

1 TOWN OF CAPE ELIZABETH
2 ZONING BOARD OF APPEALS

3
4 July 27, 2004

7:00 p.m. Town Hall

5
6 Present: Jay Chatmas, Chair
7 Steven LaPlante
8 James Walsh
9 Joseph Gugliemetti
10 Len Gulino

Absent: Michael Tranfaglia
Gib Mendelson

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12 Mr. Chatmas stated the first item of business was the prior meeting's minutes.

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14 Mr. Gulino made a motion to approve and Mr. Laplante seconded. 4 in favor, 0 opposed,
15 1 abstained.

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17 Mr. Chatmas thanked Mr. Mendelson for acting as chair for the prior meeting. He stated
18 there wasn't any Old Business and introduced the New Business.

19
20 NEW BUSINESS

21
22 To hear the request of Penny Pollard & Arlyn Roffman for an administrative appeal of
23 the Code Enforcement Officer's decision to lift the stop work order at 52 Shipwreck
24 Cove Road, Tax Map R03, Lot 10A and to question why a site plan review was not
25 required.

26
27 Mr. LaPlante asked about the scope of the discussion the evening. He wanted to know if a
28 site plan review is normally required for a new residential property.

29
30 Mr. Chatmas stated that it is not required and is not part of the Board's decision.

31
32 Mr. Smith stated that it was a direct question to the Board and the Board should
33 ultimately determine if there should be a residential site plan review.

34
35 Mr. Chatmas asked the applicants or representatives to please approach the podium.

36
37 Bill Greenburg, Arlyn Roffman's husband and property owner. He stated he believes the
38 building is still not in compliance with the height restriction. He also wanted to know the
39 determination of the front of the lot and it's bearing on setbacks and the need for site
40 plan. He stated that in the zoning ordinance it stated whenever there is more than 10,000
41 sq. ft is either modified or removed, a site plan is required. He passed out a printed
42 Power Point presentation and stated he would answer any questions as he spoke. He said
43 they take issue with the house not being in compliance now and never being in
44 compliance. He read from the Zoning Ordinance, Article Section 19-1-3, the definition of
45 building height.

1 He stated the definition does not address multiple sloped roofs. He gave a summary of
2 comparing two different techniques for roof heights.

3 Mr. Chatmas asked the Board members for the opinion in regards to sec. 19-5-3 pg. 49 in
4 the ordinance which stated “any person aggrieved by a decision of the Code Enforcement
5 Officer or other municipal official, where applicable my appeal such a decision to the
6 Board within thirty *(30) day following the date of such decision by filing a notice of
7 appeal with the Code Enforcement Officer.”

8
9 Mr. Greenburg said that he was trying to convince the Board the house wasn't in
10 compliance in the first place and still isn't as the building is still high. He believes the
11 way the height is measure now is incorrect.

12
13 Mr. Chatmas stated that the information submitted by Mr. Greenberg was a well thought
14 and well done presentation. He wanted to impress on the applicant that the Board's
15 charge is to interpret the ordinance. According to the Ordinance, there were 30 days to
16 challenge to approach the Board and challenge the issuance of the building permit.

17
18 Mr. Greenberg stated his primary concern was the lifting of the stop work order and that
19 the permit should not have been issued in the first place.

20
21 Mr. Chatmas stated that the Board cannot take issue with the original building permit and
22 can only deal with the lifiting of the stop work order.

23
24 Penny Pollard, 3 Peabbles Point Lane, asked if a rule of law has been violated during
25 construction, is that not something that can be addressed.

26
27 Mr. Smith stated that the mean level of height was determined in November and due to
28 the modifications of the construction by the contractors there was a stop work order
29 issued.

30
31 Mr. Greenberg stated that the interpretation of the mean level of height was made in good
32 faith but was the wrong interpretation and believes there is a better technique to be used.
33 He gave an overview of what he believes should be used. He stated that the technique
34 currently used could allow for a 70 ft building height. He believes since there was an
35 incorrect interpretation of height for the building permit, the permit should become
36 invalidated. He stated if you use his method of interpretation, the house is still not in
37 compliance.

38
39 Mr. Gulino stated that if it were a typical sloped roof, then it would be in compliance.

40
41 Mr. Greenberg stated yes, and it would be more in character with the houses in the area.

42
43 Mr. Chatmas stated that since a permit has been issued, they will not undo the permit.
44 The stop work order was specifically for height violation.

45

1 Mr. Smith stated his determination of height was not random. When he had started with
2 the Town, he had questioned the building height determination and it's reasoning is for
3 aesthetic purposes, so people would be encouraged to not build flat roofed buildings.
4

5 Mr. Gulino had issue with the definition of the mean level of the highest slope of the
6 roof.
7

8 Mr. Smith reads that as highest gable or slope of the roof.
9

10 Ms. Pollard stated that she believes the Code Enforcement Officer was trying to
11 accommodate the developer to make it work.
12

13 Mr. Chatmas asked the Ms. Pollard to continue with describing the grievance.
14

15 Ms. Pollard believes that site plan review should have been required. She read from the
16 Ordinance, Sec. 19-3-2, on what requires site plan review. She stated it was Mr. Smith's
17 choice not to require site plan review, which she questions.
18

19 Mr. Gulino asked if the appeal period for site plan review fell under the 30 day ruling.
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21 Mr. Smith said the appeal of site plan review has nothing to do with the appeal of the
22 building permit.
23

24 Ms. Pollard believes the size of the home, the zoning of the home and the amount of
25 clearing needing to take place would have triggered site plan review.
26

27 Mr. Chatmas stated that in several places in the Ordinance it stated that residential
28 building does not trigger site plan review and read the specifications from the RA section
29 in the Zoning Ordinance.
30

31 Ms Pollard asked if there had ever been site plan review required for a residential home.
32

33 Mr. Smith stated no.
34

35 Ms. Pollard questioned the north side to be able to be called the front when there is no
36 entryway.
37

38 Mr. Smith stated that he had determined that the north side was the front.
39

40 Ms. Pollard described other areas of the project that she believed should not have allowed
41 this building to be built. She believes there was failure from the Town to allow this to
42 happen.
43

44 Arlyn Roffman, 1 Peabbles Point Lane, wanted to make clear that they had attempted to
45 find out what the plans were for the property, however, they had asked the wrong month.

1 She had assumed they would have been notified of any plans as that is how it is done in
2 the town she resides in. She also had a letter that she read from Judy Barresi, 54
3 Shipwreck Cove Rd. who was enable to attend but objected to the allowance of the
4 building.

5
6 Robert Armitage, 18 Reef Road, spoke of his discussion with Mr. Smith that afternoon.
7 He would like the Town Council to review the errors and omissions from the ordinance
8 that were able to allow issuance of this permit. He believes there were issues that
9 required either the Zoning Board or the Planning Board review of this project and that
10 since 30 days have come and gone, too bad for the public. He had contacted Portland
11 Water District and there are easements on the property that should not be built on.

12
13 James Morra, 5 Waumbek Road, believes fixes for height issue were not sufficient. He
14 wanted to reiterate that the height should be determined by the highest slope of the roof,
15 as stated earlier. He believes from lopping off the top of the roof that it has made it even
16 less blended with the neighborhood character.

17
18 Mr. Greenberg wanted to say in closing that if there is a better interpretation that the one
19 that has been used than it should be applied to this structure.

20
21 Mr. Chatmas thanked Mr. Greenberg and asked if there were any other comments.
22 Hearing none, he closed the Public Hearing and opened discussion amongst the Board.

23
24 Mr. Walsh was concerned about what their jurisdiction was at this juncture relative to the
25 52 Shipwreck Cove. He does not feel in good conscience that they change the rules after
26 the project was approved last year.

27
28 Mr. Gulino stated that the only way there could still be an issue is if the height violation
29 is still in effect.

30
31 Mr. Smith stated that the Board has the power to determine that if more than 10,000 sq ft
32 of the property has been disturbed, that the applicant could be informed that they need to
33 have a site plan review.

34
35 Mr. Chatmas stated that a site plan review at this point would only apply to vegetative
36 disturbance.

37
38 Mr. Chatmas stated that a site plan review at this point would only apply to vegetative
disturbance and not construction of the dwelling.

39
40 The Board had a lengthy discussion concerning the issues being discussed about the
project this month versus the items of the prior month.

41
Mr. Chatmas called for a five-minute break.

1 Mr. Walsh asked that perhaps the Town Manager could consider having all building
2 permits be on the website every week so citizens could be kept abreast of new permits.

3 Mr. Smith stated that he wouldn't have any issue doing that, however, there would have
4 to be a policy change or ordinance change before this could happen.

5 Mr. Gulino asked how that could be pursued.

6 Mr. Smith stated a citizen or Board member could initiate that with a letter to the Town
7 Council or Town Manager.

8 Mr. Chatmas stated that many of the comments made were valid. There are many issues
9 that were difficult to address, such as character of Residential A, which makes it
10 subjective. The window in which to take action for the building permit has been gone for
11 9 months.

12 Mr. Gulino stated the character and magnitude of building is troubling and does not fit in
13 the interpretation of the statute and he agrees with Mr. Greenberg's interpretation of the
14 Ordinance.

15 Mr. Walsh stated that he also has issue with the timeline but also recognizes they are
16 limited to what they can and cannot do.

17 Discussion was initiated concerning site plan review from 10,000 sq. ft. being disturbed
18 for all properties.

19 Mr. LaPlante made a motion that pursuant to section 19-9-1 that a site plan review was
20 not required for 52 Shipwreck Cove Road (R03-10A).

21 Mr. Guglielmetti seconded the motion. 5 in favor, 0 opposed, 0 abstained.

22 Discussion took place regarding verbiage concerning the second motion.

23 Ms. Pollard stated the height of the building was all based on interpretation from Mr.
24 Smith in November. They are appealing the lifting of the stop work order and their
25 interpretation of the 35ft height.

26 Mr. Gulino stated that if you do take Mr. Greenberg's interpretation the building is still to
27 high by a couple of feet.

28 Mr. Smith stated that judgment of height had been made in good faith and that it would
29 be a travesty to Mr. Friedman and others if 9 months after a project has been going a
30 decision is overturned.

31 Mr. Chatmas asked for a motion.

1 Mr. Gulino made motion to approve the appeal of the Code Enforcement Officer's
2 decision to lift the stop work order of 52 Shipwreck Cove Road.

3 Mr. LaPlante seconded the motion.

4 The appeal was denied, 4 in favor, 1 opposed.

5 Mr. Chatmas stated that there weren't any communications. The next meeting is
6 scheduled for August 24, 2004.

7 Mr. Chatmas asked for a motion to adjourn.

8 Mr. Guglielmetti made a motion to adjourn. Mr. LaPlante seconded motion. It was
9 unanimous.

10 Meeting adjourned at 10:40 p.m.

11 Respectfully Submitted,

12 Laurie Palanza

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