

1 TOWN OF CAPE ELIZABETH
2 ZONING BOARD OF APPEALS

3
4 November 22, 2005

7:00 p.m. Town Hall

5
6 Present: Jay Chatmas, Chair

Absent: Jim Walsh

7 Len Gulino

8 Joe Guglielmetti

9 Jay Chatmas

10 Gib Mendelson

11 Michael Tranfaglia

12 Mr. LaPlante

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

15
16 Mr. Chatmas asked for a role call and proceeded to the first item of business; approval of
17 the minutes. With one amendment, he asked for a motion.

18
19 Mr. Guglielmetti made a motion to accept amended minutes

20
21 Mr. Gulino seconded the motion. 4 in favor, 0 opposed. (Mr. LaPlante was absent at prior
22 meeting and Mr. Tranfaglia arrived late).

23
24 NEW BUSINESS

25
26 To hear the request of Mark Mueller Architects to reconstruct & enlarge an existing
27 structure within 75 ft of the high water line of the Atlantic Ocean located at 7 Peabbles
28 Point Lane, Tax Map R03, Lot 9F.

29
30 Mr. Chatmas gave an overview of the request. He also disclosed that he had in the past a
31 working relationship with Mark Mueller, who is the architect representing Martha and
32 Don Craig. He did not feel there would be a conflict of interest.

33
34 The Board agreed there would not be a conflict of interest. There were no issues with the
35 audience.

36
37 Martha Craig, 7 Peabbles Cove Lane, stated she is from Cape Elizabeth and hopes to
38 retire here one day. The house is very small and currently does not meet there needs.
39 They tried to design a home with the architect that would not impact the neighbor's
40 views.

41
42 Mr. Gulino asked the applicant about the proposed setbacks.

43
44 Mr. Smith clarified that the house is on a 28-acre parcel of leased land. There are not
45 individual property lines, so it is not an issue.

46

1 Mark Mueller, Architect for the Craigs, stated the setbacks listed were per Town Zoning.
2
3 Mr. Smith stated this is a unique situation and he does not require the homeowners to
4 meet arbitrary property lines. He does apply road setbacks when possible.
5
6 Mr. Smith added that there was an existing deck that the Town's records did not reflect.
7 This would affect the credit for the bay window. He asked if the architect redesigned to
8 accomplish that.
9
10 Mr. Mueller stated they had revised the drawings and calculations. They are connecting
11 the existing shed to the house, which will become a playroom. They are essentially
12 keeping the impervious amount of square footage the same.
13
14 Mr. Smith made the new drawings available to the audience.
15
16 Mr. Gulino asked if views would be impacted to abutters not shown on the plan.
17
18 Mr. Mueller stated that those abutters had different view corridors and does not believe
19 there would be an impact. The new roofline has also been lowered for less impact.
20
21 Mr. Chatmas asked if they would be removing the entire structure.
22
23 Mr. Mueller stated no, they will be leaving the existing block foundation.
24
25 Mr. Chatmas asked Mr. Smith if need be, can the foundation be replaced?
26
27 Mr. Smith stated that the Board should verify the foundation is in good shape. If it is,
28 that is one of the criteria that would enable the structure to stay where it is.
29
30 Mr. Chatmas opened the Public Hearing.
31
32 Mr. Jack Flynn, owner of 36 Peabbles Point Lane for almost 36 years, said he was
33 approached by the Craigs with a proposal to make the shed into a bunkhouse and thought
34 that was fine. When he received the notice he believed it was because the house was
35 within 75' of the water. Another neighbor called him last week and notified him that the
36 Craigs were proposing to put a 9' x 20' second floor on the structure. He received a call
37 from Mr. Craig who stated he would FedEx the plans, which were never received. He had
38 pictures to present to the Board and how this application would affect him.
39
40 Mr. Chatmas asked if his house was 1 or 2 story.
41
42 Mr. Flynn stated 2 stories.
43
44 Mr. Mueller stated that the new, steeper gable design would impact views less. The
45 Craigs also went around to the neighbors, showed the design, and got signatures in favor
46 of the project.

1
2 Mr. Flynn stated the only view it affects is his. The Craigs have his phone number in
3 Massachusetts and did not contact him until that prior Thursday. He described the view
4 corridor that exists.
5
6 Mr. Gulino stated it appeared the biggest view restrictions would be the tree to the left of
7 the house and the telephone pole.
8
9 Mrs. Craig stated they had designed the roof to be in place by the telephone pole as it
10 would impact the views the least.
11
12 Mr. Tranfaglia asked Mrs. Craig if the neighbor to the right had signed the petition.
13
14 Mrs. Craig stated yes, and it impacted that neighbor the most.
15
16 Mr. Swett, 4 Peabbles Point Lane, said on page three there was a misstatement. There are
17 definitive lines on the property. He also stated that the present owner of the whole
18 property sent a directive out to every member of the Peabbles Cove Association and
19 stated there would be nothing done externally to impact views from any abutting
20 property.
21
22 Mr. Chatmas asked if the lot lines were recorded.
23
24 Mr. Swett stated they were drawn by the property owner's parents and not recorded.
25
26 Mr. Gulino asked Mr. Smith if he had talked to the property owner.
27
28 Mr. Smith stated he had, that she wanted the neighbors to be agreeable.
29
30 Patti Franson, 2 Stonybrook Rd, asked Mr. Flynn if there had been anyone in Peabbles
31 Cove that had done improvements and impinged on a neighbor's view, including the two
32 women at the end.
33
34 Mr. Flynn stated no, and the two women lowered their roofline and did not impinge on
35 any neighbor's view.
36
37 Mr. Chatmas closed the Public Hearing and opened Board discussion.
38
39 Mr. Chatmas asked Mr. Smith to elaborate on his conversation with Mrs. Tucker, the
40 landowner.
41
42 Mr. Smith wasn't sure it was relevant, however, he would not issue a building permit
43 without a letter from her stating she would allow the improvements.
44
45 Mr. Mendelson asked why Mrs. Tucker isn't a co-applicant?
46

1 Mr. Smith did not have an answer. He stated technically she should be.
2
3 Mr. Chatmas stated that the Town has no view easement or view restriction in the
4 Ordinance.
5
6 Mr. Gulino stated it seemed that there had been a lack of opportunity for the neighbors to
7 discuss the view issue and wondered if they could table the item.
8
9 Mr. Chatmas stated that notices were sent in advance. He read the notice. He asked Mr.
10 Flynn if he received this notice.
11
12 Mr. Flynn stated he received the notice, and thought that it was concerning the bunkhouse
13 that they had initially told him about. His neighbor called him after he went and reviewed
14 the plans.
15
16 Mr. Mueller stated that they had tried to make contact with Mr. Flynn throughout the
17 weekend.
18
19 Mr. Gulino stated he was troubled that there was confusion concerning the scope of the
20 application and that there has not been an opportunity for the neighbors to discuss it.
21
22 Mr. Tranfaglia stated that due process was served, as there was public notification. He
23 believes the homeowner has met the requirements for this application.
24
25 Mr. Gulino asked if there was a miscommunication with Mr. Flynn.
26
27 Mrs. Craig stated that when they initially were looking at the project, they were only
28 going to convert the shed. After further discussion, they realized that they were only
29 getting one opportunity to enlarge the house and consequently came up with this design.
30 It was very important to them to not upset the neighbors.
31
32 Mr. Chatmas reviewed the elements with the Board.
33
34 Mr. Gulino made a motion to table the application to the next month.
35
36 Mr. Smith asked why he wanted to table the application.
37
38 Mr. Gulino stated he wanted to table the application because there was
39 miscommunication with the neighbor and he wanted to give both parties an opportunity
40 to discuss the project and hopefully come to an agreement.
41
42 Mrs. Smith stated the Board should find out if the applicant is willing to discuss this or
43 feels that the application is complete.
44
45 Mr. Gulino withdrew the motion.
46

1 Mr. Chatmas asked Mrs. Craig if she was satisfied with her plans as submitted. She has
2 the ability to move forward the application tonight or table it until next month.

3
4 Mrs. Craig wanted a ruling this evening.

5
6 Mr. Gulino made another motion to table the item due to the miscommunication of the
7 scope of the project, Mr. Flynn's longstanding status in the neighborhood, and the photos
8 taken of the project.

9
10 Mr. Mendelson seconded the motion. 3 in favor, 3 opposed. The motion did not pass.

11
12 Mr. Chatmas asked the Board to vote on the elements.

13
14
15 1. The building does meet the setback to the greatest practical extent due to the following:

16 a) The size of the lot: 6 in favor, 0 opposed.

17 b) The slope of the land: 6 in favor, 0 opposed.

18 c) The potential for soil erosion: 6 in favor, 0 opposed.

19 d) The location of other structures on the property and on adjacent properties: 6 in favor,
20 0 opposed.

21 e) The location of the septic system (if any) and other on-site soils suitable for
22 septic systems: N/A

23 f) The impact on views: 6 in favor, 0 opposed.

24 g) The type and amount of vegetation to be removed to accomplish the 6 in favor, 0
25 opposed.:

26
27 Mr. Tranfaglia made the following motion.

28
29 In the matter of the application of Don & Martha Craig, residing at 7 Peabbles Point
30 Lane, (R03-9F), that the above application be granted.

31
32 Mr. LaPlante seconded the motion. 4 in favor, 2 opposed.

33
34 COMMUNICATIONS

35
36 Mr. Chatmas stated that 3 Board Members terms were expiring. Mr. Mendelson and Mr.
37 Guglielmetti have expressed interest in being reappointed. Mr. LaPlante will not be
38 returning due to the challenges of his new job.

39
40 Mr. Chatmas asked the Board to consider whom they would want to appoint as the new
41 Chair as his term ends in December.

42
43 Mr. Smith stated that the meeting in December would be two days after Christmas. He
44 asked the Board how many members would be able to attend. There didn't appear to be
45 an issue of attendance.

1 Mr. LaPlante made a motion to adjourn.

2

3 Mr. Mendelson seconded the motion. 6 in favor, 0 opposed.

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5 Meeting adjourned at 9:10 p.m.

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7 Respectfully submitted,

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9 Laurie Palanza

10 Minutes Secretary

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