

1 TOWN OF CAPE ELIZABETH
2 ZONING BOARD OF APPEALS

3
4 February 22, 2005

7:00 pm Town Hall

5
6 Present: Jay Chatmas, Chair
7 Stephen LaPlante
8 Len Gulino
9 Gib Mendelson
10 Michael Tranfaglia
11 Joe Guglielmetti

Absent: Jim Walsh

12
13 Mr. Chatmas opened the meeting with roll call. The first order of business was Election
14 of Officers. He asked for a nomination for Chair.

15
16 Mr. Mendelson nominated Mr. Chatmas for another term as Chair of the Board. Mr.
17 Gulino seconded the motion and carried 6 in favor, 0 opposed.

18
19 Mr. Chatmas asked for a nomination for Secretary.

20
21 Mr. Gulino nominated Mr. Mendelson as Secretary. Mr. LaPlante seconded the motion
22 and carried 6 in favor, 0 opposed.

23
24 Mr. Chatmas stated the next order of business was approval of the October 26, 2004
25 minutes. Minutes were approved 6 in favor, 0 opposed.

26
27 NEW BUSINESS

28
29 To hear the request of William Turner & Persis Strong, 18 Smugglers Cove Road, Tax
30 Map U10, Lot 42 to replace and enlarge the existing dwelling within 75 feet of the high
31 water line of the Atlantic Ocean.

32
33 Mr. Chatmas gave a brief overview regarding the request. This is not an application for
34 appeal, and that construction in the Shoreland Performance Overlay District can be
35 performed if certain specifications were met. The State of Maine and the Town have
36 defined the Shoreland Overlay District as 250' from the main high water mark of the
37 Atlantic Ocean. The first 75' are regulated more stringently with construction. There are
38 two items that trigger review by the Board, 30% enlargement of square footage or
39 volume of structure, or reconstruction cost exceeding 50 % of the value of the existing
40 structure. The latter is what is triggering review.

41
42 John Mitchell, Mitchell & Associates, 70 Center Street, Portland, Maine represents Persis
43 Strong and William Turner. The property is located at 18 Smugglers Cove, which is the
44 next to the last house on a dead end street. The property is located in the RA District, as
45 well as the RP3-F zone. He described the existing property and the proposed expansion.
46 There is a 25' side setback, 20' front setback and the 75' high-water mark setback, which

1 delineates the building envelope. There were two corrections pointed out, the percent
2 increase in the sq. footage should 19.2%, not 16.1% and the existing volume increase
3 should be 26.7% vs. 21.1%. He stated that there is also a reduction in the percentage of
4 impervious surfaces from 22.2 to 21.9. This is because they are removing some of the
5 concrete driveway and are replacing with cobblestone treads with grass growing in
6 between. Mr. Mitchell reviewed the 8 practical items for the lot. He stated that if a
7 structure would be placed differently on building envelope, the neighbor's view corridor
8 would be obstructed. The eight-foot addition to the garage will impact one neighbor,
9 however, the view of the ocean for that neighbor is towards the other side of the cove.

10
11 Mr. Gulino asked about the impact of that one neighbor's views.

12
13 Mr. Mitchell stated that would impact a small portion of his view, but not of the water.

14
15 Mr. Gulino asked what the increase in height would be.

16
17 Mr. Mitchell stated that it would two feet under the allowable 35 ft.

18
19 Mr. Gulino asked about the sq. footage of the house.

20
21 Mr. Mitchell stated it would be 2059 sq. ft.

22
23 Mr. Tranfaglia asked if the area over the entrance and the peaked roof over the garage
24 would be less than 35 ft in height.

25
26 Mr. Mitchell stated everything would be under the 35 ft.

27
28 Mr. Smith stated the Boards challenge was to determine whether the height would impact
29 the view corridor. The Code Enforcement Officer will verify that the structure height
30 meets code.

31
32 Mr. Chatmas thanked the applicant and asked about the construction footprints.

33
34 Mr. Mitchell stated the building is 81' in length and 22' wide on one side and 24' wide
35 on the other. The addition on the left side of the structure is 8' wide x 24' length.

36
37 Mr. Chatmas asked for clarification on the sq. footage of the footprint and the application
38 of the 75' setback.

39
40 Mr. Mitchell stated that the 1728 sq. ft is the amount of area within the 75' setback.
41 These numbers were derived from Governor Curtis's file and were correct. The cubic
42 foot figure was incorrect due to the fact of the prior applicant had used 8' ceilings. They
43 refined that to what the actual numbers were.

44
45 Mr. Chatmas expressed his concern that although the Boards charge is not in verifying
46 the numbers, he does not want the Board to approve an expansion over the 30% allowed.

1
2 Mr. Mitchell stated they have spent a significant amount of time with the Code
3 Enforcement Officer and are confident with the numbers submitted and the methodology
4 used to obtain them.
5
6 Mr. Gulino asked about the conflict of numbers concerning square footage.
7
8 Mr. Mitchell explained that the original calculations had included a patio, which will be
9 deleted and there will be a decrease in the deck area. The area will not be increased
10 within the 75' setback.
11
12 Mr. Chatmas confirmed that they are adding a second deck, but since there will be a
13 reduction in the first deck there is a net decrease in sq. footage. He asked if they were
14 including the cobblestone as impervious surface.
15
16 Mr. Mitchell stated yes, it is included under ground cover. The sq. footage only applies to
17 structures in the 75' setback.
18
19 Mr. Mendelson asked if reduction of the paved driveway, coupled with the increase in the
20 size of the garage, results in a diminution in total of impervious groundcover.
21
22 Mr. Mitchell stated yes.
23
24 Mr. Gulino asked what section in the Zoning Ordinance is the view impact.
25
26 Mr. Smith stated it is under 19-4-4(b-3) under building relocation.
27
28 Mr. LaPlante asked how view corridors were determined.
29
30 Mr. Mitchell stated by line of sight.
31
32 Mr. Chatmas asked if there was an intention to replace septic system.
33
34 Mr. Smith stated that in the last two years, the code has been changed for the Shoreland
35 Zone. If the building is to be replaced, the septic must be replaced as well.
36
37 Mr. Chatmas asked if the applicant would meet the 20' setback from the foundation to the
38 nearest edge of the septic system.
39
40 Mr. Smith stated that if they applied for a septic system, they would be able to get a 10'
41 variance for the setback.
42
43 Mr. Gulino asked if the widow's nest was to be functional.
44

1 Graham Pillsbury, 76 Two Lights Road and construction manager, stated the first floor
2 would be a turning staircase, the second floor would be an open cathedral ceiling and the
3 third floor would be an observation deck.

4
5 Mr. Chatmas opened the Public Hearing. With no one coming forth, he closed the Public
6 Hearing.

7
8 Mr. Guglielmetti asked Mr. Smith if the 75' high water mark setback established from
9 Titcomb Associates was acceptable.

10
11 Mr. Smith confirmed that.

12
13 Mr. Chatmas stated in lieu of voting on each of the elements, he would like to have a
14 discussion on the items. He stated because of the size of the lot it precludes new
15 construction on the lot. The slope of the land would be minimally involved. The
16 prevention for soil erosion has been extensively outlined in the attachment to the
17 application. He wanted the record to reflect that the application shows a front setback of
18 20'. It is actually 25', however it can be reduced to 20' based on the average setback
19 from the two nearest properties. The septic must be replaced and an acceptable location
20 has been located in the front. He feels the impact of views is irrelevant seeing as there
21 was no opposition and the impact should be minimal.

22 The amount of vegetation removed would be minimal; however there would be
23 disruption of groundcover as there is at any job site. It has been stated that the condition
24 of the foundation is good.

25
26 Mr. LaPlante wanted to confirm that neighbors whose views would be affected were
27 notified via U.S. Postal service.

28
29 Mr. Smith confirmed that and he only had one phone call from a neighbor who was
30 interested in the proposal.

31
32 Mr. Chatmas asked if the owners had contacted any of the neighbors concerning this
33 project.

34
35 Mr. Mitchell stated that he had personally visited Mr. Hanley, Mrs. Osbourne and Mr.
36 Haltof. He explained to Mrs. Osbourne that a small sliver of her view would be affected.

37
38 Mr. Chatmas asked if the Board had any questions on the 8 elements.

39
40 Mr. Chatmas asked for a motion.

41
42 Mr. Tranfaglia made the following motion: That the application for William Turner &
43 Persis Strong, 18 Smugglers Cove Road, Tax Map U10, Lot 42, for purposes of replacing
44 and enlarging an existing dwelling within the 75' high water mark be granted.

45
46 Mr. Gulino seconded the motion. 6 in favor, 0 opposed.

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2 COMMUNICATIONS

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4 Mr. Chatmas stated on January 26th the Town hosted a Board and Commission
5 orientation. He wanted to thank the Town for hosting the event and thought it helpful. He
6 reviewed a memo from Mr. McGovern concerning the establishment of a Comprehensive
7 Plan Committee. The Comprehensive Plan's purpose is to guide the growth and
8 development of the community. He spoke with Maureen O'Meara for information
9 regarding the obligations to this committee. The representative from the Board of
10 Appeals would act as a liaison between the Comprehensive Plan Committee and the
11 Zoning Board. The anticipation is meetings once a month, for 18 months. Towards the
12 end of the process there could be more than one meeting in a month. He asked anyone
13 interested to contact him after the meeting. There was a mailer from the MMA for a local
14 land use workshop in Cumberland in March for those interested. The last item was
15 changing the title Secretary of the Zoning Board to Vice Chair. He asked for comment.
16

17 Mr. Gulino made a motion for changing the title of Secretary of the Zoning Board to Vice
18 Chair.

19
20 Mr. Tranfaglia seconded. 6 in favor, 0 opposed.
21

22 Mr. Chatmas stated a letter would be drafted for approval to the Town Council.
23

24 Mr. LaPlante made a motion to adjourn.
25

26 Mr. Guglielmetti seconded the motion.
27

28 Meeting adjourned at 8:20 pm.
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30
31 Respectfully Submitted,
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34 Laurie Palanza
35 Zoning Board Minutes Secretary
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