

Town of Cape Elizabeth Minutes of the September 25, 2012 Zoning Board Meeting

Members Present

David Johnson Josh Carver Christopher Straw
John Thibodeau Joanne Tourangeau

Also present was Code Enforcement Officer Bruce Smith

- A. **Call to Order** - Meeting called to order by Chair David Johnson at 7:00 pm.
- B. **Approve the Minutes of March 27, 2012** - John Thibodeau made a motion to approve as written, seconded by Chris Straw – all in favor
- C. **Old Business** – No old business was brought before the Board
- D. **Communications** – Councilor Jim Walsh gave an overview of the amendments to Chapter 17, Town ways and the role the Board would play in an appeal of the Director of Public works.
- E. **New Business**

The Board decided to take the cases out of order since the Murphy appeals may be lengthy and the Taylor and Schreve use permit reviews are simple & straight forward.

- 1.) To hear the application of Raymond Taylor, 2 Harrison Avenue, Tax Map U29, Lot 1 for a revision to a previously approved 7/23/2002 Home Business specifically to allow an employee who is not a resident of the home to work at the residence.

Mr. Taylor stepped to the podium and explained that he would like to have employees from time to time. There would be no increase in business but that it would run more efficiently.. Mr. Johnson asked if there would be any other changes, i.e. parking. Mr. Taylor said they would still be using the church parking lot and no vehicles other than his own will be parked on the street. Ms. Tourangeau asked if the standards of the former approval will be the same. Mr. Taylor said yes. Mr. Thibodeau asked about the concerns Sheila Roy had made in an email to the Board. Mr. Taylor said he thought her concern was the slight congestion on the street. He explained that he has made and will continue to make every effort to keep customer's vehicles in the driveway. The standard conditions of Section 19-5-5 of the Ordinance were voted on and approved all in favor.. Ms. Tourangeau made a motion to condition the revised approval that the employee's vehicle not be parked on a public way. Mr. Johnson seconded. All in favor. Mr. Johnson made a motion to approve, Ms. Tourangeau seconded. All in favor.

- 2.) To hear the application of Betty-Jane Shreve, 192 Ocean House Road, Tax Map U24, Lot 36 for a conditional use permit to operate a home business.

Ms. Shreve stepped to the podium and explained that she would like to be able to sell retail to customers from her home waste baskets/pails she designs with scenes and then spray paints.. She would also like to put up a small sign. Mr. Johnson asked if chemicals or equipment such as paint sprayers would be used. She said no. Ms. Tourangeau asked if there would be an employee. Ms. Shreve said no, but her home partner would be helping on occasion. Mr. Carver asked how many customers per day. Ms. Shreve said that she didn't anticipate more than 5. Gary Beckwith of 13 Oakwood Road spoke and stands behind her request. The standard conditions of Section 19-5-5 of the ordinance were voted on and approved all in favor. Mr. Johnson made a motion to approve and Mr. Carver seconded. All in favor.

- 3.) To hear an administrative appeal by Maynard & Deborah Murphy of the Code Enforcement Officer's 6/22/2012 issuance of Building Permit #120425 for an addition and alterations to an existing structure at 29 Pilot Point Road, Tax Map U12, Lot 69.

Mr. Johnson suggested he may have a conflict because of his rights to the deeded paper street in front of the Livingston property.. He opened it up to the Board for discussion. After discussion, no issue with the Board, no issue with the appellants counsel or the Livingston's attorney. Mr. Johnson decided then that he would participate.

Andre Doucette, attorney for the Murphys, came to the podium and spoke of the timeliness issue, to the noticing of the permit issuance and to his clients not knowing about the appeal period.

John Shumadine, attorney for the Livingstons, came to the podium and spoke about the timeline and the appeal not being filed within 30 days. He spoke about how the Good Cause Exception did not apply, but even if it did, the courts are the only ones who can grant that exception.

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He also spoke about the issue of legal standing of the Murphys in the case of the patio permit. It is his opinion that the Murphys are not affected by that permit, so they have no standing to bring an appeal. If it is not visible to them, they are suffering no injury.

(note: this item on the agenda is now intermingled with the appeal numbered 3 above)

- 4.) To hear an administrative appeal by Maynard & Deborah Murphy of the Code Enforcement Officer's 8/31/2012 issuance of Building Permit #130072 for replacement of a 50' x 25' concrete patio with a 20' x 20' stone patio and the construction of a retaining boulder wall at 29 Pilot Point Road, Tax Map U12, Lot 69.

Mr. Straw then replied that it would seem from that argument that no one would have standing.

Mr. Shumadine said you need to have an injury more particular than the general public.

Mr. Doucette opined that there is a right of way and if you are a lot owner on a plan, you have rights in all rights of way and streets shown on the plan, even if those streets have not been built. He said there were 12 truckloads of fill, and no proper survey was submitted to show where the construction would be located precisely.

Ms. Tourangeau asked if part of the fill was on Surfside Avenue.

Mr. Doucette said yes. He said the Murphys have a right of way, and the real harm is the process for approving permits was wrong. Lot coverage was never determined, and it exceeded 20%. The Ordinance of Cape Elizabeth was not followed.

There was a lengthy discussion of the issue of standing on that issue.

Ms. Tourangeau requested that they go back to the first permit and the issue of timeliness. She said from the timeline supplied it seems that the Murphys had actual notice of the permit within the appeal period.

Mr. Doucette said they had approached the Code Officer about the permit, but were steered away and not informed of the appeal period. On August 1 they met with the Code Officer and were told about the procedure to file an appeal, but by then the 30 days was over.

There was further discussion and agreement of the timeline that the permit was approved on June 22 and the Murphys contacted the Code Officer on July 16. They did not know of the appeal time limit until they actually met with the Code Officer on August 1.

The Board opened the discussion to anyone for comments.

A man spoke and said they (the Murphys) had asked for a meeting, but by the time it was scheduled they had no chance. He does not think this is fair.

Sheila Mayberry of Trundy Point asked about whether there is a timeline that concerns an abutter or is there even a timeline where anyone can be concerned about the protection of the waterfront. She addressed the issue of standing by saying that the Shore Acres Association has an easement granted in 1992 and is obligated to maintain that roadway.

Mr. Smith said that the pictures show the area before the rock wall was moved. He said the permit was revised on Sept. 19.

Mr. Doucette noted that the fill is still there.

Mr. Nielsen asked why permits aren't posted. He wants to go on record as requesting that there be a requirement to post all permits.

No one else from the audience spoke.

Mr. Johnson then asked Attorney Wall if the board could suspend the hearing and go on a site walk.

Mr. Wall said they could do that.

Mrs. Murphy then came to the podium and spoke about her contact with the Code Office. She said they left a voice mail for Bruce Smith on July 17 saying that she had questions and concerns about the permit. She called again and was given a date to see Mr. Smith on August 1 and was only told in that meeting about the appeal process.

The public comment was formally closed.

Mr. Straw asked Mr. Wall if the fact that the patio permit has been amended has changed whether they can hear the appeal on the original permit.

Mr. Wall said they can still hear that original appeal.

Mr. Johnson engaged Mr. Shumadine in conversation about the patio and since Mr. Shumadine was not at a microphone it was impossible to hear any of his responses.

Ms. Tourangeau wanted to have a decision on the standing issue now while the evidence is fresh in their minds.

Mr. Johnson feels that the pictures are sufficient.

Mr. Wall agreed with Ms. Tourangeau that minimal harm is needed to have standing.

Mr. Smith said the area in question has been used by the Livingstons and prior owners for years, and maintained and mowed by them.

Mr. Johnson proposed they suspend the hearing on the patio permit to next meeting. He moved to suspend the patio permit to the next meeting in October and continue the hearing on the timeliness of the house permit.

Mr. Johnson asked Mr. Wall about the notice requirements for the site walk.

Mr. Wall said he would look into it.

The Board voted 3-2 in favor of the motion.

A site walk was scheduled for Tuesday Oct. 9 at 4:30pm.

There was a discussion with someone in the audience that I could not hear.

Mr. Straw then asked Mr. Wall for guidance on the timeliness issue. Does the Board have the right to determine if they can hear this issue under a good cause exception.

Mr. Wall said that can only be decided by the judiciary. All the Board can do is make their reasons for the determination on the record

Each member of the Board spoke and said they are sympathetic to the Murphys, but the 30 days was not met.

Mr. Johnson proposed the findings of fact.

On June 29, 2012 the permit application #120452 for 29 Pilot Point Road was filed.

On June 22, 2012 the permit was approved.

According to the timeline supplied by the Murphys they had actual notice on July 16, 2012, prior to the expiration of the appeal period.

The findings of fact were approved 5-0.

Mr. Johnson moved to dismiss the appeal of permit # 120452 on the grounds it is untimely.

The motion passed 5-0.

The Board voted 5-0 to adjourn at 9:40 pm.