

TOWN OF CAPE ELIZABETH  
ZONING BOARD MEETING  
MARCH 23, 2004

PRESENT: Stephen LaPlante  
Joseph Guglielmetti  
James Walsh  
Michael Tranfaglia  
Gib Mendelsohn  
Dr. Jay Chatmas, Chair

Also present was Bruce Smith, Code Enforcement Officer.

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 4 - adding "the addition"  
Page 3, Line 1- correct word "apply" to "reapply"  
Page 3, Line 2 – add the word "be" prior to " the use of space"

With corrections noted and no further amendments, motion was made by Mr. Walsh to accept the minutes. Motion was seconded by Mr. LaPlante 5 in favor and 0 opposed. (Mr. Guglielmetti was absent from the meeting.)

Dr. Chatmas announced that Mr. Kennealy ended his membership with the Zoning Board to fill a vacated Planning Board position. There will be voting on a new Secretary at the end of the meeting.

**NEW BUSINESS**

To hear the request of **Kathryn Robinson, 5 Oakwood Rd, Tax Map U24, Lot 24 for a conditional use permit to operate a home business, specifically a therapeutic massage office treatment room.**

Bill Nugent introduced himself as Attorney for Kathryn Robinson, 75 Pearl St., Suite 216, Portland, Me. He stated that the conditional use permit the applicant is seeking would be very low impact on the neighborhood. The applicant would have no more than 5 clients in a day, which would add 10 additional vehicle trips on Oakwood Rd. There would not be delivery trucks and there would not be any unsanitary sewage disposal. He submitted that there would be no adverse change in property values as the practice is invisible in neighborhood. Parking would not be an issue as only one client will be there at a time. The only other change would be a small brass plaque that would be below house number. Mr. Nugent turned the podium over to Ms. Robinson.

Kathryn Robinson, 5 Oakwood Rd, spoke of the letter she wrote to the Board and would field any questions. She wanted the Board to know that she could not see the amount of clients to support an office space so she would be unable to practice at all if she was unable to do so out of her home. She read a letter from Doug McCallister, 1 Oakwood Rd, in support for her to have the practice out of the home. Ms. Robinson stated that she had some clients present that would speak about her practice and the inconvenience of doing massages in their homes.

Mr. Guglielmetti asked Ms. Robinson what the profiles were of her clients.

Ms. Robinson answered that she has two types of clients. The first type of clients receive relaxation massages and are typically from word of mouth. She also has clients referred to her from physicians and chiropractors with specific problems.

Mr. Walsh asked about the reference in the submission concerning the two-hour interval.

1 Ms. Robinson tries to keep clients separated by a two-hour minimum due to resetting the room, write notes  
2 from prior client, and to read any documentation she may have on the incoming client.  
3  
4 Mr. LaPlante asked about the separate room and how it would be set up.  
5  
6 Ms. Robinson said that clients would enter through the living room into a small bedroom. Across from the  
7 bedroom is a bathroom that is set aside for the clients. There is a changing area behind a screen and the  
8 massage table is in the middle of the room.  
9  
10 Mr. LaPlante asked about parking spaces since it appeared there are only 2 spaces in driveway.  
11  
12 Ms. Robinson stated that the driveway is long enough to fit 4 cars and she normally parks her car in the  
13 garage.  
14  
15 Dr. Chatmas asked if she dealt with medications at all.  
16  
17 Ms. Robinson stated no.  
18  
19 Dr. Chatmas asked if she had been practicing full time since January or seeing 5 patients a day since  
20 January.  
21  
22 Ms. Robinson stated no.  
23  
24 Dr. Chatmas asked how she would get clients.  
25  
26 Ms. Robinson stated word of mouth and by Physician referral.  
27  
28 Dr. Chatmas asked how she would screen a client that wasn't a referral from a doctor's office.  
29  
30 Ms. Robinson said they had a lot of specific training on that from the school. She stated that there are  
31 specific inappropriate questions that could be asked. She has training to deal with a client if it were to turn  
32 and appropriate so neither the client or she would be injured.  
33  
34 Dr. Chatmas asked why she was requesting such lengthy hours from 9 a.m. to 9 p.m. and what kind of  
35 impact would happen if she were to limit it.  
36  
37 Ms. Robinson answered that a lot of people cannot get off from work to get a massage. She may have  
38 clients that she would accommodate at 7 p.m. She also stated that she does not want to work every night  
39 and prefers to practice during the day.  
40  
41 Mr. Walsh asked how someone gets licensed to practice.  
42  
43 Ms. Robinson said Maine has stringent rules, that includes school with a certain number of hours and you  
44 apply for a license. Every five years she has to get her license renewed with ongoing courses.  
45  
46 Dr. Chatmas thanked the applicant for presentation and opened the Public Hearing.  
47  
48 Pat Salve-Bothel, 90 Ocean House Road, has known the applicant for 6 years. She relayed the disruptions  
49 that occur from having to have therapy at her home as opposed to a room designed for that specific  
50 purpose. She wanted the Board to understand that the applicant does have another job at the moment,  
51 working ½ days at the high school. Mrs. Bothel wanted all to understand that her equipment is bulky to  
52 transport and that this business would not be disruptive to the neighborhood.  
53  
54 Stephen Bothel, 90 Ocean House Road, wanted to make clear that he wouldn't even be speaking in favor of  
55 the applicant if he believed this would negatively impact the neighborhood as he knows so many people in  
56 the general area. The distractions that occur when she travels to their house are overwhelming and not

1 conducive to a relaxing atmosphere needed for a massage. He does not believe such a business would even  
2 be noticed especially since just one car is there at a time.

3  
4 Dr. Chatmas thanked Mr. Bothel and asked if anyone else in favor would like to speak. Hearing none, he  
5 opened the floor for citizens in opposition.

6  
7 Rita Ready O'Donovan, 6 Chambers Road, described Chambers and Oakwood Roads and the necessity for  
8 residents on Oakwood Rd to use Chambers Rd. The roads are narrow and kids cannot walk on side of road  
9 when two cars pass due to lack of room. She does not think that a business that is going to generate traffic  
10 is appropriate for that small neighborhood.

11  
12 Keith Citrine, 7 Chambers Road, has lived there most of his life and had previously submitted a letter dated  
13 March 18, 2004 in opposition. He is very concerned about the increase in traffic that would occur from  
14 this business as well as parking. He has concerns with the business decreasing property values and her  
15 being compliant with any standards set by the Board. He asked the Board to deny the application for the  
16 primary reason of child safety issues and submitted pictures showing how steep and narrow the roads are.

17  
18 Dr. Chatmas asked if the Town maintained the road.

19  
20 Mr. Citrine said yes.

21  
22 Mr. LaPlante asked if there was another business of Oakwood Road and what was it.

23  
24 Mr. Citrine stated yes, someone makes jewelry.

25  
26 Dr. Chatmas asked if he knew if there had been any accidents since 1957.

27  
28 Mr. Citrine answered that he was not aware of any.

29  
30 Dr. Chatmas asked if he had petitioned the Town concerning the issue prior to tonight.

31  
32 Mr. Citrine answered yes; he had approached Michael McGovern and the police department. They had  
33 tried to get speed bumps on the road but it was paved instead.

34  
35 Dr. Chatmas asked if paving had alleviated the traffic concern.

36  
37 Mr. Citrine stated not really.

38  
39 Ed Dilworth, 10 Clinton Rd, requests that the Board deny the application. The basis for this request is in his  
40 opinion is that Ms. Robinson does not follow rules, regulations or conditions. He stated that her dogs are  
41 repeatedly in their yard; they have called the police who have told him it is an ongoing problem. He stated  
42 that her children had also cut down trees on his property and put up a swing. He said they had discussed  
43 the property lines and he showed her where they existed. She then had more trees cut. He sued and part of  
44 the settlement was that she have her land surveyed, plant trees along the property line, and she had to pay  
45 damages. He reiterated his belief that Ms. Robinson will do whatever she wants regardless of rules.

46  
47 Connie Turcotte, 9 Oakwood Road, has lived there since 1956. She submitted to the Board 29 signatures of  
48 people in the neighborhood who were opposed the massage parlor. She saw an ad in the Cape Courier for  
49 her business and contacted Mr. Smith and he was going to contact her. Since 1999 she has had a running  
50 battle with Ms. Robinson due to her dogs running at large. She does not believe that Ms. Robinson will  
51 follow any stipulation put on by the Board. She may want to sell her house and if there is a massage parlor  
52 next door she thinks it will certainly affect the value of her house. This business would definitely generate  
53 a lot more traffic on a one-lane street.

54  
55 Dr. Chatmas asked for a five-minute recess.

1 Jane Parrish, 6 Oakwood Road, works for a physician's office and stated that she is well aware that clients  
2 are never on time and schedules rarely run on time. She said that her biggest issue is traffic. There are a lot  
3 of kids in the neighborhood and she is worried that the extra traffic combined with the danger of the road is  
4 hazardous. She hopes the best for Ms. Robinson's career but doesn't want it in her neighborhood.

5  
6 Dr. Chatmas asked Ms. Parrish if there were any times that would be acceptable.

7  
8 Ms. Parrish stated 10a.m. to 3p.m. during the school year.

9  
10 Connie Burns, 8 Oakwood Road, has lived there 23 years. She is very concerned about traffic and children  
11 in the neighborhood. She is also concerned the business negatively effecting the value of her property. She  
12 isn't sure that Ms. Robinson would comply with any restrictions set by the Board and who would monitor  
13 it.

14  
15 Dr. Chatmas asked if there were any times that would be acceptable to her.

16  
17 Ms. Burns said no.

18  
19 Dr. Chatmas wanted everyone to know that they cannot make a judgment based on past history; they are  
20 obligated to make a judgment on the current application based on current standards.

21  
22 Joan Fortin, Attorney at Bernstein, Sur, Sawyer & Nelson, had submitted a letter to the Board dated March  
23 19, 2004, and would like to highlight a portion of it. She believes that Oakwood Rd is inappropriate for  
24 extra vehicular travel. She questioned if the bedroom would be the only room used for the business as she  
25 mentioned she interviews the clients before going into the massage room. She wanted to remind the Board  
26 that the burden of proof is on Ms. Robinson, not on the neighborhood. She mentioned that her first trip on  
27 Oakwood Rd recently made her see the concern for traffic and children in the neighborhood as the pitch of  
28 the road and having only one lane is potentially dangerous.

29 She said that in all due respect, because there hadn't been an accident yet would be little comfort if one  
30 occurred. She pointed out that she would have to have a handicapped accessible parking space. Ms. Fortin  
31 stated that under Maine law it is legitimate for property owners to testify to the value of their own home.  
32 She also wanted to testify that she thought that the hours requested were too long.

33  
34 Dr. Chatmas wanted Ms. Fortin to know that the property is nonconforming however the business is an  
35 accessory use, which is permitted. He stated again that prior compliance is not something the Board can  
36 rule on.

37  
38 Dr. Chatmas asked if there were any more comments. Hearing none, he asked if Ms. Robinson would  
39 answer to why an advertisement ran in a newspaper after being told not to and why she had said that there  
40 would be one room dedicated to massage but spoke of talking to clients in another room prior to massage.

41  
42 Mr. Nugent wanted the Board to know that there wasn't any address in the ad; it did not specify that any  
43 massage would be in her home. He also wanted to speak of the issue with Mr. Dilworth and that it is not  
44 germane with the issue at hand and that there are two sides to every issue. He turned the podium over to  
45 Ms. Robinson to answer Dr. Chatmas.

46  
47 Ms. Robinson stated that she forgot to call the Cape Courier and cancel ad. She said that when she initially  
48 meets a client she would speak to them at the dining room table as it is less threatening and the light is  
49 better. She also clarified that she hadn't been seeing clients because she wasn't ready. The people that  
50 have been going to her house were not paying clients. She has also had a Doctor and a Chiropractor at the  
51 house so they could see how she would run the business.

52  
53 Dr. Chatmas asked Ms. Robinson how detrimental it would be if her business hours were restricted.

54  
55 Ms. Robinson stated that it would be extremely difficult with school hours. She wouldn't mind regular  
56 working hours with perhaps one night a week to accommodate some clients.

1  
2 Mr. Tranfaglia asked what would happen if someone popped in to see if they could get a massage on the  
3 spare of the moment or as a walk in.  
4

5 Ms. Robinson stated she would say that she is sorry, but she is not ready. She said that if she is not prepared  
6 and centered it would not be a good experience for the client.  
7

8 Mr. Mendelsohn asked if she would ever put her address in an ad in the media.  
9

10 Ms. Robinson answered no, she would not want strangers to just approach her.  
11

12 Dr. Chatmas asked if there were any more comments. Hearing none, he closed the public hearing.  
13

14 Dr. Chatmas stated that the discussion centered around two issues. One is traffic; the other is value of  
15 adjacent properties. He said that currently the traffic is less than ideal and according to the ordinance she  
16 would comply. He believes that the street is possibly hazardous as it stands now.  
17

18 Mr. LaPlante stated that it would carry some weight with him personally if there were a business on a street  
19 in a neighborhood that he was thinking of buying into.  
20

21 Mr. Tranfaglia said that it is a small neighborhood and is dangerous especially for children and any  
22 additional vehicles are adding to a bad situation. He stated the value of property is speculative but having  
23 customers come to a home has a greater impact than one without.  
24

25 Dr. Chatmas asked if there were any other comments. Hearing none he asked the Board to vote.  
26

- 27 1. The proposed use will not create hazardous traffic conditions when added to existing and  
28 foreseeable traffic in its vicinity.  
29 2 in favor, 3 opposed, 1 abstained.  
30
- 31 2. The proposed use will not create unsanitary conditions by reason of sewage disposal, emissions to  
32 the air, or other aspects of its design or operation.  
33 5 in favor, 0 opposed, 1 abstained.  
34
- 35 3. The proposed use will not adversely affect the value of adjacent properties.  
36 2 in favor, 3 opposed, 1 abstained.  
37
- 38 4. The proposed site plan and layout are compatible with adjacent property uses  
39 and with the Comprehensive plan.  
40 5 in favor, 0 opposed 1 abstained.  
41
- 42 5. The design and external appearance of any proposed building will constitute an  
43 attractive and compatible addition to its neighborhood, although it need not have a  
44 similar design, appearance or architecture.  
45 5 in favor, 0 opposed, 1 abstained.  
46

47 Dr. Chatmas stated that items 1 and 3 failed and asked for a motion.  
48

49 Mr. Mendelsohn stated that the application for Kathryn Robinson be approved.  
50

51 Dr. Chatmas stated based on the vote, motion is denied.  
52

53 Dr. Chatmas asked that he would accept nominations for secretary. Mr. Walsh would like to nominate Gib  
54 Mendelson. Mr. LaPlante seconded that motion.  
55

56 Dr. Chatmas stated the next meeting date is April 27<sup>th</sup>. He asked for a motion to adjourn.

1

2 Mr. Walsh made a motion to adjourn and Mr. LaPlante seconded.

3

4 Meeting adjourned at 9:50 p.m.

5

6 Respectfully Submitted,

7 Laurie Palanza