

TOWN OF CAPE ELIZABETH  
MINUTES OF THE ZONING BOARD

April 24, 2006

7:00 p.m. Town Hall

Present: Len Gulino, Chair  
Peter Black  
Robert Chatfield

Jim Walsh  
Jay Chatmas

Absent: Michael Tranfaglia  
Gib Mendelson

Also present was Bruce Smith, Code Enforcement Officer.

Mr. Gulino opened the meeting with a roll call and asked for comments on the prior month's minutes. With noted amendments, he asked for a motion.

Mr. Walsh made a motion to accept minutes as amended.

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

NEW BUSINESS

To hear the request of Richard L. Armstrong, 5 Ironclad Road, Tax Map U08, Lot 6 for an easterly side property line variance of 10 feet from the required 25 feet and a westerly side property line variance of 9 feet from the required 25 feet to do additions at 15 and 16 feet respectively from their side property lines.

Mr. Richard Armstrong, 5 Ironclad Road, bought the home a few years ago that was originally built in the 20's and was modified in the 80's. They will be trying to make changes that will create a better looking home. He reviewed the pages of the application.

Mr. Gulino confirmed with the applicant that the easterly side setback is 23', to be reduced to 15', a westerly setback increase from 15' to 16', and the rear setback will remain at 105'.

Mr. Armstrong stated he had a land survey of the property from 2003. His proposal is for a sunroom/porch on the east side of the house and to elongate the second floor on the west side.

He did a comparison survey of the 13 surrounding properties and only 3 are not within the 25' setback requirement.

Mr. Gulino asked if he did the survey himself.

Mr. Armstrong stated he participated, that he is an engineer but not licensed.

Mr. Gulino asked which properties meet setbacks.

Mr. Armstrong stated lots 7, 8 and 13.

Mr. Chatmas asked if these numbers were included in the calculations.

Mr. Armstrong stated no, but he could run the numbers quickly.

Mr. Chatmas stated that it needs to be the 10 nearest properties, as the Ordinance dictates, and need to be the 10 closest, not chosen by the applicant.

Mr. Armstrong stated that maybe he gave too much information. He unfortunately had started the project on Friday when Mr. Smith was sick, and he worked on it through the weekend as the application was due Monday. His point was 10 of the 13 neighboring parties are not in compliance.

Mr. Smith stated that you could include 15 or 20 properties, but they have to be all inclusive.

Mr. Chatmas stated you can include as many as you want; however, they have to compare the 10 nearest neighbors to the property.

Mr. Chatmas clarified on page 11 that numbers listed were side setbacks.

Mr. Armstrong said yes, he should have labeled as such. He stated the purpose of that page was to show the average size of neighboring properties. He gave an overview of the increase of square footage, with 273 sq. ft. on the first floor, and 184 sq. ft. on the second floor.

Mr. Armstrong stated page 12 was an architectural perspective of the east & north side of the house.

Mr. Gulino asked how deep the porch was and if it impacted any neighbor's views.

Mr. Armstrong stated that the porch is 6' deep and the sunroom is proposed to be 13.5' deep. They will not be impacting any of the neighbor's views.

Mr. Gulino asked if any trees would be removed.

Mr. Armstrong stated one tree would be removed. He added that the architect that they have been working with has a strong background in historical design.

Mr. Gulino asked who did the drawings?

Mr. Armstrong stated Glenn Harmon.

Mr. Gulino asked if page 15 is depicting work on the 3<sup>rd</sup> level?

Mr. Armstrong stated the architect called the basement (which is ½ basement, ½ living space) the bottom level.

Mr. Gulino asked Mr. Smith if this caused any height issues.

Mr. Smith stated he didn't believe that it did; however he would confirm that.

Mr. Armstrong stated that page 16 show additional detail for the proposed addition. Page 17 shows an architectural perspective for the west end of the level. The last page has signatures from the neighbor's that have no objections to this proposal.

Mr. Gulino stated that he appreciated the applicant doing that, as he believes it is a good idea.

Mr. Gulino asked Mr. Chatmas if it is typical to add the property setback into the calculations or not.

Mr. Chatmas verified with Mr. Smith that the properties that make setback are not included as it is mute.

Mr. Smith stated if a property is included, the setback numbers for the property should be included.

Mr. Gulino and Mr. Armstrong went through the scaled numbers for the properties within setbacks.

Mr. Chatmas stated, in his opinion, that in this instance it is relevant as he has numbers for 10 properties that do not meet setbacks.

Mr. Black agreed with this.

Mr. Chatmas stated this is something that should be looked at by the Town Attorney.

Mr. Armstrong came up with an adjustment number of 14.6 for a setback.

Mr. Gulino asked the applicant if he had anything else to add. Hearing none, he closed the public portion of the meeting and opened Board discussion.

Mr. Chatmas told the applicant it was a well-prepared application, and all elements of the standards were met.

Mr. Walsh stated this could be a case study for someone else to do the research. He thanked him for his completeness and believes all the elements have been satisfactorily met.

Mr. Black asked how you would figure economic injury.

Mr. Gulino stated there is an 8-part test and the applicant has to comply with all the elements for a variance to be granted. He gave thorough explanations of elements #2 & #4, which are the most difficult elements for applicants to meet.

Mr. Gulino asked for any other discussion. Hearing none, he proceeded to the voting stage.

1. The proposed variance is not a substantial departure from the intent of the Ordinance.  
5 in favor, 0 opposed, 0 abstained
2. A literal enforcement of the Ordinance would cause a practical difficulty.  
5 in favor, 0 opposed, 0 abstained
3. The need for the variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.  
5 in favor, 0 opposed, 0 abstained
4. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.  
5 in favor, 0 opposed, 0 abstained
5. The practical difficulty is not the result of action taken by the applicant or a prior owner.  
5 in favor, 0 opposed, 0 abstained
6. No other feasible alternative to a variance is available to the petitioner.  
5 in favor, 0 opposed, 0 abstained
7. The granting of a variance will not unreasonably adversely affect the natural environment.  
5 in favor, 0 opposed, 0 abstained
8. The property is not located in whole or in part within shore land areas as described in Title 38, section 435.  
5 in favor, 0 opposed, 0 abstained.

## **JUDGMENT**

A motion was made by Mr. Chatfield to approve the variance appeal and seconded by Mr. Walsh 5 in favor, 0 opposed, 0 abstained.

Mr. Armstrong wanted to state that Mr. Smith was very helpful, and pointed several items to him that he would have missed.

Mr. Gulino thanked the applicant. He asked for a motion to adjourn.

Mr. Walsh made a motion to adjourn. All in favor.

Meeting adjourned at 7:48 PM.

Respectfully submitted,  
Laurie Palanza

