

1
2
3
4
5
6
7
8
9

Town of Cape Elizabeth

Minutes of the May 26, 2009, Zoning Board Meeting

10
11
12

Members Present:

Peter Black	Peter Howe
Jay Chatmas	John Thibodeau
Leonard Gulino	

13
14

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

15
16

A. Call to Order – Meeting was called to order by Chairman Gulino at 7:04 pm.

17
18
19
20
21

B. Approve the Minutes of April 28, 2009 - Mr. Chatmas requested a change in wording on page 2, line 32 from “vice” to “versus” and for clarification the minutes should reflect that the statement was made concerning e-mail notifications sent to board members. Board members should reply to the secretary to reflect their attendance status, whether they would, or would not, be in attendance for a board meeting. Motion to approve the minutes made by Mr. Howe; seconded by Mr. Thibodeau. All in favor.

22
23

D. Old Business – None.

24
25

E. New Business

26
27
28
29

This meeting was called to hear the request of Jay Stackhouse, 14 Philip Road, Tax Map U22, Lot 20, for a conditional use permit to operate a home business, specifically a massage therapy business.

30
31
32
33
34
35
36

Jay Stackhouse explained that he has lived at this address since April 2007 and in Cape Elizabeth since 1994. He was a Chiropractor in Portland for 25 years. He sold that practice in 1999 and retired. He has recently gone back to school to learn massage therapy as something to do part-time. He has three children, a fifteen year-old daughter, who lives with him part-time (part-time with her mother, also in Cape Elizabeth) and two sons in their thirties.

37
38
39
40

He graduated from Spa Tech Institute two weeks ago and has applied for a state license, which he should receive in about two weeks. His goal is to start practicing message therapy the first part of June.

41
42
43
44

He is here to request a conditional use permit to operate a home business. Mr. Stackhouse passed out copies of the Zoning and Home Business Requirements for Cape Elizabeth to those in attendance.

45
46

Mr. Stackhouse reviewed the seven criteria for a home business:

47
48
49

1. He would be the only person employed by the business. He would not need a secretary or anyone else.

1 2. Vehicular traffic would be no more than 10 trips a day, which is five clients a day -
2 actually more than he could physically do. He plans to schedule clients for one to one-
3 half hour appointments with one-half hour in between. He's thinking of having two to
4 three clients a day, maybe working three to four days a week, Monday through Friday.
5 Mr. Stackhouse stated there was plenty of room in the driveway for off-street parking.
6 His car would be kept be in the garage.

7
8 Business hours would be from 8:00 am to 6:00 pm.

9
10 3. The business would not produce any odors, fumes, dust, glare, noise, or electrical
11 interference in excess of that produced by normal residential use.

12
13 4. Parking would be off-street in the driveway.

14
15 5. The square footage occupied by the business is less than 20% of the floor area of
16 the home. There is a small office and bathroom downstairs on the first floor that would
17 be used for the business.

18
19 6. Signage is not being requested at this time.

20
21 There was a discussion about the transferability of this permit, if his residence and
22 practice were sold. The Code Enforcement Officer replied that if the business operated
23 in the exact same way, the permit would most likely be transferable. Mr. Stackhouse
24 stated that he wanted this permit for himself, only, and that it not be transferable.

25
26 7. There shall be no outdoor storage of equipment or materials.

27
28 When questioned by Mr. Thibodeau, Mr. Stackhouse replied that the school bus comes
29 down his street; however, he was not certain exactly where the bus stopped on the two-
30 way street.

31
32 Mr. Howe asked for clarification about the sign. Mr. Stackhouse stated after consulting
33 with instructors at Spa Tech, who had home businesses, he decided not to have a sign.
34 He would like to amend the application to reflect he would not have a sign.

35
36 When questioned concerning additional plants and shrubs mentioned in item four of the
37 application, Mr. Stackhouse replied he was replacing the old plants in the front of the
38 house with new, more attractive landscaping plants.

39
40 Mr. Stackhouse read a letter given to him by Kimberly Carlisle, 15 Philip Road (directly
41 across the street from Mr. Stackhouse's residence), addressed to the Zoning Board
42 Public Hearing dated May 26, 2009.

43
44 "After speaking with Mr. Stackhouse (Jay) this morning regarding his
45 proposal I feel as though my concerns were heard and addressed and
46 would simply like to re-state them here for the purposes of clarity and
47 support.

48
49 My main areas for concern are:

1 1) Increase of traffic on Philip, which is already used as a “cut-through”
2 and vehicles using the road as such are not aware – careful of the
3 children/pets and general neighborhood safety aspect.
4

5 2) Parking – Philip Road, being without sidewalks, becomes congested
6 and dangerous when multiple cars park on either side of the street.
7 Another safety issue, mainly.
8

9 3) Signage – In keeping with the neighborhood residential zoning and
10 characteristics and safety issues, my concern was that a sign would
11 (might) increase traffic, as well as unscheduled clients “walk-ins” – would
12 not be able to control number.
13

14 4) Hours of Operation – In keeping with residential/neighborhood safety –
15 lifestyle, my concern again was in regard to operating hours. I would
16 support an 8:30/9 am – 5 pm “normal business hours” with the last client
17 leaving by 6:30 pm. I believe this would help maintain the residential
18 integrity, yet I am still concerned regarding the increase of vehicles –
19 especially in non-daylight hours of operation (when the clocks “fall back,”
20 at 4 pm for example).
21

22 I wish Jay well in his new venture, and I hope that he is successful and
23 that he will ensure that his clients will be notified that this is a residential
24 neighborhood, to be alert while driving and to park in the driveway. Not
25 only do we have young children, also pets and disabled neighbors who
26 currently look out for one another. I’m not sure if it’s reasonable to
27 assume Jay’s clients would be thinking of these factors.
28

29 However, I do believe the Jay will act as a responsible business owner, as
30 he has been a good neighbor. I have faith that Jay will address these
31 concerns and promote safety among his clients and neighbors.
32

33 Sincerely, Kimberly A. Carlisle.”
34

35 Mrs. Carlisle added a post script that attention to driving cautiously and
36 parking only in driveway could be mentioned in initial correspondence with
37 clients.
38

39 In response to questions, Mr. Stackhouse replied that there was currently only one
40 vehicle at his residence. He stated that his daughter might obtain a car once she had
41 her license and that there is a two car garage. Mr. Stackhouse understands that all
42 parking must be off street.
43

44 Mr. Stackhouse confirmed that he would be the only staff member of the business. He
45 is developing a pamphlet listing his credentials to help obtain referrals. He may put a
46 business card ad in the Courier. He would like operating hours to be at least until 6:00
47 pm to have the flexibility of some evening hours.
48

1 After discussion, it was decided to restrict this permit solely to Mr. Stackhouse. The
2 permit will not be transferable, if he should ever sell this residence and business.
3 Business operating hours would be 8:00 am – 6:00 pm, Monday through Friday.
4

5 Erik Urbanek, 10 Philip Road, expressed his support of the applicant. Mr. Urbanek
6 stated that the only school bus stops on Philip Road would be for Kindergarten
7 students, because the close proximity to the schools. He didn't think the bus made any
8 stops on Philip Road this year.
9

10 Dwayne Wakefield, 15 Dearborn Drive, asked for clarification concerning the specific
11 details of the permit. He asked if the applicant wanted to add Saturday morning hours,
12 would he have to come back to the board. Chairman Gulino replied that was correct.
13 Mr. Wakefield also questioned if this business was approved, would it be easier for
14 other businesses to get a permit in the neighborhood? Chairman Gulino replied that
15 home businesses were allowed by town ordinance which was passed some time ago.
16 This board has granted permits to many businesses, massage and other types. This
17 board considers each application on it own merits. Mr. Chatmas added that each
18 application was considered individually and in detail. One business permit does not
19 affect another. Applicants must meet the standards of the ordinance. This would not
20 pave the way for anything different or unique. Mr. Wakefield stated he had no
21 opposition to Mr. Stackhouse's business.
22

23 Mr. Stackhouse thanked the board and his neighbors for their support.
24

25 After inquiring and finding no further comments from the gallery, Chairman Gulino
26 closed the public portion of the meeting. The board concluded that the standards of the
27 ordinance were met. Not having a sign was a plus, especially for the neighbors.
28

29 Chairman Gulino summarized the amended application:
30

31 This permit would not be transferable. There will be no signage. The hours of
32 operation will be limited from 8:00 am to 6:00 pm, Monday through Friday. That the
33 number of clients would be limited to five or less per day, resulting in no more than ten
34 vehicle trips per day for the business.
35

36 Findings or Conclusions:
37

38 1. The proposed use will not create hazardous traffic conditions when added to existing
39 and foreseeable traffic in its vicinity. All were in favor.
40

41 2. The proposed use will not create unsanitary conditions by reason of sewage
42 disposal, emissions to the air, or other aspects of its design or operation. All were in
43 favor.
44

45 3. The proposed use will not adversely affect the value of adjacent properties. All were
46 in favor.
47

48 4. The proposed site plan and layout are compatible with adjacent property uses and
49 with the Comprehensive Plan. All were in favor.

1 5. The design and external appearance of any proposed building will constitute an
2 attractive and compatible addition to its neighborhood, although it need not have a
3 similar design, appearance or architecture. All were in favor.

4

5 Judgment:

6

7 A motion was made by Mr. Howe and seconded by Mr. Black to approve the application
8 of Jay Stackhouse for a Conditional Use Permit to operate a Home Business specifically
9 a massage therapy business in his residence with the limitations that: one, this grant
10 will not be transferable; two, there will be no signage on the building; three, the hours of
11 operation will be limited from 8:00 am to 6:00 pm, Monday through Friday; and that the
12 number of vehicle trips per day be limited to ten vehicle trips.

13

14 All were in favor.

15

16 Chairman Gulino thanked the members of the gallery for coming.

17

18 Mr. Chatmas reiterated his request that board members reply to the secretary's e-mail
19 notification of a zoning board meeting to reflect their attendance status: whether they
20 would, or would not, be in attendance for a board meeting. So that it would be known if
21 a quorum would be present and who was to attend. Board members should reply to just
22 the sender of the e-mail notice to limit unnecessary e-mail to others not on the board.

23

24 **F. Communications – None.**

25

26 **G. Adjournment – Motion by Chairman Gulino to adjourn; seconded by Mr. Black. All**
27 **were in favor. Meeting adjourned at 7:54 pm.**