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# Town of Cape Elizabeth

## Minutes of the March 23, 2010, Zoning Board Meeting

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### Members Present:

Jay Chatmas	Thomas Kinley
Peter Howe	John Thibodeau
David Johnson	

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

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**A. Call to Order** – Meeting was called to order by Chairman Johnson at 7:00 pm.

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**B. Approve the Minutes of January 26, 2010** - Motion to approve the minutes was made by Mr. Howe; seconded by Mr. Thibodeau. All were in favor.

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**C. Old Business** – None.

### **D. New Business**

This meeting was called to hear the request of Michael and Jennifer Duddy, 11 Crescent View Avenue, Tax Map U16, Lot 41 for a right sideline variance of thirteen (13) feet from the required twenty-five (25) feet to replace a single car garage with a mudroom and two car garage with family room above at twelve (12) feet from said property line.

Chairman Johnson asked Mr. Duddy to go to the podium and explain his request.

Mr. Duddy stated that he would like to expand his garage to a two bay garage and get a family room above it. The Crescent View Avenue neighborhood is a neighborhood of relatively small lots with houses of modest to medium size built close together. Many of the houses in the neighborhood already sit closer to their side property lines than our house does or would even with the addition. And half the houses sit as close or closer to the side property lines as our house would with the addition. So we feel we meet the requirement of the variance standard to show that 50 percent of the neighborhood is as close or closer to the side line.

In the neighborhood there are a number of houses that are larger, square footage wise, than our house would be even with the addition, particularly, at the end of the circle overlooking crescent beach, the houses are all larger. Since we purchased the house about eleven years ago, there have been a couple of additions that make these houses substantially larger than ours even with the addition.

What we are asking the board to do is to think about the size in the following way: In our neighborhood, as the older generation moves along, a new generation of families moves in, which is happening incrementally all the time. What we are seeing is houses having their roofs cut off and second stories put on and people going out to the side with a garage or some form of addition. If you were to take the houses that are there now

1 and look at size in the following way: If you cut the roof off and the house went up over  
2 the footprint and the garage; would our house still be comparable in size to all of those  
3 houses. I think the answer is easily yes. I think that is the natural evolution for this  
4 neighborhood. We don't think it's going to change the nature of the neighborhood, but  
5 allows it to evolve with the families that are there without anybody having a  
6 "McMansion" in the middle of a small, modest neighborhood. So, from a size  
7 perspective we also think we meet the size variance of the standard.

8  
9 Mr. Duddy concluded saying he would answer any questions from the board.

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11 Mr. Thibodeau asked if there had been any other houses in that neighborhood that have  
12 come before the board to ask for a similar variance.

13  
14 Mr. Smith responded that the Miller's, Lot 63, two houses around the corner from the  
15 Duddys's had a variance for a farm porch added to the front. This is a corner lot and he  
16 believes the variance was for a front yard; by definition a corner lot has two front set  
17 backs. Mr. Smith was not aware of any other variances in that neighborhood; but that's  
18 not to say there haven't been others.

19  
20 Mr. Duddy recalled speaking to neighbors sometime in the past about getting variances.

21  
22 Mr. Howe noted that the board had received three pieces of correspondence (from Mary  
23 Burns, 15 Crescent View Ave., Lois Ewing, 8 Crescent View Ave., and Peter Hatem and  
24 his wife, 18 Crescent View Ave.) that were in support of the Duddys's application. Mr.  
25 Howe asked if Mr. Duddy had spoken to any others in the neighborhood and how they  
26 felt.

27  
28 Mr. Duddy responded that he did not go around with a partition for neighbors to sign like  
29 he did seven years ago when he asked for a variance for a front porch, because that  
30 request was denied regardless of support. Mr. Duddy stated that he knew that the town  
31 would send a notice out. He did, however, go around and talk to all the neighbors. In  
32 particular, he talked with Tom O'Connell, Lot 40, who owns the house that is along side  
33 the right side property line. Tom was not only supportive, but enthusiastic and  
34 comfortable with what the Duddys wanted to do. Mr. Duddy affirmed that he did not  
35 hear one negative comment.

36  
37 Mr. Johnson noted that there were a number of conclusions that needed to be voted on  
38 before the board could decide to grant the variance or not. One of the considerations is  
39 that the variance is needed due to the unique circumstances of the property and not the  
40 general conditions of the neighborhood. Mr. Johnson stated he was concerned about  
41 that one. As it looks like the circumstances are not unique to this property, but are  
42 prevalent throughout the neighborhood.

43  
44 Mr. Johnson asked: Is there anything in particular about your property that would make  
45 the requirement for this variance more necessary than for anyone else in the  
46 neighborhood? Or, is it a symptom of how the neighborhood has evolved over the  
47 years?

1 Mr. Duddy responded: It is unique to my property, in that the house is located where is  
2 on the lot, to that side, a certain distance from the line. Some of the houses are not  
3 located that way.  
4

5 In response to a question by Mr. Thibodeau about building plans, Mr. Duddy responded  
6 that he has talked to builders; however, no plans have been drawn up.  
7

8 There was discussion about the footprint of the addition, property configurations, and  
9 property lines. Possible shadows that the addition may or may not cast were also  
10 discussed.  
11

12 Mr. Chatmas asked how Mr. Duddy determined the square footage comparisons in the  
13 application. Mr. Duddy stated that he used the information found on the property cards  
14 at the town office. The numbers reflect both garage space and gross living space.  
15

16 Mr. Duddy responded, when questioned, that his house was on private septic.  
17

18 Mr. Chatmas noted that the Duddys's set backs and lot coverage were consistent with  
19 the neighborhood; however, the requested increase in square footage would put their  
20 house as number two in size in the neighborhood. Significant economic injury is  
21 defined as "Placing the applicant for a variance at a disadvantage in the neighborhood  
22 by applying zoning ordinance standards which would prevent the applicant from having  
23 a structure or accessory structure comparable in size ..." The ordinance points out that  
24 an increase in size to that extent, is not acceptable.  
25

26 When asked by Mr. Chatmas, if there were any other alternatives to achieve the desired  
27 result, Mr. Duddy asked the board to compare size with evolution in mind. He stated  
28 that his square footage was larger than many houses in the neighborhood. Many are  
29 over 2,000 square feet. Mr. Duddy stated that he thought size needed more flexibility in  
30 the interpretation. He asked the board to in vision the neighborhood in the future. And  
31 asked if this would this be comparable in size to houses, if they went up over their  
32 footprint and garage? Mr. Duddy said that he believed it was.  
33

34 Mr. Chatmas stated that he tended to agree with and understood Mr. Duddy's approach;  
35 however, the ordinance reads a little differently. Mr. Chatmas asked Mr. Smith to  
36 comment on the ordinance and our town's interpretation of the ordinance in regards to  
37 the significant economic injury definition that the board is required to apply to this type  
38 of variance.  
39

40 Mr. Smith commented in general terms. An applicant would have to show significant  
41 economic injury by being deprived of something that already exists in the neighborhood.  
42 How the board applies comparables, is that at least 50 percent of those properties  
43 inventoried must qualify.  
44

45 There was discussion about how these standards became established. It was  
46 determined that these are objective standards.  
47

48 Mr. Chatmas again asked Mr. Duddy if he had thought about another way to achieve his  
49 objective as the ordinance prohibits enlarging to become the second largest.

1 Mr. Duddy expressed that his interpretation, after reading the ordinance, was different in  
2 regards to comparable size and economic injury. Mr. Duddy argued that his request  
3 would be comparable in size to what the neighborhood is going to evolve to. He asked  
4 that the board be flexible in applying the standards to what the neighborhood is going to  
5 look like in the future.

6  
7 There was discussion on how comparable is determined. Comments were made about  
8 set backs and privacy issues that might be created by houses being too big for their  
9 lots. Standards that the board has used in the past are logical and set a precedent. If  
10 a situation could be documented as being unique, it could be considered differently.

11  
12 As the discussion continued, Mr. Johnson articulated that he sensed some board  
13 members were sympathetic with the Duddys and their application; however, the board  
14 needs to comply with procedures and standards that have been set.

15  
16 Mr. Smith stated that town counsel would not establish criteria to change from what has  
17 been done. The board needs to work through what has been presented and do some  
18 findings of fact to support a decision.

19  
20 A motion was made by Mr. Howe to table the discussion to give the applicant the  
21 opportunity to present written reasoning why this request is unique. Mr. Chatmas  
22 seconded the motion in order to continue with the discussion.

23  
24 Thinking about the character of the neighborhood, Mr. Kinley noted the pictures and  
25 square footage information in the application and asked Mr. Smith about how and when  
26 these renovations occurred. Mr. Smith explained they could have met the set back or  
27 they could have had a variance. Mr. Smith stated he was only aware of one, Lot 42,  
28 that was granted a variance. If the variances were granted prior to current town  
29 ordinance there was nothing to gained by having that discussion.

30  
31 Mr. Duddy commented on how homes on both Lot 48 and Lot 49, two of the largest  
32 houses in the neighborhood, effected the character of the neighborhood. Both were  
33 added on to some time ago, with the addition on Lot 48 obstructing the view of the  
34 ocean from the house on Lot 49. Mr. Duddy found it incredible and manifestly unfair  
35 that it was possible to build that whole structure right in the middle of an ocean view  
36 while he was having trouble requesting a variance for a garage that would not obstruct  
37 anyone's view, was in keeping with the character of the neighborhood and has the  
38 support of all his neighbors.

39  
40 Mr. Johnson replied that (obsessive size, obstructing a view) was a perfect example of  
41 why the town zoning ordinance had evolved to what it is today. So that things like that  
42 would not happen.

43  
44 Mr. Smith directed the dialogue back to the motion to table the discussion and have the  
45 applicant return with a written statement as to the uniqueness of his request.

46  
47 Mr. Kinley stated the board should enforce the 50 percent standard. Not the applicant's  
48 proposal that over time the house will become 50 percent. Mr. Kinley did not feel that

1 by tabling the discussion tonight, the standards would be different when the application  
2 is reconsidered.

3  
4 Mr. Duddy commented that other variables should be applied to the standards in the  
5 sake of fairness.

6  
7 Mr. Chatmas noted that the intent and reason of the ordinance was to keep the  
8 character of a neighborhood.

9  
10 There was more discussion on the appearance and character of the house on Lot 48  
11 and the age of the neighborhood.

12  
13 Mr. Kinley added that if standards were changed for one neighborhood, what standards  
14 would the board use for someone in another neighborhood? That is why consistent,  
15 valid standards are important and should be applied. The Zoning Board has  
16 established standards that are applied equally across the board to all applicants.

17  
18 Mr. Duddy contended that ultimately his house would fall into the 50 percent standard,  
19 after his neighborhood evolves.

20  
21 There was more discussion on that logic, standards, and the ordinance.

22  
23 A vote was taken to table the discussion to give the applicant the opportunity to present  
24 additional written support as to why this request is unique at the next scheduled meeting  
25 of the Zoning Board of Appeals. The vote was two in favor. Three opposed.

26  
27 The Chair recognized Mrs. Duddy (who had arrived after the start of the discussion).

28  
29 Mrs. Duddy stepped to the podium and asked the board to reconsider the tabling of the  
30 discussion. Certainly, she surmised there must be merit to the application since it had  
31 been discussed for an hour. No harm would be done to the town if the board could give  
32 them the benefit of the doubt and allow them the opportunity to come back in a month.

33  
34 After inquiring and finding no further comments from the public, Chairman Johnson  
35 closed the public portion of the meeting.

36  
37 Mr. Chatmas commented that Mr. Kinley's statement was very valid in that the  
38 standards were established for a reason. The intent of the ordinance is to keep the  
39 character of the neighborhoods as they are. Each neighborhood has its own makeup,  
40 different lot sizes, set backs, etc. The board decisions have been very objective, based  
41 on these standards and not subjective due to requests, views, or opinions.

42  
43 Mr. Chatmas stated he voted against tabling the discussion based on his experience  
44 with the board, and his interpretation of the ordinance. According to the board's  
45 historical standards, that we (the board) have established and that we have in place,  
46 this is a significant deviation on size by square footage to those standards. Based on  
47 those criteria, this does not meet the square footage qualification.

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1 If the applicants want to table the discussion and further pursue it, Mr. Chatmas stated  
2 he would support that. If the applicants want to bring other options for expansion; those  
3 could be looked at. He affirmed he was not against the applicants and their intent; but  
4 charged with enforcing the ordinance as it's written.  
5  
6 Procedure and parliamentary rules of order were then discussed.  
7  
8 Mr. Chatmas motioned to reconsider tabling the discussion. Mr. Thibodeau seconded  
9 the motion. All were in favor. More discussion followed.  
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11 Mr. Duddy stated he would like the opportunity to submit something in writing. He  
12 asked that the board consider tabling his application until next month.  
13  
14 Mr. Kinley made to motion to table the discussion. Mr. Howe seconded the motion.  
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16 Mr. Kinley stated the intent of his motion was to give the Duddys an opportunity to see  
17 what they could do. Mr. Smith replied when questioned, that the neighbors would not  
18 be renotified.  
19  
20 A vote was taken to table the discussion on the Duddys's application until the next  
21 regularly scheduled meeting of the Zoning Board of Appeals. All were in favor.  
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23 Chairman Johnson thanked the Duddys for coming in.  
24  
25 **E. Communications – None.**  
26  
27 **F. Adjournment – Motion by Mr. Howe to adjourn; seconded by Mr. Kinley. All were in**  
28 **favor. Meeting adjourned at 8:20 pm.**