

1 **Town of Cape Elizabeth**

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3 **Minutes of the February 26, 2008 Zoning Board**

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5 **Members Present:**

6  
7 Peter Black Jay Chatmas  
8 Malcolm Weatherbie Leonard Gulino  
9 Peter Howe James Walsh  
10 David Johnson

11  
12 Also present was the Code Enforcement Officer, Bruce Smith

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14 **A.) Call to Order** - Meeting called to order by Leonard Gulino @ 7:05 pm

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16 **B.) Election of Officers** - Motion made by Jay Chatmas, seconded by Peter Howe  
17 to nominate Leonard Gulino as Chair. All in favor. Motion made by James  
18 Walsh, seconded by Peter Black to nominate Jay Chatmas as secretary. All in  
19 favor.

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21 **C.) Old Business** – There was no old business.

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23 **D.) New Business**

- 24  
25 1.) To hear the request of Genesta Lynn Berry, 3 Seal Cove Road, Tax Map U17,  
26 Lot 47 for a right side property line variance of thirteen (13) feet from the  
27 required twenty-five (25) feet to construct a one/story addition at twelve (12)  
28 feet from said property line.

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30 Jim Fisher from Northeast Civil Solutions representing the appellant explained to the  
31 Board the proposed addition and its location. The addition would not encroach further  
32 on the sideline. He explained how he determined side setbacks of surrounding  
33 structures.

34 Chair Gulino questioned the existing vegetation and who might see the addition. Jim  
35 Fisher said that because there was ample vegetation, no one could really see.

36 Peter Black asked if calculations for determining setbacks for neighbors were done  
37 electronically or on the ground.

38 Jim Fisher said both, he found monumentation on Berry property – looked at deed  
39 descriptions, found monumentation on other properties and created lines using GPS,  
40 then overlaid tax maps and rotated configurations.

41 Peter Black asked if all distances listed were side setbacks. Jim Fisher said yes.

42 Jay Chatmas pointed out that on the application the current side setback listed 25',  
43 shouldn't that be 12'? Bruce Smith said yes. Jay Chatmas suggested changing that  
44 on the application. Bruce Smith said it would be done.

45  
46 Chair Gulino asked for comment from the public. No one came forward to speak either  
47 for or against the application.

48 Chair Gulino closed the public hearing @ 7:25 pm and asked for comments from the  
49 Board.

50 Jay Chatmas said it appeared to meet standards for distance to property lines and size  
51 of surrounding homes.

52 Chair Gulino said time to vote on conclusions:

53

54 1. The proposed variance is not a substantial departure from the intent of the  
55 Ordinance.

56 7 in favor, 0 opposed, 0 abstained

57 2. A literal enforcement of the Ordinance would cause a practical difficulty.

58 7 in favor, 0 opposed, 0 abstained

59 3. The need for the variance is due to the unique circumstances of the property and  
60 not to the general conditions of the neighborhood.

61 7 in favor, 0 opposed, 0 abstained

62 4. The granting of the variance will not produce an undesirable change in the  
63 character of the neighborhood and will not unreasonably detrimentally affect the  
64 use or market value of abutting properties.

65 7 in favor, 0 opposed, 0 abstained

66 5. The practical difficulty is not the result of action taken by the applicant or a prior  
67 owner.

68 7 in favor, 0 opposed, 0 abstained

69 6. No other feasible alternative to a variance is available to the petitioner.

70 7 in favor, 0 opposed, 0 abstained

71 7. The granting of a variance will not unreasonably adversely affect the natural  
72 environment.

73 7 in favor, 0 opposed, 0 abstained

74 8. The property is not located in whole or in part within shoreland areas as described  
75 in Title 38, section 435.

76 7 in favor, 0 opposed, 0 abstained

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78 Motion to approve the variance application made by David Johnson and seconded by  
79 Malcolm Weatherbie. All in favor.

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82 2.) To hear the request of Josh & Erin Hurley, 3 Ironclad Road, Tax Map U08,  
83 Lot 1A for a front setback variance of nine (9) feet from the required  
84 twenty-five (25) feet to construct a 3<sup>rd</sup> floor deck and 2<sup>nd</sup> floor addition at  
85 sixteen (16) feet from said property line and a left side property line  
86 variance of nineteen (19) feet for 3<sup>rd</sup> floor deck at six (6) feet from said  
87 property line.

88

89 Josh Hurley, the appellant, gave an overview of the project. Would like a modest  
90 addition over existing footprint.

91

92 Jim Walsh asked if the main roof line will be raised. Josh Hurley said yes, to create  
93 better headroom, but there would be no increase in floor area.

94 Chair Gulino asked to explain the elevations. Josh Hurley walked through each elevation  
95 with the Board.

96 Malcolm Weatherbie raised the issue that the deck addition on the roof should be listed  
97 as a 3<sup>rd</sup> floor deck, not a 2<sup>nd</sup>. Bruce Smith said yes it should and he will change it to  
98 reflect.

99 Josh Hurley explained the setback comparisons for front and side. 5 out of 10 in each  
100 case.

101 Chair Gulino asked for comment from the public. No one came forward either for or  
102 against.

103 Chair Gulino closed the public hearing @ 7:45 pm and asked for comment from the  
104 Board.

105 Chair Gulino said time to vote on conclusions:

106

107 1. The proposed variance is not a substantial departure from the intent of the  
108 Ordinance.

109 7 in favor, 0 opposed, 0 abstained

110 2. A literal enforcement of the Ordinance would cause a practical difficulty.

111 7 in favor, 0 opposed, 0 abstained

112 3. The need for the variance is due to the unique circumstances of the property  
113 and not to the general conditions of the neighborhood.

114 7 in favor, 0 opposed, 0 abstained

115 4. The granting of the variance will not produce an undesirable change in the  
116 character of the neighborhood and will not unreasonably detrimentally affect the  
117 use or market value of abutting properties.

118 7 in favor, 0 opposed, 0 abstained

119 5. The practical difficulty is not the result of action taken by the applicant or a prior  
120 owner.

121 7 in favor, 0 opposed, 0 abstained

122 6. No other feasible alternative to a variance is available to the petitioner.

123 7 in favor, 0 opposed, 0 abstained

124 7. The granting of a variance will not unreasonably adversely affect the natural  
125 environment.

126 7 in favor, 0 opposed, 0 abstained

127 8. The property is not located in whole or in part within shoreland areas as  
128 described in Title 38, section 435.

129 7 in favor, 0 opposed, 0 abstained

130

131 Motion to approve the variance application made by Malcolm Weatherbie and seconded  
132 by James Walsh. All in favor.

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134 **E.) Communications** – none.

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136 **F.)Adjournment** – Motion by Peter Howe and seconded by James Walsh to adjourn. All  
137 in favor. Adjourned @ 8:05 pm

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139 Bruce A. Smith

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