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**Town of Cape Elizabeth  
Minutes of the June 25, 2013  
Zoning Board of Appeals Meeting**

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**Members Present:**

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Barry Hoffman  
John Thibodeau

Jeffery Schwartz  
Joanna Tourangeau

Christopher Straw

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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 7:02 p.m.

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**B. Approval of Minutes for May 28, 2013** - A motion to approve the minutes was made by Ms. Tourangeau; seconded by Mr. Straw. All were in favor. Vote: 5 – 0.

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**C. Old Business** – None.

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**D. New Business**

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1. To hear the request of Heather Dallas of 1 Indian Rock Woods, Scarborough, Maine, for an administrative appeal of a letter written by the Code Enforcement Officer concerning Map U7, Lot 46A.

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

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Mr. McDougal said this is a 4,000 square foot lot at 502 Delano Park. It is a nonconforming lot with a nonconforming structure, a garage, which has been on the lot for 40 to 60 years (before we kept records). In the mid 90's the owner started a process to use it as a dwelling unit. The May 17, 1994, Assessment Record characterizes the structure as garage quarters, not useable, no disposal systems, no plumbing, not used. Since then the only permit the town has issued is for the septic system. There was never a certificate of occupancy, no internal plumbing permits, no electric permits, no building permits. It is a very murky file to determine the legal use of the property. There is also correspondence between the former CEO, Bruce Smith, and the CEO prior, Ernie MacVane, and the owners of the property. I was asked to sort this out and write a document as to the legal use of the property. That is the letter that is being appealed.

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Mr. Hoffman asked to see photographs. CEO gave him a paper copy.

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Ms. Tourangeau asked the CEO about the current condition of the property. Was it a garage with just a toilet that went to the septic or was it an actual residence? Mr. McDougal stated he did not know. No plumbing permits had been issued. The current Assessor, who's been here for 15 or so years also has never stepped foot in there and

1 doesn't know what's in there. He has a significant level of depreciation on it. He based  
2 his 2011 assessment of living space on the knowledge of the Code Enforcement  
3 Officer, that it was now a dwelling unit.

4  
5 The CEO's letter is in the blue packet of information.

6  
7 Tom Jewell, attorney for the applicants came to the podium. Paul Bulger, his partner,  
8 wrote the brief. They are with the firm Jewell & Bulger, P.A., in Portland. He passed  
9 out recent pictures of the property.

10  
11 Mr. Jewell stated neither he nor Paul Bulger had received the brief from attorney  
12 Bischoff. He didn't know of it until tonight. He requested the opportunity to return, if  
13 necessary, with a proper response. Mr. Jewell said Heather Dallas and Howard Levy  
14 owned the property since 2004. They asked Bruce Smith, former CEO, to be here. In  
15 the many hours his clients have spent researching the history of this property, they have  
16 not been able to find anything prior 1996, although the garage has probably been there  
17 40 or more years prior to that date. They suspect there are some missing older  
18 documents. This property and Lot 44 were owned together for many years until the last  
19 month or two when Lot 44 was sold separately.

20  
21 Mr. Jewell continued saying when they bought the small lot there was a septic tank on it  
22 and a pipe in the road that connected it to the main property, Lot 44, where the leach  
23 field was that served both of these properties. That was apparently installed by Lisa  
24 Newbold in the mid-to-late 90's. Ernie MacVane issued the permit and found that Lot  
25 46A was a grandfathered residential use and allowed the installation of the septic  
26 system but at that time he discussed with Lisa that because of the pipe joining the two  
27 properties with a common leach field, they would have to stay in common ownership.  
28 Later when my clients bought the property, their attorney pointed out that the pipe had  
29 been put in the private road at Delano Park and that there was no easement for that.  
30 They approached the Delano Park Association to request a formal easement. There is  
31 a 2006 letter denying that request. So his clients looked at other options. They found  
32 that the science of septic disposal had advanced so that it was possible to put a  
33 separate leach field on Lot 46A just to serve that property. So they began an effort in  
34 the mid 2000's with Bruce Smith. Mr. Smith issued his letter in 2005 that this was a  
35 grandfathered single-family dwelling and he later issued septic permits to allow the  
36 separate leach field to serve Lot 46A as a separate single family dwelling.

37  
38 During meetings and through correspondence, Mr. Smith told Ms. Dallas that this was a  
39 grandfathered single-family dwelling and the lot could be sold separately. Based on that  
40 they installed the leach field for Lot 46A and evidentially sold the main house, which  
41 happened recently.

42  
43 The septic system permits were issued in 2007 and have never been appealed. That  
44 work has been done. This year when my clients began an effort to sell the main house  
45 separately, they looked at options to improve the existing dwelling (on Lot 46A), which is  
46 pretty ugly. Attached to the recent pictures are sketches from their architect to show a  
47 possible replacement to the existing structure. That would involve tearing down the  
48 existing structure and putting up this new building. The architect also had many

1 meetings with Mr. Smith to discuss what could happen on that property. Mr. Smith  
2 reiterated that this was a grandfathered single-family dwelling and could be torn down  
3 and replaced with another structure. That brought some angst from the neighbors who  
4 brought their concerns to Mr. McDougal. He issued the March 29, 2013, letter which is  
5 the subject of this appeal.

6  
7 In the letter Mr. McDougal does find that this is a grandfathered single-family dwelling  
8 and he opines that it is an Accessory Dwelling Unit, which is a nonconforming use in the  
9 RA Zone. His conclusion is based on the prior owner's statement that the main lot and  
10 the small lot would stay together in common ownership. That agreement between Lisa  
11 Newbold and Ernie MacVane was never reduced to any kind of formal easement or  
12 covenant that was recorded with the properties. So it is not binding on subsequent  
13 property owners.

14  
15 Mr. Jewell continued saying that they were here for the very limited purpose of  
16 appealing Mr. McDougal's finding that this is an Accessory Dwelling Unit as opposed to  
17 a single-family dwelling unit, as it has been found to be by earlier Code Enforcement  
18 Officers. Under the definition in Section 19-1-3, the structure on Lot 46A is not an  
19 Accessory Dwelling Unit. Mr. Jewell stated that this is a single-family dwelling unit. If  
20 the abutters had a problem with this being a Dwelling Unit, they could have filed their  
21 own appeal; it's been two and a half months and they have not done that.

22  
23 Mr. Jewell agreed with Mr. McDougal that an Accessory Dwelling Unit is not a  
24 conforming use under the Ordinance. On the other hand, a single-family dwelling unit is  
25 a conforming use in the RA Zone under Section 19-6-1.B.2.a. So the property is a  
26 conforming use on a nonconforming lot. So if the ZBA agreed with him, then the issues  
27 1 and 3 presented in their brief would never be reached; however, he would like to  
28 reserve the right to go back to them.

29  
30 Mr. Jewell concluded by stating that Lot 46A had been determined multiple times by  
31 three prior Code Enforcement Officers to have a grandfathered dwelling unit. It clearly  
32 isn't an Accessory Dwelling Unit so it must be a single-family dwelling unit.

33  
34 Heather Dallas came to the podium and stated that she had a card that has 1993 and  
35 2003 dates on it that called the property a seasonal dwelling. In response to a question,  
36 Ms. Dallas replied that she does not live there. That it's been lived in since before they  
37 bought the property. Mr. Straw advised Ms. Dallas that the board must have copies of  
38 the card if she wished it to be included in the record.

39  
40 Mr. Straw said that Mr. Bischoff's brief mentioned that their appeal was not timely, in  
41 that it was filed 31 days after because the 30<sup>th</sup> day fell on a Sunday. There was  
42 discussion with Mr. Jewell and Mr. McDougal concerning the timeliness circumstances.

43  
44 Chairman Thibodeau asked if Mr. Jewell was aware of what the minimum lot size was in  
45 the RA District. Mr. Jewell replied " Yes, way less than what we have here." Then  
46 corrected his statement saying we have a small lot for the zone, a nonconforming lot.  
47 Mr. Jewell stated in response to questions, that Lot 44 sold April 15, after Mr.  
48 McDougal's letter, but prior to the letter they were under a binding contract to sell the

1 property. Mr. Jewell's clients were aware of the prior agreement not to split the lots at  
2 the time of the sale. They relied on their attorney's advice and conversations with Mr.  
3 Smith that the lots could be split. There is a letter from Mr. Smith in 2005, where he  
4 considered this a single-family lot. There is nothing else in writing.

5  
6 Ms. Tourangeau asked if there is currently a septic system on 46A. Mr. Jewell said  
7 there was and a leach field. When the Association wouldn't grant the formal easement  
8 for the pipes in the road, his clients looked for other options. It is a septic system for a  
9 single-family dwelling with one to two bedrooms.

10  
11 Mr. Straw mentioned Exhibit G, the letter from CEO Smith dated November 25, 2005,  
12 eight days after he started as CEO for the town. It reads: "I approve the septic system  
13 application on 9/23/97 but with a restriction that the two properties remain in the same  
14 ownership." Mr. Jewell said that up until that point the lots shared a common leach  
15 field.

16  
17 Ms. Dallas returned to the podium to say that they did not purchase the properties to  
18 separate them. It was only after the Delano Park Association said they could not have a  
19 legal easement for the pipes under the road did they look into the separate septic. Mrs.  
20 Newbold, the prior owner, said she was given permission to run the pipe. It was when  
21 Ralph Pride was the president of the Association. Mr. Pride doesn't remember, and the  
22 records for 1997, when it probably occurred, have been misplaced. Mrs. Newbold  
23 thought that Mr. Pride had written something giving her permission. It was then that Ms.  
24 Dallas went to Bruce Smith and asked how she could make this legal. It was at this  
25 time that they discovered that the deed restriction was not recorded. Mr. Smith noted  
26 that there was already a septic tank and pump on the lot. He told her of a new system,  
27 that would require state approval but was something that could be done and the lot  
28 would be on its own. Ms. Dallas said they just reacted to things as they happened  
29 concerning this lot.

30  
31 In responses to questions, Ms. Dallas said the prior restriction to keep the lots together,  
32 was verbally waived by Mr. Smith.

33  
34 Mr. Straw asked Ms. Dallas and Mr. Jewell what they classified the structure as and  
35 what criteria in the Ordinance did they base their decision. There was discussion  
36 concerning why they determined it a grandfathered dwelling unit. The earliest  
37 document Ms. Dallas could find was a 1996 letter from Mrs. Newbold to Mr. Smith  
38 concerning renovations. Ms. Dallas said it should not have been a surprise to the  
39 neighbors that she was separating the lots. She has listed the big/main house for sale  
40 several times since 2007.

41  
42 Chairman Thibodeau asked for public comments.

43  
44 Bruce McGlauffin of Petruccelli, Martin & Haddow, LLP, in Portland, came to podium, he  
45 stated he was representing a number of residents of Delano Park that are neighbors of  
46 the applicant. Specifically they are: John Staples, R. Scott Raspa, James and Nancy  
47 Martin, Arland and Jennifer Marshall, Sarah Laduzenski, B. Krey Sims, Robert and

1 Linda Kopelman, Shannon Schrader, and Charles Leigh who are on record as opposing  
2 this appeal.

3  
4 Mr. McGlaulin commented on a general principal of zoning law: That nonconformities  
5 are to be decreased and eliminated whenever possible and not increased or expanded.  
6 That is based on a principle of fairness. For nonconformities that are grandfathered we  
7 do not retroactively apply the rules to those properties. We allow these grandfathered  
8 nonconforming uses to continue. But after those rules go into effect, any change or  
9 development of any property, including nonconforming properties, have to apply equally  
10 to the rules of the Ordinance. It would be unfair in this case, to my clients and other  
11 neighbors in Delano Park, to allow this request of the applicant to go forward. Although  
12 the historical record is a little murky, both the lot and the structure predate the  
13 Ordinance. So the lot and the structure are considered legally existing zoning  
14 characteristics. The use however, did not preexist the Ordinance and is not a  
15 grandfathered use and can't be considered a grandfathered dwelling or a grandfathered  
16 dwelling unit.

17  
18 Mr. Straw asked about it being a seasonal dwelling, like a Maine camp. Mr. McGlaulin  
19 said that it is the applicants' burden to prove that legal nonconforming status.

20  
21 Mr. McGlaulin continued saying that anybody who read the record would come to the  
22 conclusion that it was allowed as an Accessory Dwelling Unit. Mr. McDougal has  
23 correctly interpreted it as such. That it was an allowance as an Accessory Dwelling  
24 Unit. Mr. Jewell is correct; such a use is not proper in the Ordinance. Accordingly, Mr.  
25 McDougal has concluded that the approval as such, back in 1997, was not legally  
26 authorized. At that point in time, you have a use that was improperly authorized by the  
27 CEO. It was not authorized by the Zoning Ordinance. Mr. McDougal is generously  
28 characterizing it now as a nonconforming use that he is willing to allow to exist because  
29 of the decision of the CEO back in 1997.

30  
31 Ms. Tourangeau asked the date of that decision. Before or after June 4<sup>th</sup>? Section  
32 19-4-3.A.2.b. Nonconforming lots and the provisions for developed contiguous lots  
33 reads: "Contiguous Developed Lots: Two or more contiguous, developed  
34 nonconforming lots or parcels in common ownership as of June 4, 1997, may be  
35 conveyed separately or together, even if all or some of the lots do not meet the  
36 dimensional requirements of this Ordinance, if a principal use or structure exists on  
37 each lot..."

38  
39 Mr. McGlaulin replied they are not contiguous lots and the garage is not a principal  
40 structure. This is a micro lot, one of four created after the subdivision. It is not a typical  
41 lot. The intent was for these to be carriage house lots or garage lots. The other three  
42 continue to be used as such, this lot is the only one that has been used otherwise.

43  
44 Bill Laverty, President of the Board of Trustees of Delano Park, came to the podium.  
45 He said one lot was divided into four lots, 46 A, B, C, and D. This is the only one of the  
46 four with a dwelling unit.

47  
48 Mr. McGlaulin said they were not created for house lots.

1 Mr. Straw mentioned references to a preexisting garage apartment in Exhibit A of 1996  
2 and Exhibit B from 1997.

3  
4 Mr. McGlaufflin acknowledged the references to the apartment that existed without  
5 plumbing, but doubted that it existed in 1958, or whenever the Ordinance was enacted.  
6 The decision in 1997 was correctly characterized by Mr. McDougal as an illegal,  
7 unauthorized decision under the Ordinance. And for that reason it has to be considered  
8 a nonconforming use. What is alarming about this case is that the applicants are relying  
9 on this improper, prior decision that created a nonconformity to allow a greater  
10 nonconformity and that just can't be.

11  
12 Mr. Straw asked Mr. McGlaufflin, under our Ordinance, how he would characterize a  
13 garage that is on a lot with no other building. Mr. McGlaufflin said a garage. Mr. Straw  
14 asked how this was different from a Maine camp. There was more discussion as how to  
15 characterize it and what various definitions were.

16  
17 Mr. Schwartz mentioned Exhibit M in the applicants' package: Delano Park Association  
18 Executive Committee Meeting Minutes, dated May 6, 2006, showing unanimous vote  
19 acknowledging Town's Opinion of Use of Lot 46A. Mr. McGlaufflin said that one of the  
20 documents he passed around was a subsequent note from one of the trustees that  
21 states the vote that was taken at that meeting was rescinded in June 2006, after  
22 consultation with an attorney. The lot was never assessed.

23  
24 In response to Mr. Straw's questioning, Mr. McGlaufflin said that those minutes  
25 characterized the situation as the layperson trustees understood it at that time. These  
26 trustees knew that someone was living there.

27  
28 Chairman Thibodeau drew attention to Exhibit G in the applicants' package, in which, on  
29 November 9, 2005, Mr. Smith wrote "there is a garage and a "one family dwelling unit"  
30 existing on Lot 46A that is located on a legal nonconforming lot of record."

31  
32 Mr. McGlaufflin commented that the board would do better relying on the interpretation  
33 of the CEO rather than that of the trustees. The letter says it's a garage with a dwelling  
34 unit. It does not say it is a dwelling.

35  
36 Ms. Tourangeau said that everything she's reading says that someone is living up there,  
37 but we are considering it a dwelling unit only to the extent that it is linked to the other  
38 property. We are not considering it a separate dwelling unit. The distinction between  
39 accessory and principle is what she was struggling with especially now that they are in  
40 legally separate ownerships. What happens to that historic dependency? Do you then  
41 magnify that nonconformity by allowing it to be made into a house?

42  
43 Mr. McGlaufflin said that is what's been happening. The nonconformity has been  
44 magnified and Mr. McDougal put the brakes on it. The applicants should be happy with  
45 the conclusion that this is allowed to exist despite the number of improprieties in the  
46 past. He then spoke of Mr. Bischoff's letter. The 2006 permit by the state was never  
47 properly extended. It expired in 2008. The septic wasn't expanded until 2009.

1 David Bischoff, of McCloskey, Mina & Cunniff, LLC, in Portland, representing the  
2 Hoopes/ Brill family, who own the lots surrounding all sides of Lot 46A, except the  
3 common road, came to the podium. He said it was an oversight that Mr. Jewell and his  
4 partner did not receive his submission at the same time; however, the board could still  
5 make its decision without considering it. He talked of the flaws of the septic system  
6 replacement permit and stated that Mr. Smith's extension, to 2010, of the state's permit  
7 was invalid. Mr. Straw mentioned that installation was three years ago and it wasn't  
8 challenged. Mr. Bischoff said his clients were summer residents of Delano Park and  
9 didn't see it until they returned here.

10  
11 Mr. Bischoff said they were opposing this appeal. The timeliness issue was discussed.  
12 Mr. Bischoff stated strict application of the Ordinance made this appeal untimely. The  
13 problem his clients have is that on this tiny lot a garage has morphed into an accessory  
14 dwelling with an apartment above and with a separate septic system that is jammed into  
15 this very small lot. And now the appellants want to pursue making this into a single-  
16 family home on this very small lot is something that his clients object to. Mr.  
17 McDougal's decision is a constructive interpretation and very well thought out. Mr.  
18 Bischoff mentioned Mrs. Newbold's letter of September 29, 1997, requesting that the  
19 registry of deeds reflect that these two lots remain in single ownership. He applauded  
20 Mr. McDougal's consideration of all the issues.

21  
22 Mr. McGlaufflin closed by saying it's the applicants' burden, rules about nonconformities  
23 are to be strictly construed and applied, and Mr. McDougal's decision is impeccable and  
24 can not be credibly challenged, based on the record.

25  
26 Ms. Dallas returned to the podium and said the assessor's record in 1979 and 1993  
27 called it a seasonal dwelling with no plumbing. Ms. Dallas submitted the card for the  
28 record. Mr. McDougal said the May 17, 1994, note on the assessing card listed "Garage  
29 quarters, not useable, no disposal system, no plumbing, not used." The characterization  
30 of seasonal living quarters came after that. Mr. Straw compared it to a Maine camp with  
31 no plumbing. Mr. McDougal stated that the Assessor said it was carpeted for a game  
32 room, where the kids could go up to play. Mr. McDougal said he did not think a place  
33 for kids to play constituted a dwelling unit. Ms. Dallas said there is nothing in the record  
34 that predates Mrs. Newbold's letter of September 1996. The information about the 70's  
35 was based on what people had told her.

36  
37 Ms. Dallas stated she had a couple of corrections for the record. There was a town  
38 permit issued that was not submitted with the record. She said she asked for a year's  
39 extension. The leach field is all on Lot 46A. The septic permit application that Lisa  
40 Newbold submitted was marked Other – In-Law Apartment. Al Frick's paperwork for her  
41 permitting called it a single-family dwelling unit. So she was under the impression the  
42 town had changed its characterization and she relied on that. There was discussion  
43 about the permits and the assessor's card. Ms. Dallas said there were many  
44 discussions with Mr. Smith where the property was referred to as a single-family  
45 dwelling unit. Ms. Dallas went on to say she knows that she cannot expand the  
46 footprint. If she wants to redo the building she has to stay within the footprint. But as a  
47 single-family dwelling unit, she can convert the garage space to make a home of about

1 1350 square feet, with two bedrooms, two baths. Chairman Thibodeau interrupted  
2 stating that information was beyond the scope of tonight's issue.

3  
4 Chairman Thibodeau closed the floor to public comment. The board discussed the  
5 timeliness issue first. A Finding of Fact as to the reasoning should be in the record. Mr.  
6 Straw made a motion for a finding that the appeal, as submitted, is timely by virtue of  
7 the fact that the thirtieth day fell on a weekend or holiday and our Ordinance permits the  
8 appeal to be filed in such situations on the very next business day; seconded by Mr.  
9 Schwartz. All were in favor. Vote 5 – 0.

10  
11 Chairman Thibodeau asked the board if this was an Accessory Dwelling? The board  
12 discussed the documents in the record. The assessor's card in 1994 says the garage  
13 quarters were abandoned. The properties were historically linked together. Now they  
14 are separated with each having a septic system. The character of the neighborhood  
15 and the size of this 4,000 square foot lot being too small for a dwelling unit were  
16 discussed. Mr. Hoffman said it is not a dwelling. Mr. Schwartz said there are multiple  
17 issues; he does not think the intent of the Ordinance is to continue expanding the  
18 nonconformity of the lot. Mr. Straw said in 1993 and in 1979 it was categorized as a  
19 dwelling. Ms. Tourangeau said aside from the abandonment, the dwelling piece was  
20 never a principal use. You cannot morph what was at best accessory use into a private  
21 single-family home. Mr. Schwartz said the one constant has been the use as a garage.  
22 In the end he believes you cannot expand the nonconformity issues.

23  
24 Chairman Thibodeau asked the board their opinions as to the wording and definition of  
25 Accessory Dwelling in the CEO's letter. The March 29, 2013, letter frames the situation  
26 accurately. There was more decision as to the determination of the definition of the  
27 structure. Mr. Straw said it was a conditional use under Ordinance Section 19-6-  
28 1.C.3.b. Mr. Straw would like a determination as to what the structure is.

29  
30 Chairman Thibodeau brought the focus back to the decision on the appeal.

31  
32 Ms. Tourangeau made a motion to deny the appeal and uphold the findings in the  
33 March 29, 2013, Code Enforcement Officer's letter to Mrs. Dallas and Mr. Levy;  
34 seconded by Mr. Schwartz. Four in favor and one opposed. Vote was 4 – 1. Mr. Straw  
35 dissenting.

36  
37 **Findings of Fact:**

- 38  
39 1. Administrative Appeal for Map U7, Lot 46A, 502 Delano Park, Applicant: Heather  
40 Dallas.  
41  
42 2. Heather Dallas and Howard Levy are the owners of record of the property at Map  
43 U7, Lot 46A, at 502 Delano Park.  
44  
45 3. On March 29, 2013, the Code Enforcement Officer sent a letter to Heather Dallas  
46 and Howard Levy regarding the use on their property.  
47

1 4. On April 29, 2013, Heather Dallas submitted an administrative appeal application  
2 because she does not agree with the letter from the Code Enforcement Officer. That  
3 appeal has been denied by a vote of 4 to 1.  
4

5 **Additional Findings of Fact:**  
6

7 1. Appeal was filed on a timely basis, by virtue that the thirtieth day of the appeal  
8 deadline fell on a Sunday and the board allowed it for the next business day, which was  
9 the thirtieth-first day, a Monday.  
10

11 Vote 5 – 0. All were in favor of the Findings of Fact. (Vote was taken after last item of  
12 new business.)  
13

14 Chairman Thibodeau called for a five-minute break at 9:10 p.m.  
15

16 2. To hear the request of Timothy Gosch Jr. of 1267 Sawyer Road, Map R5 Lot 55, for  
17 an administrative appeal of a Notice of Violation and Order for Corrective Action dated  
18 April 9, 2013.  
19

20 Timothy Gosch, owner of the lot, came to the podium and stated he purchased the lot in  
21 1977. At that time he discussed the zoning with Jerry Daggles, the CEO and was told  
22 the zoning was rural farm with a business with one employee. He told the CEO he  
23 owned a tractor-trailer that he wanted to park there, and build a garage at some point.  
24 The CEO saw no problem with that. The garage was built in 1981 and 82, it is offset  
25 from the house, it was never meant to be a car garage it was a garage meant to be  
26 worked in. The truck was parked there until 1991. The garage had been used to work  
27 on the truck and Junior's three-wheeler, his other kids cars, and then once Junior  
28 started working at Jonesey's he started using the garage also to work on cars.  
29

30 Timothy Gosch, Jr. came to the podium. Mr. Gosch (father) passed out pictures of the  
31 garage. The actual prints were from the late 80's or 90's and the ones on the paper  
32 were taken this afternoon. The garage has not changed in anyway with the exception of  
33 the yellow inspection sign above the white side door that was taken down once he  
34 received the letter. He stated that he does state inspections. He said he had been  
35 working on cars since 1987/88. He was hired at Jonesey's in 1988 and if people could  
36 not afford to get their car fixed at Jonesey's, the boss did not mind him saying "you  
37 could buy used parts" and he could do the work, just not on the property. Since 1988  
38 he has been working there and sometimes asking for compensation: sometimes a  
39 McDonald's meal, sometimes just a "Thank You." Because of what the equipment cost,  
40 he cannot do the work for free. He tries to when he can, sometimes he just can't afford  
41 to.  
42

43 Mr. Gosch said the CEO knocked on his door and introduced himself and asked if he  
44 worked on cars. Mr. Gosch replied occasionally he did. The CEO asked if he asked  
45 for compensation. Mr. Gosch replied sometimes he did. The CEO said a complaint had  
46 been filled about you. Mr. Gosch said he was taken aback; he cares about his  
47 neighbors. He said his neighborhood was not like a Brentwood or Broad Cove; they  
48 have space. We don't talk to our neighbors when you get the mail, living on a 40 MPH

1 road. It doesn't feel too residential when a semi-truck comes by and almost knocks you  
2 off your bike. And all day he hears gunfire. The town calls this a residential zone – he  
3 asked if everyone had to listen to gunfire.

4  
5 Mr. Gosch said his neighborhood was old school; his neighbors would come to him if  
6 there were a complaint. He stated there were several witnesses here; but with the late  
7 hour they had to leave. Ida McCloud was here as well as Robert Butterfield, who lives  
8 directly across from the garage, said he made more noise in his hobby shop than he  
9 ever heard come from the garage. All his neighbors wanted to come up here, but an  
10 attorney advised him this was not a time for character witnesses, this was a time to look  
11 at a violation and see if something had been broken.

12  
13 When Mr. Gosch asked who submitted the complaint the CEO said the town manager,  
14 Mike McGovern knew about it. They went to see Mr. McGovern. He then described  
15 getting his state inspection license. Mr. McGovern said there wasn't a complaint;  
16 someone (not a neighbor) was driving by and noticed a car.

17  
18 Mr. Gosch believed the zoning, as well as the CEO, had changed. He said neither he  
19 nor his neighbors knew of a zoning change. He has not started any "new use of the  
20 property" as mentioned in the Code Enforcement Officer's letter; he's been doing this  
21 since the mid 80's and wasn't doing anything wrong. He stated he keeps his garage  
22 clean. He doesn't agree with the term "Repair Shop" because he doesn't do any major  
23 transmission or engine work; there are no parts or fluids lying around.

24  
25 Chairman Thibodeau summarized by stating that Mr. Gosch has been repairing cars  
26 informally since 1988. Subsequent to Jonesey's becoming a pizza place he got his  
27 state inspection designation. The zoning clearly changed. You are now in a RA Zone  
28 with a Shoreland Overlay District on it. Chairman Thibodeau said the question for the  
29 board was when did the zoning change in that area.

30  
31 In response to questioning, Mr. Gosch said that auto repair had been going on since  
32 1986, continuously, some years more than others. Mr. Gosch replied that he got the  
33 state inspection license in 2011. And before the cars, the truck work was done from  
34 1978 to 1991.

35  
36 Chairman Thibodeau asked Mr. McDougal to provide some background.

37  
38 Mr. McDougal said Mr. Gosch gave a relatively accurate description of how the last few  
39 months have played out from an administrative perspective except for the fact about the  
40 zoning. That zoning district has not changed. He referred to the Zoning Ordinance  
41 from 1986. It is the Residence A District with permitted uses – none of which resemble  
42 auto repair. Home businesses are allowed and parking a semi-truck on the property as  
43 a home occupation, would probably be allowed. But an auto repair shop in the  
44 Residence A District is not permitted nor is it permitted in the Shoreland Overlay District  
45 of the Spurwink Marsh.

46  
47 Ms. Tourangeau asked if the board recalled doing a car detailing business in the RA as  
48 a home business. Mr. Gosch replied it might have been Ray Taylor. The board agreed

1 it was. Mr. Gosch said there were no fumes or smells in his garage; he does not  
2 generate 2% of the traffic, if he has to go the home business route.

3  
4 Ms. Tourangeau asked about the size of the garage. Mr. Gosch said they had done the  
5 math, depending what parts of the building counted, but he didn't have the numbers  
6 with him.

7  
8 Chairman Thibodeau brought the focus back to the decision on the appeal and  
9 evaluating the appeal on its merits.

10  
11 Mr. Straw mentioned that the term "Repair Garage" was not defined in the Ordinance.  
12 There was discussion of whether Repair Garage fit into a Home Business. Mr. Gosch  
13 mentioned that he had a scissor jack and a concert floor and that they were required by  
14 the state police for inspections.

15  
16 Finding no public comment, Chairman Thibodeau closed the floor to public comment.

17  
18 Mr. Straw said that Repair Garage was not defined and not a permitted use in the  
19 Ordinance. Ms. Tourangeau said it is not a new use, as cited in the NOV (Notice of  
20 Violation); clearly it's a use that's been there quite some time. That part does not seem  
21 accurate. The CEO said it has always been a new use that required permitting  
22 according to the Ordinance whether in 1986 or now.

23  
24 The decision continued around the lack of a definition of "repair garage." As a home  
25 business it may be an allowed use. It is a non-permitted use in the RA, Shoreland  
26 Overlay District.

27  
28 Mr. McDougal said that the NOV wording could be changed to say you're in violation  
29 because you didn't get a permit for your use; you have to come in and get a permit.

30  
31 Ms. Tourangeau made a motion to deny the appeal and uphold the Code Enforcement  
32 Officer's Notice of Violation as revised. Specifically: It was proposed to strike the last  
33 three sentences of paragraph one of the NOV. (Starting where it reads "This activity  
34 constitutes, through the end of the paragraph.) And in the second paragraph revising  
35 the first sentence to read: "You are in violation of Section 19-3-2 of the Town of Cape  
36 Elizabeth Zoning Ordinance and are hereby ordered to discontinue operating a non-  
37 permitted use business entity on your property." Mr. Straw seconded the amended  
38 motion. Vote 5 -0. All were in favor.

39  
40 **Findings of Fact:**

41  
42 1. Administrative Appeal for 1267 Sawyer Road, Map R5, Lot 55, Applicant: Timothy  
43 Gosch, Jr.

44  
45 2. Timothy Gosch is the owner of record of the property at 1267 Sawyer Road, Map R5,  
46 Lot 55.

1 3. On April 9, 2013, the Code Enforcement Officer sent a Notice of Violation and Order  
2 for Corrective Action to Mr. Gosch regarding the use of his property.

3  
4 4. On May 6, 2013, Mr. Gosch submitted an administrative appeal application because  
5 he does not believe that auto repair is the correct description for the use of his property  
6 and the board has voted to deny the appeal and revise the Notice of Violation.

7  
8 Vote 5 – 0. All were in favor of the Findings of Fact. (Vote was taken after last item of  
9 new business.)

10  
11 Chairman Thibodeau apologized and dismissed those present for the fourth agenda  
12 item, due to the late hour. Their request will be heard next month.

13  
14 3. To hear the request of William Royal, representing Anthony and Donna Levesque of  
15 11 Vernon Road, Map U19, Lot 7-35, for a variance to construct a garage.

16  
17 Mr. Schwartz disclosed that Bill's daughter was on his "outstanding" softball team. It  
18 has no effect on his ability to be impartial. Mr. Schwartz said he knew nothing about  
19 this request nor had they talked about it. They are just casual, social acquaintances.  
20 No one had a problem with Mr. Schwartz remaining on the board.

21  
22 Chairman Thibodeau asked Mr. Royal to come to the podium. Mr. Royal said he was  
23 here to ask for a 10-foot variance for a side yard setback, to allow Tony and Donna to  
24 build a garage on their property to enclose a wheelchair ramp so that he can get in the  
25 house without being subjected to the elements. They have lived on the property since  
26 the late 60's. When they first bought the house they had the option of putting on a two-  
27 car garage, which at the time was financially impossible. Since then the zoning has  
28 changed to not allow that.

29  
30 The current ramp will be removed. The new ramp will be inside the back of the garage.  
31 Mr. Straw thanked the applicant for submitting photos of the garages in the  
32 neighborhood. Mr. Royal stated that there are 15 houses in the development, 13 have  
33 garages. Mr. Straw noted that the garages in the neighborhood were similar to what  
34 they want to build. Chairman Thibodeau asked about setbacks for the other garages.  
35 Mr. Royal said he did not know how many were within the setback; however, they look  
36 closer than 25 feet. Ms. Tourangeau brought the board's attention to the notice of  
37 public hearing. There are no dimensions but you can tell where the garages are on the  
38 lot. She commented that it looks like a lot of them are pretty close to the lot line. Mr.  
39 Royal said they are.

40  
41 Chairman Thibodeau asked if the garage was going to block any views or cast any  
42 shadows. Mr. Royal said no. He also submitted a letter from the abutting neighbor, the  
43 Wellmans. The setback would be toward their property. They are on the right facing  
44 the house. Mr. Royal said the lot was 100 feet across the front and 110 feet across the  
45 back.

46  
47 Donna Levesque came to the podium and stated that this past winter, when we had that  
48 terrible storm, she felt that she and her husband were in an unsafe situation because

1 they could not physically open the doors to their house. The snow was up against the  
2 back door. The snow was up to the doorknob and she couldn't open the door enough  
3 for either of them to get out. It was an unsafe situation because the ramp was on the  
4 outside. She said please let us get the ramp inside a garage.

5  
6 The CEO said he did not receive any comments on the application after the public  
7 notice was sent. The notice went to all the houses shown on the map.

8  
9 Chairman Thibodeau asked about the shed. Mr. Royal said it was going to be pushed  
10 back. It has no foundation; it's on blocks. Mr. Royal did not have the elevation drawing,  
11 but said it was to be a single-story building with a roof pitch of five to match the house.  
12 It would look like the other garages. Mr. Hoffman requested to look at a sketch of the  
13 garage. Mr. Royal explained the drawing. Building plans have not been submitted yet.

14  
15 Chairman Thibodeau closed the floor to public comment.

16  
17 Mr. Straw mentioned Ordinance Section 19-5-2.B.1 (last paragraph): "The Zoning  
18 Board of Appeals may grant a variance for the purpose of making that dwelling  
19 accessible to an applicant with a disability who is living in the dwelling without a finding  
20 that a strict application of the ordinance to the applicant and applicant's property would  
21 cause undue hardship."

22  
23 The character of the neighborhood and side setbacks were discussed as consistent.  
24 The abutting neighbor is supportive and no other comments were received. The five  
25 criteria for practical difficulty are met.

26  
27 Ms. Tourangeau made a motion to approve the variance request for Map U19, Lot 7-35,  
28 11 Vernon Road, applicant William Royal, on behalf of Anthony and Donna Levesque;  
29 seconded by Mr. Straw. All were in favor. Vote 5 – 0.

30  
31 **Findings of Fact:**

32  
33 1. Variance Request for Map U19, Lot 7-35, 11 Vernon Road, Applicant: William Royal  
34 on behalf of Anthony and Donna Levesque.

35  
36 **Additional Findings of Fact:**

37  
38 1. Anthony and Donna Levesque are the owners of record of Map U19, Lot 7-35, 11  
39 Vernon Road.

40  
41 2. 11 Vernon Road is a non-conforming lot in the RA district. The required setbacks  
42 and 25 feet on the front, 25 feet on the side and 20 feet on the rear.

43  
44 3. In order to construct an attached one-story, two-car garage the applicant is  
45 requesting a variance that allows a side setback of 15 feet on the easterly side of the  
46 property.

1 **Conclusions:**

2

3 1. There is no substantial departure from the intent of the Ordinance and a literal  
4 enforcement of the Ordinance would cause a practical difficulty as defined by 30-  
5 A.M.R.S.A. Section 4353, 4-C.

6

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

8

9 Chairman Thibodeau conducted the vote for the earlier decisions. All were in favor of  
10 the Findings of Fact for Timothy Gosch. Vote 5 – 0. All were in favor of the Findings of  
11 Fact for Heather Dallas of Delano Park. Vote 5 – 0.

12

13 **E. Communications** – None.

14

15 **F. Adjournment** – Chairman Thibodeau stated that the Kelly's request, the forth  
16 agenda item, would be heard next month. The meeting adjourned at 10:22 p.m.