
36 With no other persons coming forward, Dr. Chatmas closed the public hearing.

37  
38 Dr. Chatmas stated that the scope of the work entailed normal wear and tear, but noted  
39 that two elements were relevant to the application. The size of the lot would not allow for  
40 any replacement of the dwelling, and the physical condition of the foundation was  
41 adequate, therefore, general maintenance was allowable in this situation. The  
42 construction cost respective to the value of the structure was the factor for a Zoning  
43 Board ruling.

44  
45 Mr. LaPlante was inclined to grant approval given that the square footage of the  
46 structure would not change the footprint of the foundation. His favor also weighed in on  
47 the approval of the landowners and the neighbors. Mr. Walsh concurred and felt that the  
48 Barkers had spent a significant amount of time working with all parties concerned.

1 Dr. Chatmas reviewed the elements of the conclusion relevant to the case and noted  
2 that public utilities do run underneath the property and the foundation is in good form.  
3  
4 Dr. Chatmas requested a motion.  
5  
6 Mr. Mendelson made a motion **to approve the application of Richard P. Barker of 4**  
7 **Boathouse Lane, Tax Map R03, Lot 9H, to reconstruct an existing structure within**  
8 **75 feet of the high water line of the Atlantic Ocean.**  
9  
10 Motion was seconded by Mr. LaPlante 4 in favor and 0 opposed.  
11  
12 No communications were presented.  
13  
14 Dr. Chatmas asked for a motion to adjourn.  
15  
16 Motion was made by Mr. LaPlante and seconded by Mr. Mendelson 4 in favor and 0  
17 opposed.  
18  
19 Meeting adjourned at 8:55PM.  
20  
21  
22  
23 Respectfully submitted,  
24  
25 Barbara H. Lamson, Minutes Secretary  
26  
27  
28  
29