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

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**MAY 25, 2004**

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**7:00 p.m., TOWN HALL**

8 Present: Jay Chatmas, Chair  
9 Stephen LaPlante  
10 Len Gulino  
11 Gib Mendelson  
12  
13

Absent: Michael Tranfaglia  
Joseph Guglielmetti  
James Walsh

14 Mr. Chatmas called the meeting to order and asked the Board members to introduce  
15 themselves. He asked for comments on the minutes from the previous meeting. The  
16 following amendments were requested:  
17

18 Page 1, Line 46- change “do” to “see”.

19 Page 3, Line 2- change “inappropriate” to “and appropriate”.

20 Page 7, Line 34- insert after the words street is, the word “possibly”.

21 Page 7, Line 35- insert period after the word “now” and delete rest of sentence.  
22

23 Mr. Chatmas asked for a motion.  
24

25 Mr. Gulino made a motion to approve with amendments. Mr. LaPlante seconded 3 in  
26 favor, 0 opposed, 1 abstained.  
27

28 Mr. Chatmas stated that four Board Members present would be a quorum. He explained  
29 that a simple majority of members is all that is required to approve the business before  
30 the Board this evening.  
31

32 Mr. Chatmas welcomed Mr. Gulino as the newest member to the Board. He is replacing  
33 Mr. Kennealy, who has transferred to the Planning Board.  
34

35 **NEW BUSINESS**  
36

37 To hear the request of **Barbara Gulino, 5 Park Circle, Tax Map U54, Lot 15C for a**  
38 **conditional use permit to operate a home business, specifically culinary consultation,**  
39 **private instruction, and writing.**  
40

41 Mr. Chatmas stated that there would be only three members on the board that could vote  
42 on the request, as Mr. Gulino must recuse himself. He asked Mrs. Gulino to approach the  
43 podium. He stated that she had the option to delay the case until more members are  
44 present.  
45

46 Mrs. Gulino stated she does not object to only three Board members.

1  
2 Mr. Chatmas stated that anyone in audience could also object to only three members  
3 hearing the request. With no objections forthcoming, he asked the applicant to state her  
4 business before the Board.  
5  
6 Barbara Gulino, 5 Park Circle, has a business called Camp Chaos from Maine. She also  
7 conducts culinary consultation, private instruction, and food writing. She would like to  
8 have a home business so she could perform private culinary classes as well as interview  
9 people for her writing.  
10  
11 Mr. Chatmas opened the meeting to questions from the Board.  
12  
13 Mr. La Plante asked if she expected a great deal of traffic from business.  
14  
15 Mrs. Gulino stated no, she anticipates 18 clients per month, equating to 36 monthly trips.  
16 All parking would be off street.  
17  
18 Mr. Mendelson asked if she would have group classes.  
19  
20 Mrs. Gulino does anticipate group classes with no more than 6-8 people per class.  
21  
22 Mr. Chatmas stated that the ordinance mandates there not be more than 10 trips per day  
23 so that would equate to 5 students per class, assuming everyone came individually.  
24  
25 Mrs. Gulino agreed to 10 vehicle trips per day.  
26  
27 Mr. LaPlante asked Mr. Chatmas if the vote had to be unanimous for the application to  
28 pass.  
29  
30 Mr. Chatmas stated that a simple majority vote is needed to pass or fail.  
31  
32 Mr. Chatmas asked how the applicant would procure customers.  
33  
34 Mrs. Gulino stated she has an online newsletter, and a large following of people she has  
35 known from being a cooking instructor.  
36  
37 Mr. Chatmas asked if the applicant could clarify the business hours she is requesting.  
38  
39 Mrs. Gulino specified the time period she has requested (Mon.-Sat. 9:00A.M.-  
40 10:00A.M.), were hours she would like to be able to work. She would not be seeing  
41 clients that whole time and intends to do a large amount of writing. She is expecting to  
42 hold classes 2-3 times a month. She stated she has two children with disabilities and this  
43 would be an ideal way for her to work at home and meet the needs of her children.  
44  
45 Mr. Chatmas asked if she intended to increase her business.  
46

1 Mrs. Gulino stated that she has a manuscript due in December with 2 more book offers  
2 on the table. If her books do well, then her focus would remain there. If not, and there  
3 becomes a greater demand for her cooking classes, then she would look to other options  
4 outside her home to facilitate them.

5  
6 Mr. Mendelson asked about odor from the kitchen permeating the neighborhood.

7  
8 Mrs. Gulino stated that most food odor is contained in the home, which is properly  
9 ventilated.

10  
11 Mr. Mendelson asked if she would be doing catering.

12  
13 Mrs. Gulino stated no.

14  
15 Mr. LaPlante asked if she would be using the existing kitchen.

16  
17 Mrs. Gulino stated yes.

18  
19 With no further questions from the Board, Mr. Chatmas opened the Public Hearing.

20  
21 With no one forthcoming, Mr. Chatmas closed the Public Hearing and opened discussion  
22 amongst the Board.

23  
24 Mr. LaPlante stated he thought that this would be low impact to the neighborhood.

25  
26 Mr. Chatmas asked Mrs. Gulino if she could possibly limit number of days per week with  
27 the 9am to 10pm hours for business.

28  
29 Mrs. Gulino stated that she could limit class nights to Tues. – Friday with classes ending  
30 at 9:00pm and Saturday hours from 9-5.

31  
32 Mr. Chatmas stated the following conditions prior to the vote.

- 33  
34 **1. No more than 5 vehicles on any single day.**  
35 **2. Limit Saturday hours from 9:00a.m. until 5:00p.m.**

36  
37  
38 **CONCLUSIONS**

- 39  
40 1. The proposed use will not create hazardous traffic conditions when added to  
41 existing and foreseeable traffic in its vicinity.  
42 3 in favor, 0 opposed, 0 abstained  
43  
44 2. The proposed use will not create unsanitary conditions by reason of  
45 sewage disposal, emissions to the air, or other aspects of its design or operation.  
46 3 in favor, 0 opposed, 0 abstained

- 1  
2 3. The proposed use will not adversely affect the value of adjacent properties.  
3 3 in favor, 0 opposed, 0 abstained  
4  
5 4. The proposed site plan and layout are compatible with adjacent property  
6 uses and with the Comprehensive Plan.  
7 3 in favor, 0 opposed, 0 abstained  
8  
9 5. The design and external appearance of any proposed building will constitute an  
10 attractive and compatible addition to its neighborhood, although it need not have a  
11 similar design, appearance or architecture.  
12 3 in favor, 0 opposed, 0 abstained

13  
14 **JUDGMENT**

15  
16 Mr. Chatmas asked for a motion.

17  
18 A motion was made by Mr. Mendelson and seconded by Mr. LaPlante to approve  
19 the application for a conditional use permit to operate a home business with the two  
20 conditions previously discussed.

21  
22 Mr. Chatmas introduced the second item under New Business.

23  
24 To hear the request of **Theodore Cherbuliez, MD, 18 Smugglers Cove Road, Tax Map**  
25 **U10, Lot 42, for a conditional use permit to operate a home business, specifically**  
26 **psychiatric consultation.**

27  
28 Susan Cherbuliez, Scarsdale, New York, stated they were in the process of buying the  
29 house from the Curtis's to move closer to their children. She said they had a psychiatric  
30 consulting business in their home in N.Y. for 42 years. Her husband does not want to  
31 work a lot due to age and the fact he teaches in Switzerland twice a year. She stated they  
32 also did not want to move to where the business would not be wanted.

33  
34 Mr. Chatmas thanked the applicant and opened the Board to questioning.

35  
36 Mr. Chatmas asked Mrs. Cherbuliez how they would obtain patients.

37  
38 Mrs. Cherbuliez said through referrals.

39  
40 Dr. Chatmas asked if there would be medicine stored on site.

41  
42 Mrs. Cherbuliez stated no.

43  
44 Mr. Chatmas stated that it had been brought to the Board's attention that her husband is  
45 involved with apitherapy, or using bees for medical use.  
46

1 Mrs. Cherbuliez stated that it is not part of the psychiatric practice at all. They merely  
2 keep bees.

3 Mr. Chatmas stated that if apitherapy were part of the business it would be considered  
4 outside storage, which is not permitted under the Ordinance.

5

6 Mrs. Cherbuliez stated that the Zoning Board in Scarsdale, New York considered the  
7 keeping of bees a hobby. She stated she would be willing to meet with anyone with  
8 concerns about the beekeeping.

9

10 Mr. Gulino asked if Dr. Cherbuliez utilized bees in any part of his Psychotherapy.

11

12 Mrs. Cherbuliez stated “no”.

13

14 Mr. Gulino asked about parking.

15

16 Mr. Cherbuliez stated that patients would park in the driveway.

17

18 Mr. LaPlante asked if there would be a specific entry.

19

20 Mrs. Cherbuliez stated yes, the entry would open to an office and a lavatory.

21

22 Mr. Chatmas thanked the applicant, and opened the Public Hearing. He asked that anyone  
23 in favor of the application to please come forward. Hearing none, he asked for opponents  
24 to approach the podium.

25

26 Paul Hanly, 17 Smugglers Cove Road, stated the road is very busy because of the  
27 interesting street name. His concern is of a poor traffic situation being made worse.  
28 He also mentioned the large snow banks in the winter, when maneuvering vehicles is  
29 very difficult.

30

31 Leah Osborne, 16 Smugglers Cove Road, is concerned about parking and traffic. She is  
32 worried about the children that play in the area.

33

34 Susan Mitchell, 8 Smugglers Cove Road, stated it is a very narrow street. She said it is a  
35 small, dense neighborhood with children present. She is concerned with people not  
36 knowing the street and the potential hazards from their driving, especially in winter with  
37 snow banks. She does not see this as being compatible with the neighborhood. She is  
38 also concerned that there is a possible connection with the bees and the psychiatric  
39 practice.

40

41 Mr. Chatmas stated that they have to take the applicant at their word that the apitherapy is  
42 not connected with psychiatric purposes.

43

44 Mr. Mendelson asked Mrs. Mitchell if she is opposed to the home business in general or  
45 is it the impact of traffic.

46

1 Mrs. Mitchell stated her biggest concern would be traffic and is concerned with the  
2 devaluation of properties.

3  
4 Catherine Bacastow, 1 Smugglers Cove Road, would like to reiterate the problem of  
5 traffic. She believes an extra 10 vehicle trips per day is a huge increase. She also thinks  
6 there could be a lot of turnover in the psychiatric consulting so there could be a constant  
7 stream of unfamiliar people driving on this narrow road.

8  
9 Tom Toye, 20 Smugglers Cove Road, stated he researched apitherapy and found that it is  
10 used in psychiatric treatment of depression.

11  
12 Mr. Chatmas stated, again, the Board has to take the applicant at their word. He said if a  
13 violation were to take place, it would be placed with the Code Enforcement Officer to  
14 verify violation and would proceed from there.

15  
16 Mr. Toye's concern is not with the psychiatric practice, but with the potential of sales  
17 from bee products.

18  
19 John Mitchell, 8 Smugglers Cove Road, said his primary concerns are with the traffic as  
20 it is an old subdivision with a narrow road, no sidewalks, and blind spots. He stated that  
21 it does not meet today's standard for residential use and certainly not commercial use.

22  
23 Mrs. Cherbuliez stated they liked the street for it's character and unusual nature. She  
24 understands the neighbor's concerns with keeping the character of the street. She wanted  
25 the Board to know they are not looking to have a business and expand. Her husband is 76  
26 yrs old and at the end of his career. They also have grandchildren that they would have  
27 concerns over. She stated that he would also amend hours to be acceptable to the  
28 neighborhood.

29  
30 Peter Rich, 7 Smugglers Cove Road, stated he has been a resident for 30 years. He  
31 reiterated the road's shortcomings. His concern is of people who are not familiar with the  
32 road and the potential dangers that could arise from more unknowing people driving on  
33 it.

34  
35 Jeff Hobbs, 4 Smugglers Cove Road, asked the Board if the applicant was granted the  
36 business in the home and they later sold, would the approval extend to the new owner.

37  
38 Mr. Smith stated that the approval runs with the land, but the Board could certainly make  
39 it a condition to terminate with change of ownership.

40  
41 Mr. Chatmas closed the Public Hearing and opened discussion to the Board.

42  
43 Mr. Chatmas stated that almost all neighbors had discussed traffic as an issue. He said  
44 that he had attempted to back around at the applicant's driveway and found it difficult.

45

1 Mr. LaPlante stated that he also drove down the road and had concerns with a lot of one-  
2 time clients that would be trying to navigate it.

3  
4 Mr. Chatmas stated that the Board could choose to limit practice to 2 trips per day.

5  
6 Mr. Gulino stated his primary concern was with lack of sidewalks.

7  
8 Mr. Mendelson stated he drove down Smugglers Cove Road and found it difficult to  
9 navigate. He also believes that this is precisely the type of home business that should be  
10 fostered, as it is very low impact. He would like to see approval on a limited basis.

11  
12 Mr. Chatmas stated his points were well taken. He thinks an application should be  
13 approved if it meets certain criteria as sanctioned by the Ordinance. He also stated he is  
14 uncomfortable with this application due to the condition of the road. He stated if this was  
15 in a different locale it could be acceptable.

16  
17 Mr. Gulino stated he would reduce clients to one a day.

18  
19 Mr. Chatmas stated that the Board has to put the Ordinance in perspective with the  
20 neighborhood. If traffic is an issue, their charge is to keep the sanctity of the  
21 neighborhood.

22  
23 Mr. Chatmas stated the following provisional conditions:

- 24  
25 **1. Conditional use permit would terminate upon property transfer.**  
26 **2. Limit business trips to two daily.**

27  
28 Mr. LaPlante stated his concern with setting precedent by modifying the application.

29  
30 Mr. Gulino stated that there would not be one Ordinance that fits every applicable  
31 opportunity.

32  
33 **CONCLUSIONS**

- 34  
35 1. The proposed use will not create hazardous traffic conditions when added to  
36 existing and foreseeable traffic in its vicinity. 2 in favor, 2 opposed, 0 abstained.  
37  
38 2. The proposed use will not create unsanitary conditions by reason of sewage  
39 disposal, emissions to the air, or other aspects of its design or operation. 4 in  
40 favor, 0 opposed, 0 abstained.  
41  
42  
43 3. The proposed use will not adversely affect the value of adjacent properties. 3 in  
44 favor, 1 opposed, 0 abstained.  
45

1 4. The proposed site plan and layout are compatible with adjacent property uses and  
2 with the Comprehensive Plan. 4 in favor, 0 opposed, 0 abstained.  
3

4  
5 5. The design and external appearance of any proposed building will constitute an  
6 attractive and compatible addition to its neighborhood, although need not have a  
7 similar design, appearance or architecture. 4 in favor, 0 opposed, 0 abstained.  
8

9 Mr. Chatmas stated that the first item failed and items 2-5 passed. The motion for a  
10 conditional use permit failed.  
11

12 Mr. Chatmas wanted to announce Bruce Smith's achievement in receiving  
13 recognition by the Governor of the State of Maine for being a driving force in  
14 obtaining a building code adopted for the State.  
15

16 Mr. Chatmas stated the next meeting would be June 22, 2004.  
17

18 Mr. Chatmas asked for a motion to adjourn.  
19

20 Mr. Gulino so moved, Mr. LaPlante seconded the motion.  
21

22 Meeting adjourned at 9:40 p.m.  
23  
24  
25

26 Respectfully Submitted,  
27

28 Laurie Palanza  
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