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Town of Cape Elizabeth Minutes of the January 29, 2013 Zoning Board of Appeals Meeting

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Members Present:

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Josh Carver	Matthew Caton	Barry Hoffman
Jeffery Schwartz	John Thibodeau	Joanna Tourangeau

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Also present were the Code Enforcement Officer, Benjamin McDougal, and Recording Secretary, Carmen Weatherbie.

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A. Call to Order – The meeting was called to order by Chairman John Thibodeau at 7:00 pm.

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B. Welcome - Chairman Thibodeau introduced Benjamin McDougal, Cape Elizabeth's new Code Enforcement Officer.

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C. Approval of Minutes - A motion to approve the minutes of January 2, 2013, was made by Mr. Schwartz; seconded by Mr. Carver. 6 – 0. All were in favor.

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D. Old Business – None.

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E. New Business - A request for a variance on Map U03, Lot 114, at 825 Shore Road from Maria S. Chambers to construct a garage with a rear setback of six feet, a side setback of four feet and a setback of 16 feet from Stonybrook Road.

Ms. Chambers came to the podium. Mr. Schwartz asked if she or someone else had prepared the packet of information the board had been given. Ms. Chambers replied that she had prepared it.

Ms. Chambers stated the current situation at 825 Shore Road; is that it is a non-conforming lot. It is a long and skinny lot in a very eclectic neighborhood of older homes. It is one of three similar lots: 821, 823 and 825. These homes were originally built for the officers of Fort Williams in 1907/8. She would like to build a garage in the back right corner, just over the property line. This would be a garage very much like her neighbors have, with similar setbacks.

Ms. Chambers addressed an issue concerning the financial gain or windfall that was brought up last month. She said that selling the home most likely would result in financial loss. She said the home has been listed for three months and potential purchasers want a garage. With a variance she can tell buyers they could build a garage or build a garage herself to make the home sellable.

She stated that the home is set pretty far back on the lot. Since it is a non-conforming corner lot, it must comply with a 20-foot setback for frontage on both roads. There must be a 10-foot setback on the side. She has amended her application. On the west side it will meet the side setback. She is asking for the variance for the North side, which

1 would have just a four-foot setback. That would put the garage as far back in the corner
2 as reasonable and practical.

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4 Ms. Tourangeau asked if the adjacent neighbors were okay with a garage being built
5 there. Ms. Chambers replied that they were. Chairman Thibodeau asked if the lot
6 behind hers, on Stonybrook, Lot 141, had a garage. She said yes, it did. It is pictured
7 on page 16, 11 Stonybrook. The garage is under an addition to the home.

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9 Ms. Chambers addressed the conditions requiring a variance:

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11 a. The need for a variance is due to the unique circumstances of the property
12 and not to the general conditions of the neighborhood: The driving force is the long
13 skinny lot and the house being set so far back, on the lot, from Shore Road.

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15 b. The granting of a variance will not produce an undesirable change in the
16 character of the neighborhood and will not unreasonably detrimentally affect the use or
17 market value of abutting properties: She wants to mirror where other garages are
18 located and fit in as much as possible.

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20 c. The practical difficulty is not the result of action taken by the applicant or a
21 prior owner: The property was developed in 1907, before zoning and thus without
22 consideration for current zoning requirements.

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24 d. No other feasible alternative to a variance is available to the petitioner: It is
25 not feasible to build a garage to comply with setback restrictions, and abutting and
26 neighboring property owners have expressly requested that the garage be as far back
27 into the Northwest corner of the property as possible.

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29 Chairman Thibodeau asked if the garage were situated differently, would she still need
30 a variance. Ms. Chambers replied that she would not be able to build a garage without
31 a variance due to all the required setbacks.

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33 Ms. Chambers's package included a map documenting garages in the immediate
34 neighborhood. 12 out of 12 homes have garages or a detached storage building. 10 of
35 these are non-conforming. Seven are two-car garages, four are one-car, and there is
36 one large storage building.

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38 Photographs in the package showed garages of various styles. Ms. Chambers
39 addressed each situation pictured.

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41 Chairman Thibodeau asked Ms. Chambers to address where the neighbors' lots were
42 that wrote letters of support. She explained where each was located.

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44 Mr. Hoffman asked if any of the abutters objected to what she was doing. She replied
45 no. Mr. Hoffman commented that there was no one in attendance and asked if
46 neighbors had been notified. Notices of each hearing were sent to the neighbors by the
47 town.

1 Ms. Tourangeau thanked Ms. Chambers for the thoroughness in which she addressed
2 the criteria in her resubmission. Chairman Thibodeau also expressed his appreciation
3 for Ms. Chambers's thorough presentation.
4

5 Mr. Caton asked about a prior garage on the property. Ms. Chambers replied she had
6 heard there once was a garage, but she has no documentation and couldn't say for sure
7 if one had ever been there.
8

9 Ms. Chambers confirmed the size of the proposed garage as 26 feet by 26 feet.
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11 Chairman Thibodeau closed the floor.
12

13 Board discussion.
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15 To grant a variance at least four members of the board must affirmatively find that:
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17 1. There is no substantial departure from the intent of the ordinance. Section 19-4-1
18 states: "It is the intent of this Ordinance to promote land use conformities, except that
19 nonconforming conditions that were created by the adoption of this Ordinance shall be
20 allowed to continue, subject to the requirements of this Article. Except as otherwise
21 provided, a non-conforming condition shall not be permitted to become more non-
22 conforming. 6 – 0. All were in favor.
23

24 2. A literal enforcement of the Ordinance would cause a practical difficulty as defined
25 by 30-A MRSA Section 4353, 4-C. 6 – 0. All were in favor.
26

27 a. Practical Difficulty is defined as: "An occasion where the strict application of
28 the ordinance to a property precludes the ability of the property owner to pursue a use
29 permitted in the zoning district in which the property is located and results in significant
30 economic injury to the property owner."
31

32 b. Significant Economic Injury is defined as: "Placing the applicant for a
33 variance at a disadvantage in the neighborhood by applying Zoning Ordinance stands
34 which would prevent the applicant from having a structure or accessory structure
35 comparable in size, location and number to those of other lot owners in the immediate
36 neighborhood, but in no case fewer than 10 of the nearest property owners."
37

38 3. The need for a variance is due to the unique circumstances of the property and not
39 to the general circumstances of the neighborhood. 6 – 0. All were in favor.
40

41 4. The granting of a variance will not produce an undesirable change in the character of
42 the neighborhood and will not unreasonable detrimentally affect the use of market value
43 of abutting properties. In determining whether a variance would have an unreasonable
44 detrimental effect on the use or market value of abutting properties, the Zoning Board
45 shall consider if the variance would have the effect of blocking an established view,
46 posing a fire safety hazard, casting a shadow on an adjoining lot, reducing the
47 appraised value of an adjoining property by 10% or more or of eliminating the privacy of
48 an adjoining property without an effort to mitigate the lost privacy. 6 – 0. All were in
49 favor.

1 a. Undesirable Change in the Character of the Neighborhood is defined as:
2 “The result of a variance where the structure is larger or closer to the road or property
3 lines than the average of the nearest ten principle structures, or in the case of a
4 variance request for an accessory structure, the nearest ten accessory structures.”
5

6 5. The practical Difficulty is not the result of action taken by the applicant or a prior
7 owner. 6 – 0. All were in favor.
8

9 6. No other feasible alternative to a variance is available to the petitioner. 6 – 0. All
10 were in favor.
11

12 a. No other Feasible Alternative is defined as: “In the case of a variance
13 request, there is no other place on the lot, taking into consideration the physical
14 constraints of the property, or no other location on the structure that the proposed
15 construction could go without the need for a variance of without causing the owner to
16 create other compliance problems on the lot because of the Zoning Ordinance, deed
17 restrictions or conditions imposed by a lease or contract.”
18

19 7. The granting of a variance will not unreasonably adversely affect the natural
20 environment. 6 – 0. All were in favor.
21

22 8. The property is not located in whole or in part within shoreland areas as described in
23 Title 38, Section 435. 6 – 0. All were in favor.
24

25 **Conclusion:** A motion was made by Mr. Carver to approve the application for a
26 variance; seconded by Mr. Hoffman. 6 – 0. All were in favor.
27

28 **Findings of Fact:**
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30 1. Maria S. Chambers is the owner of record of Map U03, Lot 114, at 825 Shore Road.
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32 2. 825 Shore Road has frontage on both Shore Road and Stonybrook Road and the
33 definition of Setback, Front, in the Cape Elizabeth Zoning Ordinance provides that a lot
34 having frontage on more than one street shall be required to meet the minimum front
35 setback on each street.
36

37 3. The subject lot is in the Residence C (RC) Zoning District and Shore Road is
38 classified in the Cape Elizabeth Zoning Ordinance as a collector street and Stonybrook
39 Road is classified as a local street.
40

41 Board discussed relevant setbacks and wording for Findings of Fact. Since this is a
42 non-conforming lot the required rear setback is 15 feet.
43

44 4. At the rear of the garage (northerly side) the proposed setback is four feet. Thus, the
45 applicant is requesting a rear variance of 11 feet, from the viewpoint of Stonybrook
46 Road, on the northern side of the property.
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48 All were in favor of the above Findings of Fact. 6 – 0.
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1 **F. Annual Board Orientation** - Chairman Thibodeau informed the Board that Attorney
2 John Wall was out of town, so the orientation was postponed until next month.

3

4 **G. Communications – None.**

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6 **H. Adjournment** – Chairman Thibodeau congratulated Ms. Chambers and adjourned
7 the meeting 7:45 pm.