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Town of Cape Elizabeth Minutes of the August 27, 2013 Zoning Board of Appeals Meeting

Members Present:

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

The Code Enforcement Officer (CEO), Benjamin McDougal, was also present.

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

B. Approval of Minutes for June 25, 2013 - A motion to approve the minutes was made by Mr. Schwartz; seconded by Mr. Straw. All were in favor, with the exception of Matthew Caton who abstained. Vote: 6 – 0.

C. Old Business – None.

D. New Business

1. To hear the request of Cole and Margie Kelly of 9 Overlook Lane, Map U12, Lot 43, for a variance to construct an addition to their single family dwelling,

Ms. Tourangeau recused herself, as she is a direct abutter. Mr. Thibodeau disclosed that he and Mr. Kelly are members of the Purpooduck Club; they have never played a golf match together. Board members had no objection to Mr. Thibodeau hearing this case.

Mr. Craig Cooper, Rainbow Construction, came to the podium. He stated the property has been in the family 36 years. It was renovated about 16 years ago on the same footprint. They have been using it primarily as a summer home. Recently they decided to live here year round. Due to health reasons, as well as convenience, they would like to have a first floor master bedroom. With the present setback at 25 feet, we are asking for a variance to 14 feet.

Mrs. Kelly put the package together per the requirements. She went to the ten closest homes and took measurement and pictures. All six abutters have submitted letters of support. Mr. Cooper said that all the other setbacks would be met except for the side of the master bedroom ell. There is a first floor plan and an elevation view. There is a survey map showing lot and abutters and an overview of the Trundy Point neighborhood – basically all non-conforming lots.

Mr. Cooper stated the setbacks were from 23.5 feet to zero. None of the ten met the 25-foot setback. The average setback is eight feet three inches. Two of the ten

1 properties have setbacks of more than 14 feet; one is 14 feet. Seven properties or 70
2 percent have less than what we are asking; the average setback for these is three and a
3 half feet.

4
5 Mr. Cooper replied when questioned that he was not aware that this addition would
6 block any views or cast any shadows.

7
8 Mr. Thibodeau asked for public comment. Ms. Joanna Tourangeau come to the podium
9 and expressed her support. She is a direct abutter, across from a private right-of-way
10 from the project. Her home would probably be the residence most impacted, if any.
11 The impact is truly minimal; it is consistent with the character of the neighborhood. Due
12 to the topography of the lot this is the only location feasible for this addition.

13
14 Mr. Thibodeau closed the floor to public comment.

15
16 Board members commented that the package submitted was thorough and well done.

17
18 Mr. Carver made a motion to approve the variance request; Mr. Schwartz seconded.
19 Vote: 6 – 0.

20

21 **Findings of Fact:**

22

23 1. Cole and Margie Kelly are the owners of record of Map U12, Lot 43, 9 Overlook Lane.

24

25 2. 9 Overlook Lane is a non-conforming lot in the RA district. The required setbacks
26 are 25 feet on the front, 25 feet on the side and 20 feet on the rear.

27

28 3. In order to construct an addition on the side of the house the applicant is requesting
29 a variance that allows a side setback of 14 feet on the easterly side of the property.

30

31 **Conclusions:**

32

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

36

37 All were in favor of the Findings of Fact. Vote 6 – 0.

38

39 2. To hear the request of Timothy Gosch of 1267 Sawyer Road, Map R5 Lot 55, for a
40 home business conditional use permit to operate a repair garage.

41

42 Timothy Gosch, Jr. came to the podium. He said he had been working on cars since
43 1987/88. He was hired at Jonesey's in 1988 and if people could not afford to get their
44 car fixed at Jonesey's; the boss did not mind him doing the work off the property. He
45 tries to keep the noise down and respect his neighbors.

46

47 In response to questioning, Mr. Gosch said that auto repair had been going on since
48 1987, continuously, some years more than others. Mr. Gosch replied that he got the

1 state inspection license in 2011. He did not know the amount of traffic on Sawyer
2 Road. He buys about 60 State Inspection stickers every six months. Grey Barn Garage
3 is the name of the business. He repairs from four to ten cars a week. Light repair is
4 anything he can pick up and do with one hand. He works from 10 a.m. – 5 p.m., about
5 15-17 days a month. There was discussion about hazardous material, cars on property.
6

7 There was discussion concerning the requirements of Section 19-5-5C and mapping to
8 show whether property is or is not in the Shoreland Zone.
9

10 Now aware that his application was incomplete, Mr. Gosch withdrew his application. He
11 intends to resubmit with more data.
12

13 Chairman Thibodeau recessed the board for three minutes at 7:52 p.m.
14

15 Chairman Thibodeau reconvened the board at 7:55 p.m.
16

17 3. To hear the request of Wayne Brooking of 208 Two Lights Road, Map U15, Lot 18,
18 for an approval to expand his house 80 square feet in a nonconforming area per Section
19 19-4-3.B.3 of the Zoning Ordinance.
20

21 Mr. Brooking came to the podium. The purpose of his request is to build an eight foot
22 by ten foot room for an oil-fired boiler. He said he is 15 feet from the Coast Guard. The
23 side would be 29.5 feet from the neighbor. The house is over 100 hundred years old;
24 there is no basement – it's ledge.
25

26 In response to questions Mr. Brooking said it would be power vented toward the back.
27 He does not have a garage. Mr. Brooking said he has heard positive comments but no
28 negative ones about his application. The lot is about 50 feet by 200 feet.
29

30 Mr. McDougal said he had received one phone call and subsequent e-mail asking for
31 clarification on the application; but they did not express an opinion.
32

33 Chairman Thibodeau asked for any public comment, finding none, the board discussed.
34

35 Mr. Carver made a motion to grant the request; seconded by Ms. Tourangeau. All were
36 in favor. Vote 7 – 0.
37

38 **Findings of Fact:**
39

40 1. This is a request to remodel and expand a single family dwelling per Section 19-
41 4-3.B.3 of the Zoning Ordinance at Map U15, Lot 18, 208 Two Lights Road,
42 Applicant: Wayne Brooking.
43

44 2. Wayne and Beverly Brooking are the owners of record of the property at Map
45 U15, Lot 18, at 208 Two Lights Road.
46

47 **Additional Findings of Fact:**
48

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

6
7 2. The proposed structure will not increase the nonconformity of the existing structure.

8
9 3. The proposed structure is in compliance with the setback requirement to the greatest
10 practical extent.

11
12 All were in favor of the Findings of Fact and Additional Findings of Fact. Vote 7 – 0.

13
14 Chairman Thibodeau conducted a vote for the earlier decision to accept the withdrawal
15 of application by Timothy Gosch. Mr. Carver motioned to accept Mr. Gosch withdrawal;
16 seconded by Ms. Tourangeau. All were in favor. Vote 7 – 0.

17
18 **E. Communications** – None.

19
20 **F. Adjournment** – Chairman Thibodeau adjourned the meeting at 8:25 p.m.

21
22 Carmen Weatherbie.
23 Recording Secretary