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Town of Cape Elizabeth Minutes of the October 22, 2013 Zoning Board of Appeals Meeting

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Members Present:

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Josh Carver	Jeffery Schwartz	John Thibodeau
Joanna Tourangeau		

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

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

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B. Approval of The Minutes for September 24, 2013 was tabled until the next meeting due to number of members present who also attended that meeting.

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C. Old Business – None.

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D. New Business – The Request of Timothy Gosch was pulled from this meeting; it will be heard at a later date.

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1. To hear the request of Clifford P. Ryan of 14 Fenway Road, Map U44, Lot 15, for a Variance in the Shoreland Overlay District to place a shed on his property.

Chairman Thibodeau asked Mr. McDougal for background. Mr. McDougal said he reviewed the rules for putting an accessory structure on Mr. Ryan's property with him. The required setback in the Resource Protection Zone for an 80 square foot shed is 100 feet from the RP-1CW wetland. Mr. Ryan would like to place his shed at 75 feet. Because it is a variance in the Shoreland Performance Overlay District we are required to notify the DEP (Department of Environmental Protection) at least 20 days before taking action on the application. A representative of the DEP said that he felt strongly that it does not meet hardship criteria. A Shoreland variance is hardship criteria versus practical difficulty.

Clifford Ryan came to the podium and stated he was looking for a relaxation in the 100-foot mark from the Shoreland due to the unique nature of the property. He has looked for other locations for the shed, without placing it in the middle of the yard or blocking neighbors' views. He said he did consider it a hardship. He mentioned the criteria of whether the land would yield a reasonable return. As a residence, in regard to yield, he thinks of sale value. He argues that putting a shed in an inappropriate place would diminish land use greatly. He plans to live in the house many years; he has been there seven years. He is engaged and they plan to live in his house, so they need a little more space. All the setbacks limit where he can put the shed. It is a long, narrow lot. This is small house of about 1100 square foot. This placement would be in keeping with the character of the neighborhood. The hardship is not because of any action he has

1 taken. The property was put together in 1964/65. Since then there have been many
2 ordinance changes that would make it impossible to build there today.
3 Mr. Ryan referenced a drawing of the septic system in his packet of information. He
4 stated he has to devote much of the back yard to the septic system. Where the old pool
5 was is approximately the 100-foot line; from there back the yard is unusable for shed
6 purposes. He described a couple of places for the shed that were not practical. The
7 location he has selected is traditional and makes sense but runs against the codes. He
8 feels that a 25-foot variance would not cause any fundamental conflict with the intent of
9 the rules to keep stuff away from Great Pond. There is a little hump before the land
10 drops off into the mushy area.

11
12 In response to questions from the board Mr. Ryan replied his house is approximately 25
13 feet by 40 feet. Dale Brewer, a soil scientist, said there was plenty of land on which to
14 place a shed. He did not prepare a report. He did distinguish where the soil changed
15 from RP1 (poorly drained) to RP2 (very poorly drained). He placed three marker flags
16 in the backyard that are also noted on the diagram. They are noted as the line between
17 47, 51, and 53. Those numbers are the distance from the house to the RP1 setback.
18 The back of the shed would be about 25 feet back from there.

19
20 There was discussion concerning neighbors that had sheds and where they were
21 located. Pictures in the packet, other locations to store lawn furniture, and support of
22 neighboring homeowners were discussed. In regard to yield Mr. Ryan said when he
23 sold the house others might want more storage space than just the garage. The shed
24 would be a basic Home Depot 8' X 10' shed on six concrete blocks with gravel bed
25 underneath for drainage.

26
27 The chairman asked for public comment. Finding none, the floor was closed to public
28 comment. The board discussed application in regard to the hardship issue.

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30 Mr. Schwartz made a motion to deny the request for a variance. Mr. Carver seconded
31 the motion. Vote: 4 – 0. All were in favor of denying the variance.

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33 **Findings of Fact:**

- 34
35 1. Variance Request for Map U44, Lot 15, 14 Fenway Road, Applicant: Clifford P.
36 Ryan.
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38 2. Clifford P. Ryan is the owner of record of Map U44, Lot 15, 14 Fenway Road.
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40 3. 14 Fenway Road is a non-conforming lot in the RA District. The lot is also in the
41 Resource Protection 1 – Critical Wetlands District, the Shoreland Performance Overlay
42 District and the Great Pond Watershed Overlay District.
43
44 4. The required setbacks in the RA Zone for an 80 square foot shed are 25 feet front,
45 10 feet side and five feet rear.
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1 5. The required setback in the Shoreland Performance Overlay District for an 80 square
2 foot shed is 100 feet from the RP-1CW wetland and 250 feet from the Normal High
3 Water Line of Great Pond.

4 6. The required setback in the Resource Protection Zone for an 80 square foot shed is
5 100 feet from the RP-1CW wetland.

6
7 7. The application is compliant with the Great Pond Watershed Overlay District
8 regulations.

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10 **Additional Findings of Fact:**

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12 1. The land in question can yield a reasonable return without a variance granted.

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14 **Conclusion:** The application is denied by a vote of 4 – 0.

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16 **New Business 2.** To hear the request of Kathryn Joiner, representing James and Drue
17 Rowean of 2 Kenyon Lane, Map U05, Lot 31, for approval to expand the floor area of
18 the house in a non-conforming area per Section 19-4-3.B.3 of the Zoning Ordinance.

19
20 Chairman Thibodeau made the board aware that he and Mr. Rowean are members of
21 the Purpooduck Club and they play golf together on occasion. He does not believe this
22 is a conflict of interest, but needed to disclose the information. No one on the board felt
23 Chairman Thibodeau needed to recuse himself.

24
25 Chairman Thibodeau asked Mr. McDougal for a quick overview of the application. Mr.
26 McDougal said this a relatively modest rebuild and expansion primarily for the purpose
27 of meeting the building code. The primary point of the expansion was to get a code
28 compliant set of stairs in and some legal headroom on the second floor. It is a very tight
29 lot. One of the walls of the house is about a foot from the property line. Overall the
30 main peak of the house goes up one foot along with some dormering. The smaller
31 section of the house goes up about four feet; it does not exceed the peak of the main
32 house, but because they are adding floor area in a non-conforming area it requires
33 Zoning Board approval.

34
35 In response to questions about the floor area, Mr. McDougal replied the area of the
36 deck that is being enclosed is an area where they are clearly adding floor area based on
37 the definition in the Ordinance. The main concern is the ten by eight foot section, which
38 will be encompassed by the house.

39
40 Kathryn Joiner came to the podium and said the primary area of concern is as Mr.
41 McDougal said, the deck that they want to enclose to put in a better stairway. The
42 existing stair is narrow and steep and has a winder at the bottom. That is the purpose
43 for enclosing that deck and adding floor space. The only other floor space being added
44 is in the sense of more usable space. The second floor footprint doesn't get larger, but
45 right now it has a lot of sloped roof and low headroom. By raising the roof a little bit
46 there is more usable space upstairs, but it is not increasing in the sense of footprint
47 other the deck's ten by eight foot area. Ms. Joiner brought photos of the inside of the
48 house.

1 Ms. Joiner described photos in the application. She described a new deck over an area
2 that is currently a 12-foot by 12-foot patio.

3
4 In response to questions, Ms. Joiner replied the setbacks were not changing. At issue
5 is the enclosure, to make a safe code compliant stairway for the occupants. There is no
6 horizontal expansion of the building coverage, except for the 12-foot by 12-foot deck on
7 the el. That is in the area where the brick patio already is, so it is not changing the
8 impervious surface, and it is in a conforming location.

9
10 Craig Cooper came to the podium and said the new deck is smaller than existing patio
11 so there would be less impervious surface.

12
13 There was discussion about the percentages mentioned in the package. Mr. McDougal
14 said the pavers are not building coverage; they are impervious surface. So the increase
15 is just the deck.

16
17 Ms. Joiner and Mr. Cooper explained where the stairs are currently and where they
18 would be placed so that they would eliminate the trip hazards that currently exist. The
19 reason for using the deck space is so that the new stairs will meet both the rise and run
20 requirements for a code compliant stairway.

21
22 Chairman Thibodeau asked Ms. Joiner about the elevations. She said the main house
23 roof rise is increasing about one foot. Over the garage space, by Kenyon Lane, does
24 not change. On the far side, there is a steep-pitched el that is not functional on the
25 second floor. That roof is going up four feet; it is still two and one-half feet below the
26 main roof.

27
28 Ms. Joiner responded to questions saying there is no impact on neighbor views. The
29 house is on town sewer.

30
31 Chairman Thibodeau questioned why this is a reconstruction versus a relocation. Ms.
32 Joiner said based on the definitions of floor space and enclosing the deck and
33 conversations with the Code Enforcement Officer.

34
35 Chairman Thibodeau asked for public comments.

36
37 Lucille Holt-Sottery who lives at 11 Cottage Lane, which is directly across the street
38 from Kenyon Lane, came to the podium. The Roweans are long time friends and she is
39 very concerned about the safety of the staircase that is in the house now. She said it is
40 unsafe. She would like them to have an improved staircase for safety reasons. It is a
41 non- to minimally invasive renovation and she would like it approved. The roofline does
42 not interfere with her view.

43
44 Mr. Cooper returned to the podium. He said this has been the Roweans' summer home
45 and they would like this to be their retirement home. They are concerned about the
46 stairs for themselves and their grandchildren. The area currently described as the attic
47 on the plans would be enlarged for bedrooms and egress style windows would be

1 added. So there are three areas that would be improving: the egress windows,
2 headroom, and the stairs.

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4 There was no further public comment. Chairman Thibodeau closed the floor to public
5 comment.

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7 The board discussed the application. The non-conformity is the setback not the floor
8 area. There was clarification concerning reconstruction verses a relocation.

9
10 Ms. Tourangeau moved to approve the request to remodel and expand the single family
11 dwelling at 2 Kenyon Lane. Mr. Carver seconded. All were in favor. Vote 4 – 0.

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13 **Findings of Fact:**

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15 1. This is a request to remodel and expand a single family dwelling per Section 19-4-
16 3.B.3 of the Zoning Ordinance at Map U05, Lot 31, 2 Kenyon Lane, Applicant: Kathryn
17 Joiner.

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19 2. James and Drue Rowean are the owners of record Map U05, Lot 31, 2 Kenyon
20 Lane.

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22 **Additional Findings of Fact:**

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24 1. The Zoning Board of Appeals has considered the size of the lot, the slope of the
25 land, the potential for soil erosion, the location of other structures on the property and
26 on adjacent properties, the impact on views, and the type and amount of vegetation to
27 be removed to accomplish the relocation.

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29 2. The proposed structure will not increase the non-conformity of the existing structure.

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31 3. The proposed structure is in compliance with the setback requirement to the greatest
32 practical extent.

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34 All were in favor of the above Findings of Fact. Vote 4 – 0.

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36 **Conclusion:** The application is approved.

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38 **E. Communications** – Chairman Thibodeau reminded the board of the Zoning
39 Workshop tomorrow night.

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41 **F. Adjournment** – Chairman Thibodeau adjourned the meeting at 7:59 P.M.