

1 TOWN OF CAPE ELIZABETH
2 MINUTES OF THE ZONING BOARD
3

4 September 27, 2005

7:00 pm, Town Hall

5
6 Present: Jay Chatmas, Chair
7 Steven LaPlante
8 Jim Walsh
9 Michael Tranfaglia

Absent: Gib Mendelson
Joe Guglielmetti
Len Gulino

10
11 Also present was Bruce Smith, Code Enforcement Officer.

12
13 Mr. Chatmas opened the meeting with role call and asked for comments on the minutes.
14 Hearing none, he asked for a motion.

15
16 Mr. Tranfaglia made a motion to accept the minutes.

17
18 Mr. Walsh seconded the motion. 3 in favor, 1 abstained.

19
20 OLD BUSINESS

21
22 To hear the administrative appeal of Paul Coulombe, John Fatula and Audrey Fatula of
23 the Code Enforcement Officer's issuance of building permit # 050343 and flood hazard
24 development permit # 050344 on property at 24 Reef Rd, Tax Map U13, Lot 14, and
25 issuance of subsurface wastewater disposal system permit #'s 3143 & 3144 on property
26 at 26 Reef Rd, Tax Map U13, Lot 14B, all for development of 24 Reef Road.

27
28 Mr. Chatmas stated this item would be tabled for one more month.

29
30 NEW BUSINESS

31
32 To hear the request of Brian & Maryanne Denison, 1169 Sawyer Road, Tax Map R04,
33 Lot 57 for a left side property line variance of 9.31' from the required 25' to construct a
34 32' x 28' two car garage addition with second floor living space at 15.69' from said
35 property line.

36
37 Mr. Chatmas stated that there needed to be four Board members present to approve a
38 variance. Since Mr. LaPlante recused himself as he is the applicant's next-door neighbor,
39 that leaves 3 members present, not enough for a quorum.

40
41 Mr. LaPlante excused himself, as he is a next-door neighbor with the applicants. Due to
42 an illness and other absences, there would not be enough members for a quorum.

43
44 Mr. Smith suggested that the Chair could pick a date for next week and his office would
45 verify a quorum prior to the meeting.

1 Mrs. Dennison stated that they are frustrated, as this is the second month they were
2 unable to present their case, and winter months are coming which can limit building.

3
4 It was determined that Monday, October 3rd, 2005, a special Zoning Board meeting
5 would be held. This special meeting is being held due to the two-month delay that has
6 postponed the applicant's request.

7
8 To hear the request of Ariette McDonald, 36 Trundy Road, Tax Map U12, Lot 38 for a
9 front (Overlook Lane) property line variance of 10' from the required 25' and a side
10 (westerly) property line variance of 15' from the required 25' to construct an addition and
11 add a second story over the existing structure.

12
13 Mr. Chatmas stated that for a variance to be approved, it is required that a majority of the
14 Board (4 Board members) vote in the affirmative. As there are only 4 members present,
15 Mr. Chatmas gave the applicant the option to postpone the meeting to a later date when
16 there in anticipation of a full sitting Board.

17
18 Ms. McDonald stated she had since gotten married and has changed her name to Mrs.
19 Higgins. She asked if they could have a moment to discuss a postponement with her
20 husband.

21
22 Mr. Chatmas asked for a 5-minute recess.

23
24 After the recess, Mrs. Higgins stated she would like the Board to proceed with tonight's
25 meeting.

26
27 Mr. Chatmas asked her to state her proposal.

28
29 Mrs. Higgins stated that she wanted to alter the roof to have a 12/12 pitch, which would
30 acquire space under the rooflines as they have 6 children between them and only 3
31 bedrooms. They hope to add additional living space and an additional bathroom. The
32 existing footprint doesn't meet current setback requirements.

33
34 Mr. Walsh asked if the addition in the front was essential to the remodel.

35
36 Mrs. Higgins stated it wasn't essential, however the proposed mudroom would be
37 practical because of the children with boots and coats during winter. The design of the
38 garage is historically aesthetic.

39
40 Mr. Higgins stated that if they could get both variances it would be more pleasing to the
41 neighbors. They had taken the proposed plans to the 10 closest neighbors and the plans
42 were well received. Neighbors thought it would be an improvement to the neighborhood.

43
44 Mr. Chatmas stated that the Board has to look at the both variance requests individually,
45 but the approval will be as one.

46

1 Mrs. Higgins asked if they dropped the front variance request, could the Board approve
2 the other two requests?
3
4 Mr. LaPlante stated that he agreed that the applicant's proposed would be a benefit to the
5 neighborhood.
6
7 Mr. Walsh stated that the Ordinance prohibits enlarging an existing nonconforming
8 footprint.
9
10 There was discussion of replacing enlargement with a deck and Mr. Smith stated any
11 increase in sq. footage would be an issue.
12
13 Mr. Tranfaglia stated that driving by the properties it seemed that the view corridor for
14 the Mayberry property could be affected; however the Mayberry's had signed a paper
15 from the applicant stating they were in favor of the proposal.
16
17 Mr. Chatmas thanked the applicant and seeing that there were no other members in the
18 audience, the Public Hearing was closed. He opened the floor to the Board.
19
20 Mr. Walsh asked Mr. Smith if this is an all or nothing situation.
21
22 Mr. Smith stated no that modifications could be made. The application could be wholly
23 approved, partly approved, or simply denied.
24
25 Mr. Chatmas stated the front setback is an issue and only 4 out of the nearest 11
26 neighbors reflect that issue. He believes with some creative design the plan could be
27 remodeled and would tentatively suggest such.
28
29 Mr. Smith stated he needed to caution the Board that if they approve just one part of the
30 application the applicant would be held to that. The applicant may want to submit a new
31 design for approval knowing the front setback issue.
32
33 Mr. Tranfaglia stated he thought that the Board has to be very explicit on what elements
34 the application does not meet.
35
36 Mr. Chatmas stated that the applicants met the criteria for the side setback variance.
37 They do not meet the criteria for the front setback on Overlook Lane.
38
39 Mr. Tranfaglia considers the part of the house that faces Overlook Lane as the rear. It
40 faces a dirt road that has very little traffic as opposed to Trundy that has much more
41 vehicle traffic.
42
43 Mr. LaPlante agrees that this is a unique property and the applicant has done the best they
44 can with fitting into the neighborhood with minimal impact.
45

1 Mr.Chatmas stated that their argument doesn't fit the criteria set forth by the Zoning
2 Ordinance and he had an issue justifying the variance.
3
4 Mrs. Higgins stated that she is respectful of the process, however, by using tradition and
5 precedent they almost preclude her to present her case to the Board.
6
7 Mr. Walsh asked if the Board should be redirecting the case back to the applicant to
8 redesign the second floor where the setback issue exists.
9
10 Mr. Chatmas stated that if the Board allows this variance to go through, they would be
11 setting a precedent for others who do not meet the criteria set forth in the Ordinance to be
12 allowed. He suggested that the applicant remove the enlargement of the front setback
13 from their request.
14
15 Mrs. Higgins stated that was a fair compromise.
16
17 Mr. Smith stated that if the applicant was going to go with another design, they should
18 table the request and submit their new design.
19
20 Mrs. Higgins asked if she could go ahead with the design submitted for the approved
21 variance and eliminate the second floor portion that would not be granted approval.
22
23 Mr. Chatmas stated that she should withdraw her request for a front variance only and
24 submit everything else as is.
25
26 Mrs. Higgins stated she would like to examine the plans again as cutting out that piece of
27 the plan would alter it too much.
28
29 Mr. Chatmas asked if Overlook Lane was considered a street if it is a gravel private way.
30
31 Mr. Smith stated that was correct.
32
33 Mrs. Higgins stated that this would not be practical and would make the house look
34 lopsided. She is very committed to moving into the neighborhood and they have already
35 lost 7-8 months time and thousands of dollars. She doesn't think that she can make it
36 work with a 25 ft setback and they should not be held to the criteria of things that have
37 been done before because the house is so rare.
38
39 Mr. Smith stated for the record that his staff does not give out setback information. They
40 may point people to their section in the Ordinance, however, will tell them any setback
41 determination must be done by the Code Enforcement Officer.
42
43 Mrs. Higgins stated that she had a record from when she called for the setbacks prior to
44 making an offer on the house.
45

1 Mr. Smith stated that if she had simply asked for the rear setback in a RA zone, she
2 would have received the answer of 20 ft.
3
4 The Board discussed economic hardship vs. setback requirements.
5
6 Mrs. Higgins stated that the topography precludes other placement of the house or
7 expansion of the house.
8
9 Mr. Chatmas read element #4 for Mrs. Higgins so she could understand the exact
10 meaning of why she didn't meet the criteria.
11
12 Mr. Smith read from the practical difficulty standards to Mrs. Higgins for her
13 clarification and emphasized to her that the Board was in a tough position and had to
14 uphold the standards.
15
16 Mrs. Higgins stated she should retract the front setback request and work with a
17 professional to create a different design.
18
19 Mr. Smith stated that what gets approved tonight is based on the plans before the Board.
20 Any difference in square footage would have to go back before the Board.
21
22 Mrs. Higgins stated that she wanted to table the application until next month to rework
23 the plans.
24
25 Mr. Chatmas verified with Mr. Smith that they could come before the Board next month.
26
27 Mr. Smith stated yes, as long as the applicant does not deviate from what was advertised.
28
29 Mrs. Higgins asked how she should prepare for the next month's meeting.
30
31 Mr. Smith stated that she should submit 10 copies of the plans a week before the meeting
32 so they would be included in the Board's packets.
33
34 Mrs. Higgins thanked the Board.
35
36 Mr. Tranfaglia made a motion to table the application to the following month.
37
38 Mr. LaPlante seconded the motion. 4 in favor, 0 opposed.
39
40 COMMUNICATIONS
41
42 Mr. Chatmas stated that Gib Mendelson, Steve LaPlante and Joe Guglielmetti terms were
43 ending at the end of this year. Mr. LaPlante will not be accepting another term due to
44 business obligations. Joe Guglielmetti accepts with reservation as his business is
45 demanding and Gib Mendelson accepts without reservation. Applications will be on the
46 Town website in October for any new perspective member.

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Mr. Chatmas reviewed a memo from the Maine Municipal Association regarding a workshop for Planning Boards and Boards of Appeals in Augusta.

Mr. Chatmas stated that all Board members should call the Code Office when the packets are received to confirm attendance.

Mr. Tranfaglia stated he did not receive a packet until the Monday evening prior to the meeting last month and therefore did not believe there would be a meeting.

Mr. Smith stated that was an unusual circumstance and if the meeting is cancelled, a cancellation notice is sent out.

Mr. Chatmas asked for a motion to adjourn.

Mr. LaPlante made a motion to adjourn.

Mr. Tranfaglia seconded the motion. 4 in favor, 0 opposed.

Respectfully submitted,

Laurie Palanza
Recording Secretary

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