

1 TOWN OF CAPE ELIZABETH
2 ZONING BOARD OF APPEALS

3
4 September 30, 2004

7:00 pm Town Hall

5
6 Present: Jay Chatmas, Chair
7 Jim Walsh
8 Len Gulino
9 Michael Tranfaglia

Absent: Gib Mendelson
Steven LaPlante
Joseph Guglielmetti

10
11 Mr. Chatmas opened the meeting with a roll call. He stated there was a quorum with 4
12 members present. The first order of business was approval of the minutes. With
13 corrections noted, he asked for a motion.

14
15 Mr. Gulino made a motion to approve the minutes.

16
17 Mr. Tranfaglia seconded the motion. **3 in favor, 1 abstained.**

18
19 NEW BUSINESS

20
21 To hear the request of Lisa O. Hansen, 9 Maiden Cove Lane, Tax Map U05, Lot 38 to
22 enlarge an existing foundation and reconstruction of an existing dwelling within the
23 shoreland zone of the Town of Cape Elizabeth.

24
25 Mr. Chatmas gave an overview of the application.

26
27 Eric Peterson, Peterson Design Group and resident of 54 Oakhurst Road, was
28 representing the Hansens. He thanked the Chair for his informative overview and
29 described the proposed minor footprint and upward expansion of the home. The proposal
30 is a 27% expansion of living space, which falls within the 20% lot coverage allowed by
31 the Town. Currently the structures cover 16% of the lot and the proposed addition would
32 increase that amount to 18.5%. The proposed house will fall below the 35' height limit
33 and the design of the house will be in keeping of the architectural vernacular of the Cape
34 Elizabeth coastline and he had elevations to reflect that. He discussed the one change
35 that the applicant had wanted to make that evening, which is on one corner of the existing
36 building to be moved back two feet away from the high water mark. A permit has been
37 applied for and assumed to be approved by the DEP since no response from the contrary
38 has been received within the time limits.

39
40 Mr. Chatmas asked if there was any written documentation to confirm this.

41
42 Mr. Smith stated that he has talked from Dawn Buker from the DEP and confirmed it had
43 been approved.

44
45 Mr. Chatmas asked about the determination of the height and average grade of the
46 existing structure.

1
2 Mr. Peterson stated that Owen Haskell Surveyors had prepared a complex calculation of
3 the average original grade. The Town determines the formula for this calculation.
4
5 Mr. Walsh asked if the overhangs and bay windows were included in measurements of
6 setbacks.
7
8 Mr. Peterson stated yes.
9
10 Mr. Chatmas asked how he determined the existing volume and the increase of the total
11 square footage of impervious ground cover.
12
13 Mr. Peterson said the percentage of impervious cover was determined from a prior
14 survey, and then added the proposed square footage, which can be supplied to the Board.
15 He said there had been question about the gross living space. He stated that they did not
16 include the basement area, as the Town guidelines allows. They did include the first
17 floor, second floor, the garage and space adjacent to the garage that is at grade level. He
18 also stated they could have used porches, decks, and exterior stairs, which the town
19 allows, but chose not to.
20
21 Mr. Tranfaglia asked if a similar house could be built on the existing foundation.
22
23 Mr. Peterson stated that they are using the existing foundation and the Hansens had
24 looked at repairing the stucco and roof tiling. These repairs are exotic and could not find
25 the people to do that work.
26
27 Mr. Chatmas asked what percentage of the structure is within the 75ft high water setback.
28
29 Mr. Peterson said 100 percent of it is.
30
31 Mr. Chatmas asked how he determined the high water line.
32
33 Mr. Peterson said it was from a survey provided to them from Royal River. He offered to
34 submit a copy of this survey.
35
36 Mr. Gulino asked about the amendment to the plan he had mentioned.
37
38 Mr. Peterson stated that on the east face the closest existing point is at 38 ft to the high
39 water line. Currently the proposed addition is shown 2 ft closer at 36 ft, they will be
40 correcting the site plan to show the proposed addition to be at 38 ft for compliance with
41 the Ordinance.
42
43 Mr. Gulino asked Mr. Smith if the modification they are proposing does not make the
44 structure closer to the water.
45

1 Mr. Smith believes this to be true, however, will double check site plan prior to issuing a
2 permit.
3
4 Mr. Chatmas asked if the Town Ordinance was as restrictive as the DEP.
5
6 Mr. Smith stated that it has to be at least as restrictive under state law.
7
8 Mr. Chatmas asked about the condition of the foundation and how much of it they will be
9 reusing.
10
11 Mr. Peterson stated the majority of the foundation would stay and be retained.
12
13 Mr. Chatmas asked about the amount of tear down versus reuse of structure.
14
15 Mr. Peterson stated that is why they are there this evening. He stated that it would not
16 take a whole lot of renovation of that structure to trigger a review. The roof profiles have
17 changed; the second floor will basically be redone in its entirety. Some portions of the
18 first floor will remain. The dining room will now be a bedroom, the kitchen is in the same
19 location but with a new layout, the living room and sunroom are in the same room. He
20 stated they are not 100% sure of how much of the structure will be taken down until they
21 get into the renovation and see how much rot there is.
22
23 Mr. Chatmas asked about the location of the septic system and what the new intention
24 was for it.
25
26 Mr. Peterson described the location of the septic system. The Hansens have approached
27 their two abutters and are planning to connect to the Town sewer system. Once the sewer
28 connection is made the septic system will be abandoned.
29
30 Eric Hansen, 9 Maiden Cove Lane, stated they had hired BH2M to work with Bob
31 Malley at Public Works and the Portland Water District to have sewer connection. They
32 are still working on getting maps together to determine the best location for connection.
33
34 Mr. Chatmas asked about any impact of soil erosion from the enlargement.
35
36 Mr. Peterson stated this property is a good candidate for no soil erosion due to the fact
37 that the lot is bounded on 3 sides with a retaining wall. The remainder of the property has
38 a stone wall.
39
40 Mr. Walsh asked about the impact of views from expansion.
41
42 Mr. Hansen stated there is a huge tree that hides the house most of the time until the
43 leaves fall. He said that even though the roof would rise 4 ft, it is basically in the same
44 position. He said they had shown the plans to neighbors in Maiden Cove and they had
45 liked the plans.
46

1 Mr. Chatmas opened the Public Hearing and asked if anyone would like to speak in
2 support of the project.

3
4
5 Bob Baross, 5 Maiden Cove Lane, has been watching the project closely and met with the
6 Code Enforcement Officer this week. He said as far as he could tell there wasn't any
7 conflict with the rules and regulations with the Town. He stated his wife has written a
8 letter stating they have no objection to the construction of this project.

9
10 Mr. Gulino asked if he was an abutter.

11
12 Mr. Baross stated yes, that they share a driveway.

13
14 Mr. Walsh asked if he had discussed tying into the sewer system.

15
16 Mr. Baross stated yes, and that the monetary figures were shocking. The Town had at
17 first turned down a sewer line going down the street because they didn't want to put a
18 pumping station in the turnaround. Now there is technology so each residence will have
19 a forced sewage pump, which they will maintain.

20
21 Mr. Chatmas asked for any other supporters of the project. Hearing none, he asked for
22 anyone in opposition to approach the podium.

23
24 Joseph Calise, 15 Surf Road, believes the Hanson's are asking the Town to make an
25 exception to the Ordinance. He stated they knew what they were buying when they
26 bought it and the home would serve them well as it stands. The community expects the
27 Board to uphold the Ordinance to its extent and protect the Town. He stated that it is
28 incumbent upon the applicant to say this is the only way to use the property. He said it
29 has already been determined to be substantially nonconforming. He said on page 40 in
30 the Ordinance that if a home is destroyed by an act of God, you may rebuild it because
31 this happened to you; you didn't ask for it to happen. It also states, "in no case shall a
32 structure be reconstructed or replaced so as to increase its nonconformity". That is
33 where he objects to what is happening. He has no objection to improving it as it is. He
34 believes it will impact visual site lines. He hopes the Board will consider his comments.

35
36 Mike Marino, 4 Birch Knolls, stated the Hansen home is part of their view line. He
37 stated the community is a historic cottage neighborhood where most of the homes are 2-
38 4,000 sq. ft. He said their home is very visual and that the scale and bulk should fit the
39 nature of the property. He believes if it is a nonconforming property, it should not be
40 allowed to be more nonconforming.

41
42 Elizabeth Monaghan, 4 Sea Star Lane, spent a lot of time growing up at this property.
43 She stated it is a large and picturesque home and that Mr. Marino and Mr. Calise have hit
44 it on the head with their comments about any increase making the project more
45 nonconforming. She stated that the home should keep within the nature of the
46 community. She does not believe a decision can be made without the highwater mark

1 survey to be present. She also questions the interpretation of the value of the house and
2 the costs. She strongly opposes this.

3
4 Mark McIntyre, 3 Birch Knolls, questions why he was notified if what they are proposing
5 is within the law, as it exists.

6
7 Mr. Chatmas stated that the Ordinance requires that if a structure is rebuilt exceeding
8 50% of the value of that structure, that it come before the Board of Appeals.

9
10 Mr. McIntyre stated that whether he like the appearance of what is proposed is not
11 germane. Mr. McIntyre stated he came because of a fence that has been erected and has
12 offended him by not allowing his grandchildren to play on the rocks.

13
14 Mr. Chatmas stated that there are 8 points that they need to look at and see if the
15 enlargement meets the setback to the greatest possible extent as stated by the Ordinance.

16
17 Patricia Franson, 40 Surf Road, which is where she grew up and a potential inheritant.
18 She was wondering what she could possibly do to prevent this. She stated that they are
19 going to tear down this structure and not just add on and fix up. The house is 5300 sq.ft,
20 which she believes should be comfortable living space for a family of four. She stated
21 the proposal is to enlarge it to 6735 sq. ft., which is an increase of 1600 sq. ft. She wants
22 to know if they are only going a foot here and a foot there, where is the expansion. She
23 strongly opposes this and believes it is beautiful as it is. She thinks it is unfortunate that a
24 home built in 1930 that hundreds and hundreds of people and the ships in the shipping
25 lanes have admired over the years would no longer be there.

26
27 Maya Cohen, 20 Surf Road, stated she is not an immediate abutter but she does oppose
28 this renovation project for all the reasons that Mr. Calise and Mrs. Franson mentioned.
29 She said that all old houses have issues and she understands that as she lives in the old
30 Benoit house. She stated that a lot of mariners unofficially use that house as a point of
31 navigation. She wants to know how much of the house would be preserved. She
32 interpreted the presentation that it was to be gutted and believes that would be a shame.

33
34 Mr. Gulino asked if there was particular provision in the Ordinance that she felt that this
35 violates.

36
37 Ms. Cohen stated that she agrees with Mr. Calise that the proposed renovation should not
38 be more nonconforming.

39
40 Mr. Gulino asked how this would be additionally nonconforming.

41
42 Ms. Cohen said from increasing the square footage.

43
44 Mr. Gulino stated that in 19.4.4B1A, basically allows the renovation of a structure so
45 long as the expansion, floor area or volume not increase by more than 30%.

1 Ms. Cohen reiterated that she opposes this and the house is already very large.

2
3 Mr. Calise questioned the authority for the Board to go forward. He stated he was Vice
4 Chair of the Board 15 years ago. He said there is a lot of vaguery in the sited Ordinance.
5 He stated that the provision added in the Ordinance came from changes that were added
6 statewide on January 1, 1989 to clamp down on the amount of expansion in these
7 sensitive areas. He discussed his interpretation of the reconstruction and what could be
8 done to this structure. He believes that the burden of proof is on the applicant. He said
9 the Board should not have to defend itself for not granting a variance; there should be a
10 substantial reason for granting it.

11
12 Ms. Monaghan thinks the reconstruction is key. The proposed reconstruction is not a
13 Spanish style design. The new design is a New England style house. If you are
14 rebuilding a house in size, that house would have to be completely torn apart. She
15 reiterated if you are enlarging a property that is nonconforming already, including the
16 drips and roof overhangs, is making it more nonconforming.

17
18 Mr. Gulino stated the duty of the Board is to apply the Zoning Ordinance. He said that
19 what he is hearing is that she does not like the design change. He stated their duty is to
20 apply the Ordinance. He asked if she could reference any provision in the Ordinance that
21 would preclude a change in style.

22
23 Ms. Monaghan stated that it was really not about the change in style. That it is also the
24 duty of the Zoning Board to listen to the people in the neighborhood affected by the
25 change and support the community.

26
27 Mr. Gulino agreed with that and stated that they are bound by the Ordinance when
28 making these decisions. He said that to be helpful in the deliberations that she pinpoint
29 any provision in the Ordinance.

30
31 Ms. Monaghan stated on page 40, like Mr. Calise, this property is creating a more
32 nonconforming property.

33
34 Lucinda Yates, 11 Birch Knolls, lives directly across cove from applicants. She said that
35 it would be the Board's job to enforce the code and if the building is nonconforming, that
36 they should not allow it to be more nonconforming.

37
38 Mr. Gulino stated the applicant has stated it doesn't make the property more
39 nonconforming.

40
41 Mr. Smith stated there is case law and the courts have ruled that the nonconformance is
42 only an issue when the applicant wants to build closer to the ocean, or body of water.

43
44 Mr. Gulino asked Mr. Smith if by his calculations, the applicant would not be building
45 closer to the water.

1 Mr. Smith stated that is correct.
2
3 Mr. Calise stated the existing footprint is nonconforming and that the property is in an
4 Overlay district. He wanted to know if the property was in conformance with the RC
5 Zone and if the proposed addition would be in conformance.
6
7 Mr. Smith stated yes. He said the Ordinance was dated and the DEP has recognized that
8 the intent was to include properties that people wanted to self-destruct and rebuild.
9
10 Mr. Chatmas gave a summary of the points mentioned from discussion and reminded all
11 that what triggered the meeting was the percent of rebuild, which was in excess of 50%
12 of the value of the structure.
13
14 Mr. McIntyre asked if there were a judgment to be made.
15
16 Mr. Chatmas stated that they were searching for valid comments that could be applied to
17 the Ordinance. If there is something that can be changed within their boundaries, then
18 they give it strong consideration.
19
20 Mr. Gulino stated that this public forum is available to allow the people in the community
21 an opportunity to review the plans and analyze the Ordinance and see if the applicant
22 may be missing something and often times there is something that could be modified that
23 would allow the applicant to be in compliance with the Ordinance.
24
25 Mr. Chatmas stated there were comments about the style and beauty of the existing
26 house. He stated the Ordinance does not specify or define this for the Board to comment
27 on.
28
29 Patricia Franson asked there was anything in the ordinance that referred to historic value.
30
31 Mr. Smith stated there was a historical reference that was removed a couple of years ago.
32
33 Ms. Franson stated that when Union Station in Portland was ripped down, people haven't
34 forgiven themselves for that. She stated that the Hansens are ripping down this house and
35 that people should think about this. Once it is taken down, it will never come back.
36
37 Mr. Gulino encouraged Mrs. Franson to talk to the Town Council about reinstating a
38 historical provision.
39
40 Mr. Chatmas reviewed the eight points to be considered by the Board for making their
41 decision.
42
43 Ms. Monaghan stated she would have liked to see the high water mark survey.
44
45 With no further comments from the audience, Mr. Chatmas closed the public hearing.
46

1 Mr. Walsh stated the plan with the dotted lines has been what is causing confusion. It
2 appears as though the building is being built closer to the high water mark.

3
4 Mr. Gulino stated that the application that they are considering would be modified to
5 make sure that they are not closer to the high water marks. They will also be submitting
6 the survey to confirm accuracy of calculations, and Mr. Smith will be confirming they are
7 not encroaching on the high water mark on three sides. He moved the application for
8 approval.

9
10 Mr. Walsh wanted to commend Mr. Chatmas for welcoming comments and looking for
11 solutions or alternatives. He wanted to reiterate that the Board members are members of
12 the community as well, however, there is a body of law that they must follow when
13 making a decision.

14
15 Mr. Chatmas made the following motion to approve the application of Lisa Hansen, 9
16 Maiden Cove Lane, for the building enlargement and reconstruction of the structure and
17 it's foundation in a Shoreland Overlay District within 75ft of the highwater mark.

18
19 Mr. Gulino seconded the motion. **4 in favor, 0 opposed.**

20
21 Mr. Chatmas stated the next meeting was October 26, 2004.

22
23 Mr. Smith stated that there would be a workshop at 6:00 pm prior to the meeting on
24 October 26, 2004.

25
26 Mr. Gulino made motion to adjourn.

27
28 Mr. Tranfaglia seconded the motion. **All in favor.**

29
30 Meeting adjourned at 9:15p.m.

31
32 Respectfully Submitted,

33
34 Laurie Palanza
35 Secretary
36 Zoning Board of Appeals

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