Town of Cape Elizabeth Minutes of the April 28, 2009, Zoning Board Meeting Members Present: Jay Chatmas Peter Howe James Walsh

Also present were the Code Enforcement Officer, Bruce Smith, and Recording Secretary, Carmen Weatherbie.

David Johnson

A. Call to Order – Meeting was called to order by Jay Chatmas at 7:00 pm.

B. Approve the Minutes of February 24, 2009 - Mr. Chatmas noted that the spelling of his name was not consistent throughout the minutes. The secretary apologized will correct the spelling. Motion to approve the minutes made by Mr. Walsh; seconded by Mr. Howe. All in favor.

D. Old Business – None.

E. New Business

This meeting was called to hear the request of Erin and Joshua Hurley of 3 Ironclad Road, Tax Map U08, Lot 1A for extension of the already granted variances (on February 28, 2008) for a front setback variance of nine (9) feet from the required twenty-five (25) feet to construct a 2nd floor deck and 2nd floor addition at sixteen (16) feet from said property line and a left side property line variance of nineteen (19) feet for 2nd floor deck at six (6) feet from said property line.

This variance was originally submitted, reviewed, and approved on February 28, 2008. The ordinance does state that the variance granted is good for one year, so that would have expired of February 28, 2009. This is somewhat a formality. Mr. Chatmas asked Mr. Smith to explain the extension process as it applies to the ordinance.

Mr. Smith replied that from the ordinance standpoint an extension may be granted for an additional year. It doesn't state how the board should do such; however, all meetings need to be in a public forum and need to be advertised, therefore this meeting was called. Mr. Smith stated that the area surrounding the Hurley's property had not changed from when their original application was submitted. So this was really just a formality. The Hurleys submitted a written request for the extension. No fee was charged because this was the first time this has happened.

Mr. Chatmas inquired if a notice was sent to neighbors. Mr. Smith replied that the same format was used to notify neighbors, as if this were a first request. Mr. Smith received one telephone call from a neighbor who asked if there were any changes to the originally approved variance. He was told there were none and was fine with that.

There was some discussion about the effective date of the extension. It was decided that it would be retroactive from the expiration of the first variance, therefore expiring February 28, 2010.

Mr. Chatmas asked the Hurleys to summarize their intensions in regard of the extension. Mr. Hurley replied that he was just seeking a one year extension to the previously granted variance. There are no changes other than for time.

Mr. Thibodeau asked about a reference to a third floor deck. Mr. Hurley replied that it was in reference to what someone pointed out the night of February 28, 2008, that the deck was actually a third floor deck – not a second floor deck.

There was discussion about changing to a builder who advised the Hurleys to raise the basement about three feet, thus changing the height of the home. Code Enforcement Officer Smith commented that this will not change the floor space of the building and that the new height would still meet code. Mr. Hurley added that a third floor deck might not be added due to cost. Mr. Chatmas advised Mr. Hurley that this extension was his second request and last chance, with no further extensions according to the ordinance.

Judgment:

A motion was made by Mr. Chatmas and seconded by Mr. Walsh to extend the existing variance that was granted on February 28, 2008, for one additional year from February 28, 2009. All in favor.

F. Communications – None.

There was a discussion about lack of administrative procedure for an extension. Mr. Smith will check with the attorney to see if additional guidance is required.

Mr. Chatmas requested that board members reply to the secretary's e-mail notification of a zoning board meeting to reflect their attendance status: whether they would, or would not, be in attendance for a board meeting. Board members should respond to the sender (and other board members, if they'd like, versus reply to all) of an e-mail notice. All were in favor of such action so that it would be known if a quorum would be present and who was to attend.

The next Zoning Board Meeting is scheduled for Tuesday, May 26, 2009.

G. Adjournment – Motion by Mr. Walsh to adjourn; seconded by Mr. Thibodeau. All in favor. Meeting adjourned at 7:21 pm.