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Town of Cape Elizabeth Minutes of the December 11, 2013 Zoning Board of Appeals Meeting

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Members Present:

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Josh Carver	Matthew Caton	Barry Hoffman
Christopher Straw	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 6:58 p.m.

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B. Approval of Minutes:

1. **Approval of the Minutes for October 22, 2013** - A motion to approve the minutes was made by Mr. Carver; seconded by Ms. Tourangeau. All were in favor. Vote: 6 – 0.

2. **Approval of the Minutes for September 24, 2013** - A motion to approve the minutes was made by Mr. Carver; seconded by Mr. Caton. All were in favor. Vote: 6 – 0.

C. Old Business: None.

D. New Business:

1. To hear the request of Timothy Gosch of 1267 Sawyer Road, Map R5 Lot 55, for a Home Business Conditional Use Permit to Operate a Repair Garage.

Chairman Thibodeau asked Mr. McDougal for a brief update.

Mr. McDougal said that in September, Mr. Gosch's application was incomplete. He has redone the application with all the necessary information. In April Mr. Gosch was given a notice of violation; he appealed that notice in June and the board suggested the application for a home business. The notice of violation was amended. Mr. Gosch is here now with a complete application.

Mr. Gosch come to the podium and stated that this is a one-man, light auto repair shop. He is the only person who works there. Although his neighbors are not close, he respects them and keeps the noise down. There is no pollution – nothing from inside the garage gets outside. There is grass growing inches from the garage door.

Chairman Thibodeau asked about the property being in the Shoreland Overlay Performance District and whether a repair garage was prohibited. Mr. Gosch replied that the Marsh was over 400 feet away. Mr. McDougal said the provisions of Ordinance

1 Section 19-6-11 D do not apply because they are specifically for Great Pond, not the
2 Spurwink Marsh.

3
4 Chairman Thibodeau said a few emails of support were received: Mr. Fogg, who
5 recycles motor oil; Miss Montesano of 1257 Sawyer Road, who lives next to Mr. Gosch,
6 and Mr. Mark Woodward of 96 Wells Road.

7
8 Mr. Hoffman asked if this authorization would be transferable. Mr. McDougal said the
9 approval would transfer with the property if it were ever sold. Ms. Tourangeau said any
10 future owner would be subject to the same limits. Mr. Straw talked about conditions that
11 apply to a home business being similar to those of a residence.

12
13 Mr. Gosch replied to questions saying the garage is 650 total square feet. He typically
14 works on one or two cars a day, but not everyday. There maybe two or three cars
15 parked at the site at any given time. Cars may be visible or tucked out of sight. Mr.
16 Gosch said he owns six or seven cars himself. Sometimes there may be up to five
17 customer cars parked there, but he does try to keep them to a minimum. Generally the
18 upper, south driveway, by the house contains his personal vehicles. The lower, north
19 driveway is for the business. He does keep one personal vehicle there in case he
20 needs to go get parts.

21
22 Mr. Gosch said he would be the only person working in the garage; however, he
23 sometimes instructs vehicle owners how to do maintenance on their own cars. The
24 hours generally are from 10 a.m. to 6 p.m. He may work four or five days a week, but
25 not always the same days. The driveway is gravel; there is no asphalt on the property.

26
27 Chairman Thibodeau asked for public comment.

28
29 Peter Brawn, 84 Wells Road, came to the podium and said the only way to tell if Tim is
30 working in the garage is to walk around the garage to see if the lock is on the door.
31 There is no noise or light coming from the garage. Mr. Brawn recommends approval;
32 Tim is doing a service for the community.

33
34 Chairman Thibodeau closed the floor to public comment.

35
36 The board reviewed the new application and discussed whether the application met the
37 criteria for a home business. Conditional use limitations including "parking lot"
38 definition and parking restrictions were discussed.

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40 **Findings of Fact:**

- 41
42 1. This is a request for a Conditional Use Permit for a Home Business at 1267 Sawyer
43 Road, Map R5, Lot 55.
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45 2. Timothy B. Gosch is the owner of record for Map R5, Lot 55.
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47 3. The proposal is consistent with the definition of *Home Business* found in Section
48 19-1-3 of the Town of Cape Elizabeth Zoning Ordinance.

1 4. The proposal satisfies the requirements of Section 19-5-5 (*Conditional Use Permits*)
2 of the Town of Cape Elizabeth Zoning Ordinance.

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4 **Conditions:**

- 5
6 1. All customer vehicles are prohibited from backing out of the business's
7 driveway.
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9 2. The hours of operation for customer pick up and drop off is limited to six days a
10 week, exclusive of Sundays.
11
12 3. Use is limited to the application as stated.
13
14 4. Limited to not more than five vehicles for the home business, and not more than four
15 in the business's driveway.

16
17 Ms. Tourangeau made a motion to approve the application with the conditions as
18 drafted. Mr. Caton seconded motion. Mr. Straw was not comfortable with more than
19 two parked vehicles. Vote: 4 – 2. Mr. Straw and Mr. Hoffman dissenting.

20
21 The application was approved.

22
23 **New Business - 2.** To hear the request of Mark Toothaker of 2 Wheeler Road, Map
24 U16, Lot 1, for a variance to construct a 12 foot x 27 foot sunroom.

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26 Mr. Toothaker came to the podium and stated that he wanted to add a 12 foot x 27 foot
27 sunroom onto the back of the house - the Two Lights Road side of the house. The
28 house was moved about 15 years ago to the location it is today. It is the final project on
29 the house before he retires.

30
31 The Code Enforcement Officer, Mr. McDougal, stated that the site plan submitted with
32 the application is not a true boundary survey. Mr. McDougal handed out a Boundary
33 Survey of the property dated December 6, 2013, that he received today.

34
35 Mr. McDougal said the previous application for a Reconstruction/Relocation in 2000
36 is included in the packet. Some of the information in that application is inaccurate
37 by today's standards. Information on the new Boundary Survey should be used.

38
39 Responding to board questions Mr. Toothaker said the deck currently exists. The
40 house is situated where it had to be placed in 2000, which is further away from the
41 road then requested. The sunroom addition was not contemplated in 2000.

42
43 Finding no one present for public comment, Chairman Thibodeau closed the floor to
44 public comment.

45
46 The board discussed the new survey and reviewed the application for a variance in
47 accordance with Ordinance Section 19-5-2 B. Mr. McDougal said that in 2000, the
48 house was encroaching on the right-of-way for Two Lights Road. The Zoning Board, at

1 that time, said the house needed to be at least 17 feet back. It is 22.9 feet from Two
2 Lights Road. There was discussion concerning the 2000 board decision.

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4 Mr. Carver made a motion to approve the application for the variance. Ms. Tourangeau
5 seconded motion. Vote: 6 – 0.

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7 The variance was approved.

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9 **Findings of Fact:**

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11 1. Variance Request for Map U 16 Lot 1, 2 Wheeler Road, Applicant: Mark Toothaker.

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13 **Additional Findings of Fact:**

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15 1. Mark Toothaker is the owner of record of Map U 16 Lot 1, 2 Wheeler Road.

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17 2. 2 Wheeler Road is a non-conforming lot in the RA district. The required setbacks
18 are 30 feet from Wheeler Road, 40 feet from Two Lights Road, and 20 feet on the
19 remaining rear property line.

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21 3. In order to construct an addition on the side/rear of the house the applicant is
22 requesting a variance that allows a setback of 22 feet on the Two Lights Road side of
23 the property.

24
25 **Conclusions:**

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27 1. There is no substantial departure from the intent of the Ordinance and a literal
28 enforcement of the Ordinance would cause a practical difficulty as defined by
29 30-A.M.R.S.A. Sec. 4353, 4-C.

30
31 Mr. Caton moved that the application be approved subject to the Additional Findings of
32 Fact number three being changed to 22 feet. Mr. Straw seconded. All were in favor.
33 Vote 6 – 0.

34
35 **E. Communications:** None.

36
37 **F. Adjournment:** Chairman Thibodeau adjourned the meeting at 8:50 P.M.