

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

4 October 25, 2005

7:00 PM Town Hall

5  
6 Present: Jay Chatmas, Chair  
7 Jim Walsh  
8 Joe Guglielmetti  
9 Gib Mendelson  
10 Michael Tranfaglia  
11 Len Gulino  
12

Absent: Steve LaPlante

13 Also present was Bruce Smith, Code Enforcement Officer.  
14

15 Mr. Chatmas started the meeting with roll call and approval of the September minutes.  
16 With an amendment, he asked for a motion.  
17

18 Mr. Gulino made a motion to accept the amended minutes.  
19

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

22 OLD BUSINESS

23 To hear the administrative appeal of Paul Coulombe, John Fatula and Audrey Fatula of  
24 the Code Enforcement Officer's issuance of building permit # 050343 and flood hazard  
25 development permit # 050344 on property at 24 Reef Rd, Tax Map U13, Lot 14, and  
26 issuance of subsurface wastewater disposal system permit #'s 3143 & 3144 on property at  
27 26 Reef Rd, Tax Map U13, Lot 14B, all for development of 24 Reef Road.

28 Mr. Chatmas gave a brief history of the appeal and stated that the permits for the property  
29 have been withdrawn. He stated his concern on making preemptive decisions on the  
30 property without building permits. He asked the appellant's counsel to approach the  
31 podium for comment.

32 Richard Bryant, Van Meer & Belanger, acknowledged the appealed permits. When the  
33 appeals were filed, under the Zoning Ordinance sec. 19-2-5, they asked for a  
34 determination of the wetland boundaries. The Code Enforcement deferred making any  
35 determination of the wetland boundaries as the two parties were trying to negotiate. They  
36 have not been able to reach a consensual agreement, but are still asking for a  
37 determination of the delineation of the wetland boundaries. He believes there is also a  
38 violation of the Zoning Ordinance from a conveyance between abutting property owners  
39 and cited Section 19-4-2, reduction in nonconforming lots.

40 Mr. Chatmas stated he was sure that the Board could not make any judgments concerning  
41 the conveyance of properties, since the building permits had been withdrawn. The  
42 moving of the sideline on lot 26, resulted in a net increase of the nonconforming lot.

43 Mr. Bryant stated there are differences concerning the minimum lot size from the State  
44 of Maine Statute and the Town of Cape Elizabeth Ordinances.

1 Mr. Chatmas questioned if the Board even needs to hear the appeal at this time and asked  
2 the Town Attorney to address this issue.

3 Michael Hill, Attorney representing the Town of Cape Elizabeth, stated there is no  
4 controversy at this time as there is no building permit to have controversy from. The  
5 appellant had a standing when the appeal was made and now the matter is moot,  
6 including the nonconforming lot issue. Mr. Smith was correct in not addressing the  
7 wetlands delineation. The appellant may appeal determination of the wetland boundary at  
8 a later date.

9 Mr. Gulino asked if there was a time limit on which an action could take place.

10 Mr. Hill does not believe there is.

11 Mr. Smith stated it is not unusual for someone to create a lot that may be illegal and let it  
12 sit for a period of time. When someone applies for a permit, he would review the files  
13 and the project may or may not be approved and a neighbor may appeal at that time.

14 Scott Anderson, on behalf of Pya Chang, stated the Ordinance provides any person  
15 aggrieved by a decision from the Code Enforcement Officer, may come before the Board  
16 and have that decision reviewed. He stated there may be issues with the delineations of  
17 the wetlands and issues with the lot lines, however any appellant must show they have  
18 been injured by the determination. They are asking the Board to dismiss this appeal, as  
19 the appellants cannot show they have suffered any injuries thus far. He has submitted a  
20 letter to the Board summarizing this.

21 Mr. Chatmas asked Mr. Hill if the wetlands issue could be brought before the Board in a  
22 preemptive need without a permit in hand.

23 Mr. Smith stated if the delineation of the wetland issue is disputed, then it would be sent  
24 to the Planning Board for their review.

25 Mr. Chatmas closed the Public Hearing and asked for comments from the Board.

26 Mr. Gulino stated that he was in agreement with Mr. Hill.

27 Mr. Tranfaglia made the following motion.

28 Motion to Dismiss Administrative Appeal of Paul Coulombe and Mr. & Mrs. Fatula  
29 based on the following:

30 1) The applicant brought an administrative appeal of the issuance of a building permit,  
31 flood hazard development permit, and subsurface wastewater disposal system for 24 Reef  
32 Road and 26 Reef Road.

33 2) The permits were withdrawn by the property owner, Pya Chang LLC, on August 8<sup>th</sup>,  
34 and August 12<sup>th</sup>, 2005.

35 3) Since the permits at issue have been withdrawn, this matter is moot and the appeal  
36 should be dismissed.

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

38 Mr. Chatmas introduced the 2<sup>nd</sup> item under Old Business.

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

5 Mr. Gulino recused himself as he has a pending legal matter in behalf of the client.

6 Ariette McDonald Higgins and Michael Higgins, 36 Trundy Road, revised portions from  
7 last month's meeting and addressed the problems on the backside of the house.

8 Mr. Chatmas stated it appeared they were not going to expand on the Overlook Lane side  
9 of the property.

10 Ms. Higgins stated that was correct.

11 Mr. Mendelson asked the applicant for clarity on the setback issue, as he was absent from  
12 the last meeting.

13 Ms. Higgins approached the Board and gave a brief overview for the benefit of Mr.  
14 Mendelson and Mr. Guglielmetti(who was also absent from the prior meeting).

15 Mr. Chatmas stated the applicant submitted neighborhood comparisons. The applicant  
16 was able to satisfy the two separate side setbacks, but not the front setback on Overlook  
17 Lane.

18 Mr. Mendelson asked if there had been an amendment to the application to withdraw the  
19 front setback variance?

20 Mr. Smith stated that when a motion is made, only the side variance could be approved.

21 Mr. Chatmas stated, as there was no one in the audience, there would not be public  
22 comment.

23 Mr. Chatmas opened the floor to Board discussion. Since there was no discussion, he  
24 proceeded to vote on the elements.

- 25 1. The proposed variance is not a substantial departure from the intent of the Ordinance.  
26 5 in favor, 0 opposed, 0 abstained
- 27 2. A literal enforcement of the Ordinance would cause a practical difficulty.  
28 5 in favor, 0 opposed, 0 abstained
- 29 3. The need for the variance is due to the unique circumstances of the property and not to  
30 the general conditions of the neighborhood.  
31 5 in favor, 0 opposed, 0 abstained
- 32 4. The granting of the variance will not produce an undesirable change in the character of  
33 the neighborhood and will not unreasonably detrimentally affect the use or market  
34 value of abutting properties. 5 in favor, 0 opposed, 0 abstained
- 35 5. The practical difficulty is not the result of action taken by the applicant or a prior  
36 owner. 5 in favor, 0 opposed, 0 abstained
- 37 6. No other feasible alternative to a variance is available to the petitioner.  
38 5 in favor, 0 opposed, 0 abstained
- 39 7. The granting of a variance will not unreasonably adversely affect the natural  
40 environment. 5 in favor, 0 opposed, 0 abstained

1 8. The property is not located in whole or in part within shoreland areas as described in  
2 Title 38, section 435. 5 in favor, 0 opposed, 0 abstained

3  
4 **JUDGMENT**

5 Mr. Tranfaglia made the following motion:

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7 In the matter of Ariette Higgins, who resides at 36 Trundy Road, Tax Map U12-38, at the  
8 said applicant's request for a side westerly property line variance of 15 ft from the  
9 required 25 ft to construct an addition and a second story structure be granted.

10  
11 Mr. Walsh seconded the motion. 5 in favor, 0 opposed.

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13 Mrs. Higgins thanked the Board for their time and assistance.

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15 Mr. Chatmas stated there were no new business or communication items.

16  
17 Mr. Smith brought to the Board's attention that the next meeting would be held  
18 November 22, prior to Thanksgiving. He wanted to know if any Board members had any  
19 conflicts with this.

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21 It appeared that all members would be present.

22  
23 Mr. Chatmas strongly encouraged response from Board members concerning attendance  
24 for the next meeting at their earliest convenience.

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26 Mr. Guglielmetti made a motion to adjourn.

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28 Mr. Mendelson seconded the motion and was unanimous.

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30 Meeting adjourned at 8:50 pm.

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32 Respectfully submitted,

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37 Laurie Palanza  
38 Minutes Secretary  
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