

1 **Town of Cape Elizabeth**  
2 **Minutes of the March 27, 2012, Zoning Board Meeting**  
3

4 **Members Present:**

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6 Josh Carver Barry Hoffman David Johnson  
7 Jeffery Schwartz Christopher Straw John Thibodeau  
8

9 Also present was the Code Enforcement Officer, Bruce Smith.

10  
11 **A. Call to Order** – The meeting was called to order by Chairman David Johnson at  
12 7:01 pm.

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14 **B. Election of Officers** – David Johnson was nominated for Chairman by John  
15 Thibodeau and seconded by Christopher Straw. All were in favor.

16  
17 **C. Approve the Minutes of December 28, 2010 and July 26, 2011** – A motion to  
18 approve both minutes was made by Mr. Thibodeau; seconded by Mr. Johnson. All were  
19 in favor.

20  
21 **D. Old Business** – Rules regarding public participation and creation of work plan. Mr.  
22 Smith will have background information regarding rules and work plan available for  
23 board members at the next meeting.

24  
25 **E. New Business**  
26

27 **1.)** The administrative appeal by Paul F. Driscoll, Esq. of the Code Enforcement  
28 Officer's interpretation of certain provisions of the Cape Elizabeth Residential A District  
29 and the Cape Elizabeth Shoreland Performance Overlay District governing the standard  
30 for calculating minimum lot area at 12 Tides Edge Road, Tax Map U08, Lot 14, will be  
31 held over until the April meeting at the request of the appellants.

32  
33 **2.)** To hear the appeal of Michael & Jennifer Duddy, 11 Crescent View Avenue, Tax  
34 Map U16, Lot 41 for a right side property line variance of 13 (thirteen) feet from the  
35 required 25 (twenty-five) feet to construct a 1 ¾ story addition at 12 (twelve) feet from  
36 said property line.

37  
38 Mr. Duddy stepped to the podium and gave an overview of his request to reapply for a  
39 variance that was granted by the board two years ago, which expired because  
40 construction was not started in time. This request is almost identical, although the  
41 design is slightly different and more in line with the character of the neighborhood, that  
42 the board had wanted to preserve. He explained that the existing one car garage  
43 would be torn down. Exhibit 1 shows a concept drawing of the first proposed plan. The  
44 board had requested a different design due to concerns over size. The next plan, to  
45 satisfy the board, just took a chunk off the second story. That design still wasn't what  
46 the Duddy's really wanted. So, after a couple more years, they have a design that is  
47 more consistent with what the board had requested and keeps the additional space in  
48 proportion to the neighborhood. The new design drops the roofline considerably and fits

1 the living space under a couple of dormers and extends the garage to the back. The  
2 total height is now 20 feet.

3  
4 Mr. Duddy responded to questions from Mr. Johnson, saying that the new design did  
5 not interfere with either the back or front setbacks and the side setback remains the  
6 same as last time. The added depth does not interfere with any view corridors.

7  
8 Mr. Thibodeau asked what the additional area was between Exhibit 2 to Exhibit 3?  
9 Mr. Duddy thought it was about 40 feet.

10  
11 There was a discussion about side setbacks. Page 2 and a table in Exhibit 5 list side  
12 setbacks. Mr. Duddy was not sure when construction would start.

13  
14 Chairman Johnson closed the public discussion.

15  
16 Mr. Straw asked Mr. Smith to explain 19-5-2B. 1f. c., Page 51, about the 10 feet  
17 setback. Twelve feet is more generous in this case.

18  
19 Chairman Johnson added one Finding of Fact to the previously approved Findings of  
20 Fact of April 27, 2010:

21  
22 8. That the current application is substantially similar to the last, except for the height  
23 and depth of the structure, neither of which impact the requested variance.

24  
25 Chairman Johnson conducted the voting on the Conclusions in regard to the revisit of  
26 the variance previously approved April 27, 2010.

27  
28 1. The proposed variance is not a substantial departure from the intent of the  
29 Ordinance. All were in favor.

30  
31 2. A literal enforcement of the ordinance would cause a practical difficulty. All were in  
32 favor.

33  
34 3. The need for the variance is due to the unique circumstances of the property and not  
35 to the general conditions of the neighborhood. All were in favor.

36  
37 4. The granting of the variance will not produce any undesirable change in the  
38 character of the neighborhood and will not unreasonably detrimentally affect the use or  
39 market value of abutting properties. All were in favor.

40  
41 5. The practical difficulty is not the result of action taken by the applicant or a prior  
42 owner. All were in favor.

43  
44 6. No other feasible alternative to a variance is available to the petitioner. All were in  
45 favor.

46  
47 7. The granting of a variance will not unreasonably adversely affect the natural  
48 environment. All were in favor.

1 8. The property is not located in whole or in part within shoreland areas as described in  
2 Title 38, Section 435. All were in favor.

3

4 A motion was made by Mr. Thibodeau to approve the application as presented. It was  
5 seconded by Mr. Johnson. All were in favor.

6

7 Chairman Johnson congratulated Mr. Duddy on approval of the variance.

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9 **E. Communications** – None.

10

11 **F. Adjournment** – Motion by Mr. Thibodeau to adjourn; seconded by Mr. Straw. All  
12 were in favor. Meeting adjourned at 7:23 pm.