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Town of Cape Elizabeth Minutes of the May 28, 2013 Zoning Board of Appeals Meeting

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Members Present:

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Josh Carver	Matthew Caton	Christopher Straw
John Thibodeau	Joanna Tourangeau	

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

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A. Call to Order – The meeting was called to order by Chairman John Thibodeau at 7:01 pm.

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B. Approval of Minutes for March 26, 2013 - A motion to approve the minutes was made by Mr. Carver; seconded by Ms. Tourangeau. All were in favor. Vote: 5 – 0.

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C. Old Business – None.

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D. New Business Chairman Thibodeau stated that the last agenda item, to hear the request of Heather Dallas of 1 Indian Rock Woods, Scarborough, Maine, for an administrative appeal would be heard at the June 25th meeting.

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1. To hear the request of Randy Talbot of 825 Shore Road (Map U3 Lot 114) to amend the existing Zoning Board approval dated January 29, 2013.

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Chairman Thibodeau asked Code Enforcement Officer (CEO) for background on this application.

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Mr. McDougal said this variance was heard by the board on January 29th of this year, when Maria Chambers was the owner of the property. Now the new owners, the Talbots, want a different garage design than Ms. Chambers. The CEO stated he was not certain if he could grant this variance on his own, so he brought it before the Zoning Board for a determination. A variance was granted for the garage to be four feet from the property line; they are not asking to change that, but they want the structure to be slightly larger by 100 square feet.

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Mr. McDougal replied in response to questions that the increase in size is toward the middle of the property so there is no change in setbacks; there is no change in height; and he received two inquiries but no objections.

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Chairman Thibodeau stated he would be happy to hear the request but felt it was within the existing footprint of the variance that had already been approved.

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Mr. Straw thought that additional assessment and analysis of structures of the nearest ten properties was needed. He was not in attendance at the January 29 meeting. Ms.

1 Tourangeau said that what was reviewed (in January) was that the setbacks were
2 similar and consistent in the neighborhood and not the overall size of the garage.
3
4 Chairman Thibodeau asked the board if this merited board review. Mr. McDougal said
5 that the applicable Section was 19-5-4 of the town Ordinance. There was board
6 discussion. The desired structure would be eight feet longer (34 feet vice 26 feet).
7 Chairman Thibodeau decided to hear the request from the Talbots.
8
9 Craig Cooper of Rainbow Construction came to the podium and stated that he was
10 representing the Talbots. This was approved as 26 feet by 26 feet, the two-car
11 standard size garage, to make this property more salable. The Talbots have purchased
12 the property and would like a garage that would better fit their needs. There is a wet
13 basement in this house, so the garage would also serve as a storage area (referred to
14 as a workshop on the plan). Mr. Cooper showed plans for the garage in the middle of
15 the property. The back was increased 8 feet and the front corner taken out to make an
16 alcove and the front measurement of 24 feet. As far as he knew no one in the
17 neighborhood had objected.
18
19 Mr. McDougal replied in response to questions that the neighbors received two weeks
20 notice of the hearing and he received only two telephone inquiries with general
21 questions.
22
23 Chairman Thibodeau asked Mr. Cooper about how the Practical Difficulty standard was
24 met. Mr. Cooper replied because the basement is wet, there is no other place on the
25 property to put items for general storage.
26
27 Mr. Straw mentioned looking at economic injury and undesirable changes to the
28 neighborhood and looking at the ten nearest properties' garages in comparison.
29
30 Mr. Carver mentioned that previously (in January) pictures of the other garages were
31 viewed. Chairman Thibodeau said the comparison of properties was quite thorough (16
32 or 18 neighbors) and the change was consistent with those in the neighborhood. Ms.
33 Tourangeau stated that the standards were met for the variance already and all that
34 needed to be decided was whether this change of 100 additional square feet, a small
35 portion of which is along that four foot setback, is or is not significant enough to impact
36 our decision on the underlying Practical Difficulty. She didn't think it significant enough
37 to take away that determination after looking at all the other garages.
38
39 Mr. Cooper said during the design, the architectural features were meant to be in
40 keeping with the neighborhood.
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42 Mr. Caton mentioned that only the additional area (11' X 8') 88 square feet need be
43 considered for the variance.
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45 Finding no public comments, Chairman Thibodeau closed the floor to public comment.
46 The board discussed the previous decision and garages in the neighborhood. The
47 previous record should be appended to this decision.
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1 Ms. Tourangeau made a motion to approve the application to amend the underlying
2 variance to allow a four-foot setback and to increase the space and bulk within that four-
3 foot setback to the size shown on the plans submitted as part of the application.
4 It was seconded by Mr. Carver. Vote was 4 – 1. Mr. Straw dissenting.

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6 **Findings of Fact:**

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8 1. This is a request to amend the January 29, 2013, Zoning Board approval to add a
9 garage to the property at 825 Shore Road. The record of that meeting is incorporated
10 into this record.

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12 2. Randy and Cindy Talbot are the new owners of the property.

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14 3. On January 29, 2013, the Zoning Board approved a variance for a 26 feet by 26 feet
15 garage to be constructed on the property with a setback of four feet on the northerly
16 side of the property.

17
18 4. The new owners of the property would like to have a garage that is 24 feet by 26 feet
19 with an additional 10 feet by 20 feet workshop space attached to it. This increases the
20 permissible nonconforming floor area by 88 square feet.

21
22 5. The height of the garage will be unchanged from the January 29, 2013, approval.

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24 Vote 5 – 0. All were in favor of the Findings of Fact.

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26 Chairman Thibodeau congratulated the Talbots.

27
28 **New Business** 2. To hear the request of Eileen Monahan of 3 Peabbles Point Lane to
29 reconstruct and expand a nonconforming structure at 2 Tucker Lane (Map R3 Lot 9V)
30 based on Section 19-4-3.B.3 of the Zoning Ordinance.

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32 Chairman Thibodeau asked Code Enforcement Officer (CEO) for background on this
33 application.

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35 Mr. McDougal said this application is a demolition and rebuild of a nonconforming
36 structure. Originally the applicant came to town hall with a set of plans with a base floor
37 footprint and a second floor that was rather awkward. The second floor was laid out to
38 adhere to the setbacks. As presented, the CEO could have approved the building
39 permit. Mr. McDougal mentioned to the applicant that she had an option to go before
40 the Zoning Board and square off the structure and get slightly more space. They are
41 building on the same footprint and getting an additional one-half to two-thirds story
42 above.

43
44 Ms. Tourangeau asked how many setbacks were impacted. Mr. McDougal discussed
45 frontages (both Shipwreck Cove Road and Tucker Lane) and setbacks. The plan
46 proposed is a vertical expansion. Mr. Caton questioned the distance between house
47 and a grey house in photograph. Mr. McDougal said it was at least 30 feet.

1 Eileen Monahan came to the podium and stated that she was one of the owners of 2
2 Tucker Lane. It is part of the Peabbles Cove Community. Peabbles Cove went through
3 reorganization about two years ago. The owner of the land offered it for sale to the
4 association, as one parcel. Then those who had been leasing there bought their own
5 property. The leaser of this property was not able to purchase it, so a small group of
6 current owners purchased it. It is the last piece of land. It has been on the market for
7 the last year. House not lived in since at least 2009. We finally found an interested
8 buyer, who has worked with the abutters to save their views. We have the written
9 consent of all the abutters. We hope to continue with the sale and have a nice house
10 there (that somebody could actually live in).

11
12 Ms. Monahan continued to address all the criterion of the Ordinance saying it was a
13 modest house, building on the existing footprint and they are using best practices for
14 erosion and sedimentation control. As for the impact on views, all neighbors have given
15 signed consent to the changes.

16
17 Mr. McDougal said he received only one comment on this application from a woman
18 who was in attendance. Mr. McDougal said she might want to speak for herself.

19
20 Ms. Monahan handed the signed single page plans to the board and explained how the
21 association's rules applied here.

22
23 Mr. Caton asked Ms. Monahan to explain where each person, that signed the plans,
24 lived in relation to the property. Ms. Monahan did so. Mr. Caton also noted that Edward
25 Perry signed, "on the condition that no dormers are added." Ms. Tourangeau asked if
26 there was any recourse the association could take, if dormers were added. Ms.
27 Monahan was not sure. Mr. McDougal said unless the floor area was expanded,
28 dormers could be added without Zoning Board approval. There was discussion about
29 limiting what was approved. The planned elevation is 26 ½ feet to the apex of the roof.
30 Currently it is a one-story structure of approximately 18 feet high.

31
32 Edward Perry, owner of 6 Tucker Lane, came to the podium. His house is one house
33 away from Eileen's house. He was the one who wrote the note about the dormers. He
34 was concerned about the sketch the board was looking at. He had requested a copy of
35 the one he signed, but did not receive a copy. (Mr. Perry was given a copy of the view
36 presented to the board.) The two houses behind this one are 25 feet in height with
37 partial water views. This builder's plan is considerate in the way the ridgepole was run
38 and views for the two houses behind are maintained. The Peabbles Cove Association
39 was established to save everyone's water views; however, they could override the
40 Perrys' objection if a structure that blocked his view was proposed. This builder's plan
41 is good and acceptable. However, if a full second story were added, it would block his
42 view, as well as the other home behind this structure.

43
44 Chairman Thibodeau said that if this request were approved, there would be nothing the
45 board could do two or three owners from now. Ms. Tourangeau thought maybe the
46 board could set limits or conditions on the variance. The plan presented to the board
47 was similar to the sketch Mr. Perry and the abutters signed. There was discussion
48 concerning further enlargement of a nonconforming structure. Mr. McDougal stated in

1 his opinion the Board is reviewing this for impact on views; so if there was another
2 building permit requested in the future, that would also go before the Board.

3
4 Chairman Thibodeau closed the floor to public comment. Mr. Straw noted an
5 inconsistency in the Zoning Ordinance between Section 19-4-3.B. and Section 19-4-4.B,
6 concerning Shoreland zoning that had been discovered in a prior board. The CEO
7 stated he had mentioned that to the Town Planner.

8
9 The board discussed the Ordinance and how it applied to this nonconforming structure
10 and impact on views. Ms. Tourangeau noted that the more detailed plans submitted
11 with the application, showed a more pinched roof, which seemed to be more assessable
12 to people concerned about views from behind the house. Mr. Caton said the single
13 page sketch was significant because of the signatures of the abutters.

14
15 Ms. Tourangeau motioned that the board approve the application for reconstruction/
16 replacement of this property in compliance with the Boundary Retracement As-Built
17 plans for the lot at 2 Tucker Lane by Ross Boundary Surveys dated April 2013 per the
18 plan packet. Mr. Straw seconded. Vote 5 -0. All were in favor.

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20 **Findings of Fact:**

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22 1. This is a request to reconstruct and expand a single family dwelling per Section 19-
23 4-3.B.3 of the Zoning Ordinance at 2 Tucker Lane, Map R3 Lot 9V.

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25 2. Eileen Monahan, member, on behalf of Cove Collaborators, L.L.C., is the applicant
26 and owner of the property.

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28 3. The Zoning Board of Appeals has considered the size of the lot, the slope of the
29 land, the potential for soil erosion, the location of other structures on the property and
30 on adjacent properties, the location of the septic system and other on-site soils suitable
31 for septic systems, the impact on views, and the type and amount of vegetation to be
32 removed to accomplish the relocation.

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34 4. The proposed structure will not increase the nonconformity of the existing structure.

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36 5. The proposed structure is in compliance with the setback requirement to the greatest
37 practical extent.

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39 6. The reconstruction will comply with the building plan as submitted for the record by
40 Ross Boundary Surveys, April 2013, Job # 21304CE and the building plan by Cape
41 Cottage Home Designs attached thereto, dated May 6, 2013.

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43 Vote 5 – 0. All were in favor of the Findings of Fact.

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45 **E. Communications** – None.

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47 **F. Adjournment** – Chairman Thibodeau adjourned the meeting 8:40 p.m.