

1 TOWN OF CAPE ELIZABETH  
2 MINUTES OF THE ZONING BOARD

3  
4 May 23, 2006

7:00 pm Town Hall

5  
6 Present: Len Gulino, Chair  
7 Michael Tranfaglia

Jim Walsh  
Peter Black

8  
9 Absent: Jay Chatmas  
10 Gib Mendelson

Robert Chatfield

11  
12 Mr. Gulino welcomed everyone to the meeting and asked for comments on the minutes.

13  
14 With noted amendments, he asked for a motion.

15  
16 Mr. Walsh made a motion to approve the amended minutes.

17  
18 Mr. Black seconded the motion. 4 in favor, 0 opposed.

19  
20 NEW BUSINESS

21  
22 To hear the request of Ann Kilby, 4 City View Road, Tax Map U03, Lot 53 for a  
23 conditional use permit to operate a home business, specifically the practice of shiatsu and  
24 other holistic therapies for visiting clients.

25  
26 David Lourie, Attorney representing Ann Kilby, stated that Ms. Kilby has resided in  
27 Cape Elizabeth for many years. She is not in the best of health and is not looking to build  
28 her practice. She just wants to keep the clients she currently has and see them at her  
29 residence. Ms. Kilby came before the Board 3 years ago and was turned down.  
30 Afterwards, she rented an office on St. John St. Only 2 or 3 clients visit in her office  
31 weekly. This may increase slightly if she could see clients in her home, as clients prefer  
32 to be seen in a home setting. Parking will not be an issue. The prior application had a  
33 neighborhood petition to not allow her to see clients out of her home, as there were some  
34 issues with her son. Traffic will be minimal, and believes this will be the quintessential  
35 home occupation. He hopes that the Board will focus on the issues and evidence, and not  
36 the conduct of Ann's son.

37  
38 Mr. Gulino asked when Ms. Kilby started the shiatsu practice.

39  
40 Mr. Lourie said about 10 years ago, more so since the last application.

41  
42 Mr. Gulino asked who was currently residing at the residence.

43  
44 Mr. Lourie stated Mr. & Mrs. Kilby, their son Danny and a daughter.

45  
46 Mr. Gulino asked how many vehicles were at the home.

1 Mr. Lourie stated 3, principally driven by Mr. Kilby, a physician, and their son Danny.  
2  
3 Mr. Gulino referenced the vehicle trips from the application being one.  
4  
5 Mr. Lourie was averaging the 2-3 trips as 4-6 trip ends, which equals approximately one  
6 per day.  
7  
8 Mr. Smith stated it cannot be an average number; but must be based on a per day count.  
9  
10 Mr. Lourie stated the maximum patients could be 2, which is 4 trip ends.  
11  
12 Mr. Gulino asked about the current usage of the road.  
13  
14 Mr. Lourie stated they had estimated 20. There are two other homes on the street.  
15  
16 Mr. Smith stated under the ordinance, she could have 5 clients per day, regardless of the  
17 traffic count.  
18  
19 Mr. Gulino asked if she could live with no more than 2 clients per day.  
20  
21 Mr. Lourie stated yes.  
22  
23 Mr. Gulino asked if she could live with the conditions of 9-5, Monday through Friday,  
24 that vehicles only are parked in the driveway, and no signage.  
25  
26 Mr. Lourie said that is fine.  
27  
28 Mr. Tranfaglia was concerned whether this would be a good fit in the neighborhood. He  
29 stated the road could be hard to navigate.  
30  
31 Mr. Lourie stated the clients are regulars who would know the road.  
32  
33 Mr. Gulino asked if there would be a problem staggering clients so there would be no  
34 “stacking”.  
35  
36 Mr. Lourie stated no.  
37  
38 Mr. Gulino opened the Public Hearing for anyone in support of the proposal. Hearing  
39 none, he asked for anyone against or neutral to the proposal.  
40  
41 Brad Smith, 30 Forest Road, wanted to speak to the road being winding and twisted, with  
42 tight turns. He stated there were approximately 12 children in the neighborhood and was  
43 concerned with that. He asked for clarification on the amount of trips coming from/to the  
44 home. He asked if the practice would be solely inside the home. He asked about a zoning  
45 issue with the prior request that concerned parking. He questioned what recourse he has if  
46 the conditions are not met.

1  
2 Mr. Gulino stated that if a condition is not met, he could bring any infraction to the Code  
3 Enforcement Officer, who will enforce the condition. Concerning the vehicle trips, the  
4 maximum customers would be two per day, resulting in a total of 4 vehicle trips.

5  
6 Mr. Walsh stated the application states two or three clients a week.

7  
8 Mr. Gulino stated he proposed the more restrictive condition of 2 clients per day, which  
9 is more restrictive than the 10 trip ends that allowed.

10  
11 Mr. Smith stated that it needed to be clear how many trip ends would be allowed per day  
12 and that the application may need to be amended.

13  
14 There was discussion to determine the amount of clients and trip ends.

15  
16 Mr. Smith stated that the application asks for 2-3 clients per week and as discussion went,  
17 it went to 2 a day, which it is a huge increase.

18  
19 Mr. Lourie stated that they are asking for a reasonable amount of clients and by  
20 stipulating the business hours of 9-5 it has eliminated the problem with bus stop issues.  
21 It is time for her to have this use and move on.

22  
23 Mr. Tranfaglia stated the last time a home occupation was denied, it was due to the fact it  
24 could create a traffic hazard.

25  
26 Mr. Lourie stated that turning around in the Kilby's driveway will not create a public  
27 hazard.

28  
29 Mr. Gulino asked if there were any other comments for the public hearing. Hearing none,  
30 he closed the public hearing. He stated the applicant has agreed to conditions that  
31 include: no more than 2 customers per day, no more than 10 customers per week, no  
32 overlapping customers, no on-street parking, customers limited to Monday-Friday  
33 between the hours of 9:00 a.m. to 5:00 p.m. He agrees with Mr. Lourie that this is an  
34 appropriate business to have out of the home, especially with the conditions imposed. He  
35 also believes that it is harder for a woman to make a living out of their home. He does not  
36 believe the home occupation will create a hazardous traffic condition.

37  
38 Each of the following elements where then voted on:

- 39  
40 1. The proposed use will not create hazardous traffic conditions when added to  
41 existing and foreseeable traffic in its vicinity. 4 in favor, 0 opposed, 0 abstained.  
42 2. The proposed use will not create unsanitary conditions by reason of  
43 sewage disposal, emissions to the air, or other aspects of its design or operation.  
44 4 in favor, 0 opposed, 0 abstained.  
45 3. The proposed use will not adversely affect the value of adjacent properties.  
46 4 in favor, 0 opposed, 0 abstained.

- 1 4. The proposed site plan and layout are compatible with adjacent property  
2 uses and with the Comprehensive Plan. 4 in favor, 0 opposed, 0 abstained.  
3 5. The design and external appearance of any proposed building will constitute  
4 an attractive and compatible addition to its neighborhood, although it need not have a  
5 similar design, appearance or architecture. 4 in favor, 0 opposed, 0 abstained.  
6

7 Mr. Gulino reviewed the definition of Home Business, from the Zoning Ordinance, and  
8 confirmed the 6 elements of the definition with Mr. Lourie. He confirmed the conditions  
9 set forth, which include: no signage, business hours of 9 a.m. to 5 p.m. Monday – Friday,  
10 vehicle parking in driveway only, no overlapping clients, and a maximum of 10 clients  
11 per week.  
12

13 Mr. Tranfaglia made the following motion:  
14

15 In the matter of the application for a conditional use permit with map/lot number as  
16 described, owned by Alan and Ann Kilby, the application be approved with conditions  
17 set forth this evening.  
18

19 Mr. Black seconded the motion. 4 in favor, 0 opposed.  
20  
21

22 \*\*\*\*\*  
23

24 To hear the request of Kerrilyn Rand Welsh, 168 Two Lights Road, Tax Map U15, Lot  
25 67 for a conditional use permit to operate a home business, specifically for the retail sale  
26 of homemade goods.  
27

28 Kerrilyn Welsh, resident of 168 Two Lights Road for 23 yrs, asked that her name be  
29 corrected, as it is Welch. Ms. Welch is asking permission to sell garden concrete  
30 stepping-stones. She had been selling them on a table in front of her house for the past  
31 couple of summers and didn't realize she was doing anything wrong until Bruce stopped  
32 by. She took the table down immediately. She introduced a copy of her site plan,  
33 including neighbors.  
34

35 Mr. Gulino asked to look at the site plan. He asked how long she'd been selling goods  
36 from her home.  
37

38 Ms. Welch said the prior two summers.  
39

40 Mr. Gulino asked what months she sold the items.  
41

42 Ms. Welch said June 1<sup>st</sup> through October 1<sup>st</sup>.  
43

44 Mr. Gulino asked how many she sold.  
45

1 Ms. Welch stated just over 200, less than 2 a day, with many people buying more than 1.  
2  
3 Mr. Gulino asked how many customers stop per day.  
4  
5 Ms. Welch stated 4-5.  
6  
7 Mr. Gulino asked where they park.  
8  
9 Ms. Welch stated in the driveway and on the road.  
10  
11 Mr. Gulino asked how many lanes her road was.  
12  
13 Ms. Welch stated 2 lanes.  
14  
15 Mr. Gulino asked if there was a shoulder.  
16  
17 Ms. Welch stated not paved but had plenty of parking space in driveway.  
18  
19 Mr. Gulino asked where they were being displayed.  
20  
21 Ms. Welch stated they had been displayed outside until Bruce told her not to. She can use  
22 her original garage for storage and retail space.  
23  
24 Mr. Tranfaglia asked if there had been any accidents or complaints from Beacon Lane.  
25  
26 Ms. Welch stated no complaints to her and no accidents to her knowledge.  
27  
28 Mr. Gulino asked what hours would she be operating.  
29  
30 Ms. Welch stated that, by the hours that people stopped by last summer, it would be from  
31 10 am to 7 pm.  
32  
33 Mr. Gulino asked what days of the week.  
34  
35 Ms. Welch stated that she had a lock box outside for people to use on the honor system.  
36 She stated that whatever was approved, she would live by.  
37  
38 Mr. Smith asked what days she would like.  
39  
40 Ms. Welch stated weekends are great; she would like Sunday-Saturday.  
41  
42 Mr. Gulino asked her to describe the stepping-stones.  
43  
44 Ms. Welch stated that they were made of concrete with sea glass, broken pottery, and  
45 seashells. The largest are 13" in diameter and weigh between 10-20 lbs.  
46

1 Mr. Walsh asked where the sign would be on the property.  
2  
3 Ms. Welch was hoping for a two-sided sign, like the one included in the packet.  
4  
5 Mr. Walsh asked if that was a permanent sign.  
6  
7 Ms. Welch stated she could take it down every day, if requested.  
8  
9 Mr. Gulino asked the distance between her driveway and Beacon Lane.  
10  
11 It was estimated to be 65 feet.  
12  
13 Mr. Black asked if these were repeat customers.  
14  
15 Ms. Welch stated they are typically vacationers, as they drive by.  
16  
17 Mr. Black asked if it was possible to put the sign by the driveway so customers could  
18 park there instead of Two Lights Road.  
19  
20 Ms. Welch stated that she could include on the sign “park in driveway”.  
21  
22 Mr. Smith stated that she needs to direct the traffic, that they discussed this before and  
23 knew parking on Two Lights Road could be an issue.  
24  
25 Mr. Gulino asked if anyone wanted to speak in favor of the application.  
26  
27 Mary Page, 172 Two Lights Road, stated there is no problem with an increase in traffic or  
28 traffic accidents, that people drive by it, see it, and stop. She has no problem with this at  
29 all. She has more people stopping at her house asking directions than stop at Ms. Welch’s  
30 house.  
31  
32 Mr. Gulino asked if anyone else wanted to speak in support of the item. Hearing none, he  
33 asked for anyone opposing the item to speak.  
34  
35 Dan Boxer, 10 Mares Hollow, stated he realizes that the Ordinance provides for home  
36 businesses, was looking for a productive dialog. He stated there was a letter delivered that  
37 day, signed by 8-10 people in the neighborhood and that he is a lawyer speaking for  
38 them. He stated he drives by Ms. Welch’s house every day. He would like the Board to  
39 consider the issues of traffic; that any vehicle needs to be parked off the road and gave an  
40 example of two vehicles from the prior fall. He stated there needs to be controls in place  
41 to assure parking in the driveway. They prefer a sign that does not have prices on it. He  
42 stated the sign mentioned sea lady faces, and did not know what that referred to.  
43  
44 Ms. Welch stated they were all garden decorations, made from concrete.  
45  
46 Mr. Boxer asked if she made them all.

1  
2 Ms. Welch stated no, Mary Page makes the sea faces.

3  
4 Mr. Boxer asked if the sea lady faces were included in the application before, if not then  
5 the application has to reconsidered for a new product. The driveway and turnaround may  
6 attract new customers. He verified with Ms. Welch that the traffic count before was only  
7 for the stepping-stones and not for the sea faces. He didn't believe it would be a big  
8 thing, but requests the Board be more cautious with the traffic issue, which is their  
9 biggest concern. His other comment was on outside display, however, if it is determined  
10 that the display is inside, that issue goes away. Neighbors and himself, are concerned the  
11 road could develop into a commercial street to take advantage of the lighthouse and the  
12 Lobster Shack. He referenced a sandwich board for an art gallery.

13  
14 Mr. Smith stated he had spoken with the art gallery owners and it should not be a  
15 problem this year. If it is, he asked them to call his office.

16  
17 Mr. Gulino asked if there was anyone else in support or opposition.

18  
19 Ms. Welch wanted to address the issue with adding another product. She stated the  
20 Ordinance allows 2% of traffic. Two Lights Road has 1800 vehicle trips so that would  
21 equal 36 trips and therefore not be an issue.

22  
23 Mr. Gulino asked where she got the number of vehicle trips.

24  
25 Ms. Welch stated from the Maine D.O.T.

26  
27 Mr. Walsh asked if she would consider moving the operation to the other side of the  
28 house. He also asked if they had considered selling this at the Lobster Shack.

29  
30 Ms. Welch stated she hadn't pursued it, but she has considered selling elsewhere.

31  
32 Mr. Gulino stated he has reservations as it is a retail operation, and it is difficult for him  
33 to have a feel for the traffic layout. He would not be comfortable moving forward without  
34 a site visit or additional photographs. He questions the appropriateness of creating a retail  
35 space in a residential neighborhood.

36  
37 Mr. Tranfaglia found the layout to be sensible, with the walkway from the driveway to  
38 where the stones are sold. He finds it ironic that due to a complaint, she needs to have a  
39 sign. He believes she should be able to put whatever she wants on the sign. He believes  
40 traffic safety is the biggest issue, and since she had been operating her business for three  
41 years without issue, it should not be considered an issue. He does not have trouble with  
42 this operation.

43  
44 Mr. Black asked if she advertised.

45

1 Ms. Welch stated if she could afford it she might, however, it is more of a hobby that she  
2 makes money at.  
3  
4 Mr. Black asked if she had any suggestions to get people to park in her driveway.  
5  
6 Ms. Welch thought a sign indicating that would be useful. She believes that people  
7 parked on the side of the road because that is where the stones were. Without the stones  
8 on display, the sign would be the only way they would stop, and it would indicate where  
9 to park.  
10  
11 Mr. Smith stated she cannot control where people park unless the Town posts the road. If  
12 complaints get received, then it could be a hazard, which would be addressed. The  
13 purpose of a home business is to sell products or crafts made on site.  
14  
15 Mr. Black stated he needed convincing that customers would not create a hazard. He  
16 asked if she could suggest a condition to impose.  
17  
18 Ms. Welch stated she could put another sign up where customers shouldn't park.  
19  
20 Mr. Smith stated that would have to be decided by the Town Council. He suggested the  
21 sign have an arrow showing where to park.  
22  
23 Mr. Walsh asked Mr. Smith if the Board could give approval for the upcoming season  
24 and then monitor and measure the whole effort.  
25  
26 Mr. Smith stated it either meets the standards or not. The safeguard would be there, if  
27 conditions are not followed, he could take action.  
28  
29 Mr. Gulino stated, from what he has seen, traffic is quick through that area. He would  
30 like a site visit or aerial photographs, because he is not convinced there will not be a  
31 traffic hazard.  
32  
33 Mr. Smith stated whether there is a site visit or not, people parking on the side of the road  
34 could still be an issue.  
35  
36 Mr. Gulino stated the Board is charged to find that the business will not create a  
37 hazardous traffic condition. With a vehicle parked on the side of the road, with 2 wheels  
38 on the road, he believes this a hazard.  
39  
40 Mr. Tranfaglia revisited the fact that the business had been operating for three years, and  
41 the fact the driveway is rather expansive. He gave the example of garage sales where  
42 several folks park on the side of the road. This business has operated for three years  
43 without incidence.  
44  
45 Mr. Gulino stated there is a multi part test that needs to pass to approve the business. He  
46 doesn't believe, at this point, they can find for one of the findings. Based upon the way



1 the property lies, and without a site visit or aerial photographs, and they have heard from  
2 the applicant itself, makes it difficult.

3  
4 Ms. Welch believes this would be eliminated with the product not being on display.

5  
6 Mr. Gulino stated, based upon the application as it stands, he cannot make the necessary  
7 finding. He stated she can ask the Board to close the deliberations and proceed to a vote,  
8 or she can withdraw the application and resubmit it.

9  
10 Mr. Black stated, though he is concerned with the traffic, if Ms. Welch puts the sign on  
11 the right side of the property, it's more likely the customers will stop there where it is  
12 safe. He asked Mr. Boxer his opinion.

13  
14 Mr. Boxer stated the more they are forced or pointed to an area, the better. However,  
15 people tend to stop in front of houses. He believes they are heading in the right direction.

16  
17 Ms. Page stated, in regards to the traffic issue, Mr. Boxer does not live on Two Lights  
18 Road, he lives on a private road. Traffic will not be created, it is already there. The  
19 applicant is trying to put people in a safe place. When she is in her garden, people stop all  
20 the time to ask directions, with 2 wheels on and 2 wheels off. This will not be a  
21 destination, people will see the sign and may stop.

22  
23 Mr. Tranfaglia stated that people will stop if they see someone outside anyways, and the  
24 sign is actually making the situation safer.

25  
26 Ms. Page stated that is correct, and they are trying to accommodate the situation.

27  
28 Mr. Welch, Mrs. Welch's husband, asked to speak to the concerns of the driveway.

29  
30 Mr. Gulino asked if there were signs in the past and if they indicated where to park.

31  
32 Mr. Welch stated a sign was there stating prices, not where to park. He thinks the location  
33 of signage would be best put towards the Lobster Shack, with an arrow. They will make  
34 their best efforts, but people will still do what they will. She is dedicated to do this right,  
35 and make it work.

36  
37 Mr. Gulino asked if there were any more comments. Hearing none, he opened Board  
38 discussion.

39  
40 Mr. Smith stated their decisions needed to be based on findings.

41  
42 Mr. Black thought that if the sign indicated to park in the driveway, and placed  
43 appropriately for that, he would be inclined to approve the application.

44  
45 Mr. Gulino reiterated his position that it is a potentially hazardous situation. It is more  
46 substantial as it is retail, and has signage. He is concerned of the burden to the neighbors.

1 He believes that the applicant needs to prove aesthetically appropriateness, and will not  
2 create a traffic hazard. The applicant should come back with sign designs, where it will  
3 be located, and the neighbors can view it. He would vote against it today. He is not trying  
4 to make life difficult for the applicant, but suggests floating a motion to table the issue for  
5 a site visit and allow the applicant to come back with a sign for the neighbors to see.

6  
7 Mr. Tranfaglia has an issue due to the fact that the applicant has lived at the property for  
8 23 years. The initial reason for the sign was for safety, and now the Board is seeking  
9 approval from the neighbors. He believes the homeowner is entitled to operate a home  
10 business under conditional use. Measures will be undertaken to make it less visible.

11  
12 Mr. Gulino moved that they table the application to the next meeting to be able to see the  
13 sign, where it will be located and for the Board to do a site visit either as a Board or  
14 individually.

15  
16 Mr. Smith asked that if they meet as a Board, it would constitute a public meeting where  
17 someone would have to take minutes.

18  
19 Mr. Gulino amended his motion to conduct a site visit, with the Board, prior to the next  
20 meeting.

21  
22 With a lack of a second, the motion failed. Mr. Gulino asked for more discussion.

23  
24 Mr. Smith stated the Board should vote on the findings of fact.

25  
26 Mr. Tranfaglia made a motion to table the application, with Board members doing an  
27 individual site walk, if so inclined.

28  
29 Mr. Gulino seconded the motion. 4 in favor, 0 opposed.

30  
31 \*\*\*\*\*

32  
33 To hear the request of James Phillips & Melissa Burke, 7 Point Road, Tax Map U08, Lot  
34 37 to reconstruct and enlarge an existing structure within 75 feet of the normal high water  
35 line of the Ocean and to hear a request for a variance of 2.1% over the maximum  
36 allowable 30% volume allowance.

37  
38 James Philips, 7 Point Road, is asking to increase the volume of the home by 30%. The  
39 home is currently 3014 sq. ft.. They are proposing a 4.2% increase in square footage. He  
40 stated the light monitor that is shown on the application is to be retracted.

41  
42 Mr. Smith stated the scope of the Board's review should be if the building could be  
43 reconstructed to make it less nonconforming. He stated the structure reconstruction can  
44 not be located closer to the ocean.

1 Mr. Gulino confirmed with Mr. Smith that the proposal meets the volume and square  
2 footage requirements.

3  
4 Mr. Smith stated in some cases, there may not be any alternative to building within the  
5 75ft. normal high water mark.

6  
7 Mr. Gulino asked Mr. Smith if there had been any feedback concerning the application.

8  
9 Mr. Smith stated there had been none.

10  
11 Mr. Walsh asked if he had shared the plans with the neighbors.

12  
13 Mr. Philips stated they had with the closest neighbors, who were completely supportive.

14  
15 Marilyn Levy, architect, stated she was available for any questions on the project. She  
16 stated the roof height is not increased at all.

17  
18 Mr. Gulino asked what the square footage would be upon completion.

19  
20 Ms. Levy stated the house was going from 3,014 sq. ft. to 3140 sq. ft. They are also  
21 taking off an existing airlock, and adding a covered entry.

22  
23 Mr. Smith stated the proposal is much more user friendly.

24  
25 Ms. Levy stated there was also a brick walkway that would be removed.

26  
27 Mr. Gulino asked, to what extent the proposal would affect anyone's views.

28  
29 Ms. Levy does not believe there to be any major impact as 80% of the roof is staying as it  
30 is. There is a small area over the existing kitchen that has a larger roof.

31  
32 Mr. Gulino stated that it may affect lots 38 & 39. He asked to what extent of shrubbery  
33 was to be removed.

34  
35 Ms. Levy stated that some foundation shrubbery would have to be relocated and put back  
36 in place after the completion.

37  
38 Mr. Gulino asked if the septic system had been updated.

39  
40 Ms. Levy stated yes, in 2004.

41  
42 Mr. Gulino stated they needed to do findings of fact.

43  
44 **FINDING OF FACTS**

1 1. The appellants are the owners of a property at 7 Point Road which is in the Residential  
2 A and Shoreland Overlay Districts, containing 21,250 square feet, thus making the lot a  
3 legal nonconforming lot of record. 4 in favor, 0 opposed.  
4

5 2. The appellant wishes to reconstruct and enlarge an existing nonconforming dwelling  
6 within 75 feet of the normal high water line of the ocean. The enlargement does not  
7 increase the structures nonconformity to the high water line. 4 in favor, 0 opposed.  
8

9 3. The appellant has demonstrated that the present subsurface sewage disposal system  
10 meets the requirement of state law and the subsurface wastewater disposal rules and  
11 that a new system can be installed in compliance with the law and said rules. 4 in favor,  
12 0 opposed.  
13

14 Mr. Gulino made a motion to approve the application of James Phillips & Melissa Burke,  
15 Tax Map U08, Lot 37, the relocation and reconstruction as proposed is in accordance  
16 with the application filed with the Board.  
17

18 Mr. Walsh seconded the motion. 4 in favor, 0 opposed.  
19

20 Mr. Gulino asked for a motion to adjourn.  
21

22 Mr. Black made a motion to adjourn.  
23

24 Mr. Walsh seconded the motion. 4 in favor, 0 opposed.  
25

26 Meeting adjourned at  
27

28 Respectfully submitted,  
29

30 Laurie Palanza

31 Minutes Secretary  
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