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Town of Cape Elizabeth Minutes of the May 27, 2014 Zoning Board of Appeals Meeting

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Present:

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Josh Carver	Matthew Caton	Aaron Mosher
Michael Tadema-Wielandt		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 Josh Carver called the meeting to order at 7:00 p.m.

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B. Approval of Minutes: Approval of the Minutes for March 25, 2014, was tabled until the next meeting.

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C. Old Business: Will be continued at the next meeting.

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D. New Business:

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1. To hear the request of Verizon Wireless and New Cingular Wireless PCS, LLC for an administrative appeal of the Code Enforcement Officer's decision to deny each of their building permit applications to add wireless telecommunications antennas and associated equipment buildings on the Portland Water District property at 11 Avon Road (Map U12, Lot 12). The two applications are very similar and the applicants requested to be heard as one agenda item.

46
47

Chairman Carver asked CEO McDougal for the general background.

Mr. McDougal said communications began last summer with representatives of both Verizon and AT&T concerning placing antennas on the water tank on Avon Road with the associated mechanical structures on the ground. They first discussed the antennas being allowed based on the water tower being an Alternative Tower Structure and it was denied on that basis. The CEO's letter of August 23, 2013, outlined why. Next the Spectrum Act was discussed as to whether it pre-empted local zoning. The CEO's letter of March 19, 2014, stated the requests did not comply with the Spectrum Act.

Attorney Scott Anderson, of Verrill Dana, Portland, representing Verizon Wireless came to the podium. He stated he worked with Charles Fredette of Verizon Wireless on permitting. There are two carriers seeking to go on the Portland Water District's water tower and the two appeals were being consolidated to come before the board at the same time as a lot of issues overlap and are similar. Barry Hobbins and Robert Gashlin were here representing AT&T.

Mr. Anderson gave a visual presentation that discussed the primary issues. A copy of the presentation will be submitted for the record. Mr. Anderson talked about wireless

1 coverage gaps, colocation of antennas, wood clapboard equipment shelter with peaked
2 roof, history of the water tower, installed SCADA system for sewer and water treatment
3 plant, base station and tower definitions and a nonbinding FCC guidance document.
4

5 There was discussion about whether installing the antenna is a permitted accessory use
6 per Ordinance Section 19-6-1.B.4.g.
7

8 Joanna Tourangeau disclosed that she is not a direct abutter but lives close – on
9 Trundy Road – and received a public notice last summer about a similar application;
10 she was not able to attend that meeting. Professionally she has sat on the other side of
11 the table from Attorney Anderson and is currently on the other side of the table, from
12 Attorney Hobbins, representing a different municipality with another AT&T proposal.
13 She personally did not think either of these rose to a level of a conflict. Hearing no
14 objection from board members, Chairman Carver agreed.
15

16 Mr. Anderson answered board members questions stating power would come from a
17 pole on Avon Road, excavation would be needed for a pad for the equipment shelter
18 and a pad for a propane tank. The intent of the Alternative Tower Structure definition
19 should be something that exists already; that the Portland Water District is also using it
20 for the primary purpose of an antenna should not make a difference.
21

22 Mr. Caton asked whether the setback requirements for the RA District would need to be
23 met for the structure. The CEO said setbacks would need to be met. Attorney
24 Anderson has said the structure would meet all setbacks. The table in Ordinance
25 Section 19-4-3 applies.
26

27 Attorney Barry Hobbins, of Law Offices of Barry J. Hobbins, PA, Saco, representing
28 AT&T Mobility, LLC, doing business as (dba) New Cingular Wireless PCS, LLC, came
29 to the podium. He stated Mr. Anderson's presentation highlighted the issues. He
30 discussed the history of the two antenna sites in town and mentioned citizen study
31 groups, which lead to the language of the Ordinance. He mentioned stealth installation
32 in other nearby communities who have antennas on water towers and in a church
33 steeple.
34

35 Mr. Hobbins said that under the Telecommunications Act of 1996 a community cannot
36 discriminate against carriers. AT&T is mandated to provide coverage to communities;
37 Cape Elizabeth is one of the heaviest users of data in the state. The Ordinance should
38 be reviewed to bring the town into the new millennium. There is a significant gap in
39 coverage. He asked the board to look at all possibilities.
40

41 In response to questions, Mr. Hobbins said the 12 antenna panels would be placed
42 similarly to Verizon's.
43

44 Chairman Carver stated that correspondence received was from residents opposing
45 wireless telecommunications use of the property.
46

47 Attorney Nat Bessey, of Brann & Isaacson Lewiston/Portland, came to the podium. He
48 represents Brad Kauffman of 1 Avon Road. The crux of the issue is whether this

1 purposed use is a permitted use in the RA zone. The question of federal pre-emption,
2 the question of the Telecommunications Act, and whether this amounts to a denial of
3 coverage are secondary arguments. This is too significant an action to be moved
4 forward with just a permit application.

5
6 Mr. Bessey continued with their arguments saying the question is whether the water
7 tank is an Alternative Tower Structure. The definition states that an Alternative Tower
8 Structure must be used for a primary purpose other than just to support an antenna. At
9 this point the tank is not used for water storage; it is just used for supporting an antenna
10 as a result, we don't believe it is Alternative Tower Structure. Is it an accessory use or a
11 primary use? The definition of accessory use also provides the accessory use shall not
12 being greater in the aggregate than the primary use. The water district antenna is a
13 permitted primary use. The lease says up to four cellular facilities could use the water
14 tower. Then that use is not accessory it becomes the primary use and that is not
15 permitted under the Ordinance.

16
17 Mr. Bessey said no federal court has overruled a local ordinance with the Spectrum Act
18 of 2012. The definition of base station is not a clear element of that statute. If there
19 was a wireless facility on the water tower already it could be a base station and
20 subsequent cellular facilities would be allowed. That is not what we have here. Under
21 the Spectrum Act does the purposed facility substantially change the existing tower or
22 base station? Is a facilities and equipment shed a significant change or the addition of
23 two or three equipment sheds, in the case of two or three applicants? The addition of
24 these sheds could be quite significant and should be considered by the board.

25
26 Mr. Bessey stated under the Telecommunications Act a carrier needs to show that they
27 pursued different options before a prohibition of service claim can be made.

28
29 Attorney Anthony Armstrong, of Portland, representing Priscilla Armstrong came to the
30 podium. Ms. Armstrong owns about 10.7 acres that abut the subject property; also her
31 right-of-way and driveway go very close to the current tower. At the meeting with the
32 Water District last October, representatives said that the Portland Water District had
33 planned to take down the tower. They didn't because the price of metal changed and it
34 was not the right time to do so. The Water District took a new look at this when
35 someone came to them to rent space and paint the tower. Renting space to
36 telecommunications firms is not in the Portland Water District's charter.

37
38 Mr. Armstrong stated that the CEO's letter of denial is on sound legal ground. The
39 briefs in opposition are excellent and well founded.

40
41 Mr. Armstrong mentioned the definition of Antenna and Ordinance Section 19-6-1.B.4.
42 He believes the focus should be the equipment on the ground. That is the problem and
43 that is what will damage the neighborhood. Maybe the equipment should be in the
44 tower. What we are talking about on Avon Road is the probability of four
45 agglomerations of equipment. It is very clear that the completed product accessory use
46 becomes the primary use.

1 Mr. Armstrong continued saying that the significant change language in the Spectrum
2 Act is valid. The FCC guidance is not law. If this would happen there would be a
3 significant change on the ground.

4
5 Chairman Carver asked if a representative from the Water District was present. No one
6 appeared. The floor was then opened to public comment.

7
8 Brad Kauffman of 1 Avon Road said the CEO's conclusion in his denial letter has
9 relevance; each of the proposals considered separately substantially change the
10 dimensions of the facility.

11
12 Mr. Kauffman addressed the federal pre-emption issues. Colocation applies to
13 structures built for the purpose of housing antennas. It does not apply to an Alternative
14 Tower Structure. We are talking about a very different kind of structure in a residential
15 neighborhood. It is substantial change. Our Ordinance talks about concealing the
16 presence of the antenna. The antenna could increase the width of the 30-foot tower by
17 two-thirds - that cannot be concealed. The principal use cannot become subordinate
18 use. Once one goes in, it is easier for others – up to four on this property. It is a small
19 parcel; these changes would be transformative. If Verizon wants to do this they should
20 proceed through the route of rezoning.

21
22 Priscilla Armstrong of 18 Avon Road said her property abuts the Water District property
23 on two sides and has a right-of-way across the third side. The town rezoned her
24 property to Residential B for continued residential use and development unbeknownst to
25 her. She doesn't find that compatible with increased commercial use of the Portland
26 Water District. She hopes the board supports the CEO's denial of the building permits
27 requested by Verizon and AT&T. She has concerns about increased noise from the
28 equipment, increased traffic on a narrow dead end street, and the significant visual
29 impact of the proposed facilities. At the October meeting Verizon assured that there
30 would be continued opportunity for public meetings and comments - there has been
31 none. They have been good neighbors to the Water District, cleaning up trash around
32 the water tower, which is a hang out for kids from age 12 up. The tower hasn't been
33 painted since 1984; it is a rusting hulk. We feel we've been treated badly. Ms.
34 Armstrong urged the board to uphold the CEO's decision.

35
36 Pavel Darling of 9 Avon Road, the closest house to the water tower, said this is a
37 residential neighborhood; there is no other commercial activity around there. The
38 representatives for Verizon and AT&T are talking about a different situation from the
39 one we have. Building a wireless telecommunication facility with a bunch equipment
40 shelters would be a very substantial and transformation change. Neighbors feel like
41 they have not been part of the process with Verizon. The board's job is to consider
42 what these building permits would do and uphold the CEO's decision and deny the
43 appeal. If Verizon and AT&T want to pursue this, they should do it through rezoning.

44
45 Bob Cronin of 7 Avon Road said he fought this battle twice before Town Council and
46 Planning Board. He quoted Ordinance Section 19-5-2.A. under Administrative Appeals,
47 which states the board should interpret the meaning of the Ordinance. It does not say
48 interpret federal law. Under Section 19-6-1, Purpose of Residence A District there is

1 nothing about private commercial enterprise. If the installation of transmission facilities
2 is permitted, it would require separate accessory buildings. Is that a permitted use on
3 this property? Under Reconstruction or Replacement, if the shelters were built they
4 would increase the nonconformity of the lot. Changes in nonconforming use shall not
5 increase traffic or devalue surrounding properties. This proposal would do both. Mr.
6 Cronin had always hoped the water tower would be torn down.

7
8 Attorney Anderson returned to the podium and said he would provide a copy of the
9 lease with Portland Water District. He believes the Water District has a legal right to
10 enter into this contract. He addressed one of the reasons for the Spectrum Act and
11 colocation provisions. Neighbors don't want the structure there, they dislike the
12 structure and object to it. However, this tower has been there for 70 years, it is tall
13 enough and it is housing other antennas. This is where the town wants to direct carriers
14 to go.

15
16 Chairman Carver mentioned the local ordinance does not give the board authority to
17 apply federal law. Attorney Anderson concluded the local authority was too narrow.
18 The federal pre-emption is one of the legal issues the board has a responsibility to look
19 at. The primary use of this tower is the antennas that are being used for the town sewer
20 treatment system. The primary use, and it's more important than cell phone coverage,
21 is that the toilets and septic systems work. That is the primary use of this tank and will
22 continue to be the primary use whether Verizon or AT&T go on it or whether we need to
23 find alternative. We are not supplanting the primary use.

24
25 Ms. Tourangeau asked about the role of the equipment shed; does it accommodate one
26 user or four? Attorney Anderson replied the shelter is sized for only Verizon. A longer
27 shelter could house both Verizon and AT&T. The site is densely developed with trees.
28 It is difficult to see the site, especially when the trees are leafed out. Ms. Tourangeau
29 asked what concealment would be afforded the equipment shed? The equipment shed
30 is an essential part of the Alternative Tower Structure and is part of the definition. We
31 propose to shield the building as a clapboard, peaked-roof shed. There was more
32 discussion about concealment and if the equipment could be put inside the tank.

33
34 Attorney Hobbins said that AT&T's concealment proposal includes a landscaped shed
35 with cedar shake siding. There would be screening with shrubbery, possibility eight-foot
36 Arborvitae. The Planning Board could help make those decisions if the building permit
37 is granted.

38
39 Finding no additional public comment, Chairman Carver closed the floor.

40
41 When asked about the primary use of the water tower, the CEO said there is no
42 documentation for a permit for the equipment – which makes it a gray area. He had
43 requested documentation from the Portland Water District about how the antennas
44 came to be placed on the top of the tank. He had not received any information to date.

45
46 There was discussion about the tank still being used for water and further discussion
47 about the project meeting guidelines and setbacks for the Residential A District.

48

1 The board examined how and when the federal statutes would apply to the town's
2 ordinance.
3
4 Mr. Tadema-Wielandt mentioned the CEO's letter of August 23, 2013, where the CEO
5 determined that it was not an Alternative Tower Structure because it's not primarily used
6 for purposes other than to support the antenna. In Tab 6 of the Verizon application the
7 Portland Water District writes that the Tank "was disconnected from the system in the
8 fall of 2007 and is no longer used for water storage. Since that time, the tank has only
9 been used by the District to operate a communications antenna."
10
11 The discussion centered on conforming or non-conforming use of antenna and the
12 definition of Alternative Tower Structure. There was dialog about whether the antenna
13 that is there now is an accessory or primary use and how the characterization of use
14 might change with additional communications antennas and the requirement for
15 concealment of the antennas and equipment shed(s). Ordinance Section 19-6-1.B.4.g.
16 was referenced.
17
18 It was agreed that the principal use of the tank by the Water District is for general utility
19 and utility services use. Incidental, subordinate and accessory uses, as well as,
20 footprint, visual impact, volume and concealment of the equipment shed(s) were
21 discussed.
22
23 Chairman Carver asked town Attorney John Wall's opinion concerning the Spectrum Act
24 and federal pre-emption. Mr. Wall referenced case law from 2000 concerning the Town
25 of Hampton and state law concerning transfer stations and landfills. Those provisions,
26 which conflicted with the local ordinance, controlled. There was specific pre-emption
27 language in that statute. The law court reversed and sent back the issue to the local
28 board on the grounds of a pre-emption issue and that the pre-emption applied and
29 therefore effected the town's ability to enforce certain aspects of its ordinance.
30 Considering that decision, Mr. Wall advised that it was fair and necessary for the Board
31 to consider what impact the argued pre-emption would have on the enforceability of the
32 local ordinance.
33
34 There was discussion as to the water tower not being an existing base station for an
35 existing wireless tower and therefore why the Spectrum Act would apply. The Verizon
36 submission of April 16, 2014, Page 5, II.A. reads, "The Existing PWD SCADA
37 Equipment is a Wireless "Base Station." The Brann & Isaacson brief page 4, II reads:
38 "The term "existing base station" is not defined in the statute. Nearly every available
39 definition of that term, however, requires a base station to be a part of a *mobile*
40 network." The chair concluded that the threshold requirement for the Spectrum Act
41 was not met.
42
43 There was not enough information concerning coverage or what their equipment shed
44 would look like in the application submitted by AT&T.
45
46 Finding no further discussion, Chairman Carver closed the board discussion at
47 approximately 10:00 p.m.
48

1 Ms. Tourangeau moved to reopen for a procedural discussion as to how to issue their
2 findings; Mr. Caton seconded. All were all favor. Vote 5 – 0. After discussion, the chair
3 concluded that there should be two separate findings with two separate motions due to
4 the differences in the completeness of applications.

5
6 Ms. Tourangeau moved to deny the administrative appeal of Verizon Wireless regarding
7 the Code Enforcement Officer’s decision to deny each of a building permit at 11 Avon
8 Road. Mr. Caton seconded. All were all favor. Vote: 5 – 0.

9
10 **Findings of Fact:**

11
12 1. This is an Administrative Appeal of the Code Enforcement Officer’s decision to deny
13 a building permit requesting to add wireless telecommunication antennas and an
14 associated equipment building to the property at 11 Avon Road (Map U12, Lot 12).

15
16 2. The applicant is Verizon Wireless, who is acting based on an agreement with the
17 property owner, Portland Water District.

18
19 3. The property has an old water tower on it that is no longer used for water storage.

20
21 4. On March 19, 2014, the Code Enforcement Officer issued the letter of denial.

22
23 5. On April 16, 2014, Verizon Wireless submitted the Administrative Appeal application.

24
25 **Additional Findings of Fact:**

26
27 6. Wireless telecommunication antennas and associated equipment buildings as
28 purposed by the applicant as an Alternative Tower Structure are only permitted in the
29 RA District, where the property is located, as an accessory use.

30
31 7. The applicant has failed to demonstrate that the purposed use would be an
32 accessory use as defined at Ordinance Section 19-6-1.B.4.g.

33
34 8. The applicant has not demonstrated that the wireless telecommunication antennas
35 and associated equipment building meet the definition as an Alternative Tower
36 Structure.

37
38 9. The applicant has not established that the property is an existing base station
39 pursuant to The Spectrum Act, The Middle Class Tax Relief and Job Creation Act of
40 2012, 47 U.S.C. 1455.

41
42 10. Even if the applicant had established that it was an existing wireless tower or base
43 station, which we have found they did not, submitted plans document substantial
44 changes to the existing physical dimensions of the structure such that we would not be
45 required to approve it under The Spectrum Act.

46
47 All were all favor of the Findings of Fact. Vote: 5 – 0.

1 Ms. Tourangeau moved to deny the administrative appeal of AT&T Mobility, LLC
2 regarding the Code Enforcement Officer's decision to deny a building permit requesting
3 to add wireless telecommunications antennas and associated equipment buildings at 11
4 Avon Road. Mr. Caton seconded. All were all favor. Vote: 5 – 0.

5
6 **Findings of Fact:**
7

8 1. This is an Administrative Appeal of the Code Enforcement Officer's decision to deny
9 a building permit requesting to add wireless telecommunication antennas and an
10 associated equipment building to the property at 11 Avon Road (Map U12, Lot 12).
11

12 2. The property has an old water tower on it that is no longer used for water storage.
13

14 3. On May 2, 2014, the Code Enforcement Officer issued the letter of denial.
15

16 4. On May 13, 2014, Barry Hobbins, Esq. submitted the Administrative Appeal
17 application on behalf of New Cingular Wireless PCS, LLC.
18

19 **Additional Findings of Fact:**
20

21 5. Based on the previous appeal which was incorporated by reference by Attorney
22 Hobbins by letter of May 13, 2014, and also at the hearing, we preceded on the basis
23 that New Cingular Wireless PCS, LLC, dba AT&T Mobility, LLC, might be one of the
24 four co-locators contemplated by the November 18, 2013, Notice of Lease Agreement
25 between Portland Water District and Portland Cellular Partnership dba Verizon
26 Wireless.
27

28 Attorney Hobbins handed a document to the Chairman. Mr. Tadema-Wielandt
29 motioned to reopen the record; seconded by Mr. Caton. It was discussed and was
30 determined not to allow the submission on the basis that the record was closed and the
31 public had left. The vote was 0 – 5. The record would not be reopened.
32

33 6. The applicant did not provide the agreement with New Cingular Wireless PCS, LLC
34 (AT&T Mobility, LLC) and the property owner, Portland Water District.
35

36 7. Wireless telecommunication antennas and associated equipment buildings as
37 purposed by the applicant as an Alternative Tower Structure are only permitted in the
38 RA District, where the property is located, as an accessory uses.
39

40 8. The applicant has failed to demonstrate that the purposed use would be an
41 accessory use as defined at Ordinance Section 19-6-1.B.4.g.
42

43 9. The applicant has not demonstrated that the wireless telecommunication antennas
44 and associated equipment building meet the definition as an Alternative Tower
45 Structure.
46

1 10. The applicant has not established that the property is an existing base station
2 pursuant to The Spectrum Act, The Middle Class Tax Relief and Job Creation Act of
3 2012, 47 U.S.C. 1455.

4
5 11. Even if the applicant had established that it was an existing wireless tower or base
6 station, which we have found they did not, submitted plans document substantial
7 changes to the existing physical dimensions of the structures such that we would not be
8 required to approve it under The Spectrum Act.

9
10 12. The applicant has not demonstrated that a substantial gap in their wireless
11 coverage exists pursuant to The Federal Telecommunications Act of 1996, 47 U.S.C.
12 Section 332 c.7.B.i.II.

13
14 All were in favor of the Findings of Fact. Vote 5 – 0. The AT&T appeal is denied.

15
16 At 10:55 p.m. there was a discussion about proceeding. It was determined that at least
17 the fourth agenda item, the request of Elizabeth M. Knauff and Marie Ahern would be
18 carried over until the next meeting.

19
20 New Business 2. To hear the request of Steven Bornick and Graham Pillsbury for a
21 variance to add living space over a garage that does not meet the required setback at 3
22 Ironclad Road (Map U08, Lot 1-A). This variance was approved by the Zoning Board on
23 February 26, 2008, but the work was not started so the variance is expired.

24
25 Steven Bornick of 23 Old Colony Lane said they were seeking a variance for a small
26 increase in square footage at 3 Ironclad Road, but based on the same footprint. The
27 foundation is already in place. It is the same foundation that was in place in the 1930's
28 when the house was originally built. They would like the original variance request for
29 2007 reapproved. It was extended in 2008, but the work was never stated.

30
31 The currently owner, Josh Hurley, explained that the work wasn't done because of the
32 real estate collapse. The appraised value was less than the cost and they could not
33 obtain a loan for the work.

34
35 Matt Caton disclosed that he was a neighbor of Graham Pillsbury, who lives down the
36 street. There was no objection.

37
38 Mr. McDougal read an email from residents at 4 Ironclad Road who could not stay due
39 to the late hour. There was an arrangement between the two previous property owners
40 or their agents to allow an expansion of the easement for the septic system for 3
41 Ironclad. Mr. McDougal said that any arrangements for the septic easement are a
42 private issue. If arrangements were made, he's not sure this is something the board
43 would get involved with. Formal engineering plans are not required to come before the
44 Zoning Board because that can be costly . There needs to be a site plan and an
45 elevation so that the Board knows what going on.

1 Mr. Bornick said there is no change to the septic. It was inspected and passed. There
2 is a 1500-gallon tank, which is large for two bedrooms. He can appreciate their concern
3 but there is no impact in that regard.

4
5 In response to questions, Mr. Bornick replied there is an increase in size of a second
6 floor bedroom, there is no increase in bedrooms. There are two bathrooms now. There
7 will be a full bath and a ¾ bath. The plans are identical to 2008, except there will be no
8 roof deck.

9
10 The CEO confirmed that the two applications are consistent with the exception of the
11 roof deck.

12
13 The chair asked for public comment.

14
15 Jackie Dennis, of 5 Ironclad Road, an abutting property voiced concern about a
16 stonewall between the two that is on their property. She wanted the new owners to be
17 sure where the boundaries are. She asked to see plans, as she heard the roofline was
18 going up and want to know what the impact would be. The CEO showed the plans to
19 Ms. Dennis. The plans were discussed. Ms. Dennis asked for consideration when
20 using the new, year-old, private roadway during construction.

21
22 Chairman Carver closed the floor to public discussion.

23
24 The board discussion began with acknowledgement that the previous variance was
25 recorded; however, the construction was not started within the required year timeframe.
26 Therefore, the original variance is void. Mr. McDougal said that a standard boundary
27 survey would be required. The building plans were discussed. The building will be on
28 the same footprint. The variance is required because the front setback.

29
30 Ms. Tourangeau moved to approve the variance request for Map U08, Lot 1-A, 3
31 Ironclad Road with the understanding that with the new requirements of the Ordinance,
32 it will require a survey. Mr. Caton seconded. All were all favor. Vote: 5 – 0. The
33 variance is approved.

34
35 **Findings of Fact:**

36
37 1. Variance Request for Map U08, Lot 1-A, 3 Ironclad Road, Applicant: Steven Bornick
38 and Graham Pillsbury.

39
40 **Additional Findings of Fact:**

41
42 1. Erin Hurley is the owner of record of the subject property. The applicants are under
43 contract to purchase the property.

44
45 2. 3 Ironclad Road is a non-conforming lot is the RA district. The required setbacks are
46 25 feet on the front property line, 25 feet on the side and 20 feet on the rear property
47 line.

1 3. A variance was approved by the Zoning Board on February 26, 2008, that would
2 allow this construction but it has expired.

3
4 4. The proposed addition is 16 feet from the front property line and it complies with the
5 side and rear setbacks.

6
7 **Conclusions:**

8
9 1. There is no substantial departure from the intent of the Ordinance and a literal
10 enforcement of the Ordinance would cause a practical difficulty as defined by 30-
11 A.M.R.S.A. Sec. 4353, 4-C.

12
13 2. The need for a variance is due to the unique circumstances of the property and not
14 to the general conditions of the neighborhood.

15
16 3. The granting of a variance will not produce an undesirable change in the character of
17 the neighborhood and will not unreasonably detrimentally affect the use or market value
18 of abutting properties.

19
20 4. The practical difficulty is not the result of action taken by the applicant or a prior
21 owner.

22
23 5. No other feasible alternative to a variance is available to the petitioner;

24
25 6. The granting of a variance will not unreasonably adversely affect the natural
26 environment; and

27
28 7. The property is not located in whole or in part within shoreland areas as described in
29 Title 38, Section 435.

30
31 All were in favor of the Findings of Fact and Conclusions. Vote 5 – 0.

32
33 The board agreed to hear to next request.

34
35 New Business 3. To hear the request of Russ Doucette, representing Doug and Alli
36 Burke, to completely demolish and reconstruct a nonconforming structure based on
37 Section 19-4-3.B.3 of the Zoning Ordinance. The subject property is 73 Long Point
38 Lane (Map R3, Lot 9Q).

39
40 Russ Doucette representing Doug and Alli Burke reported that after purchasing the
41 property, it was deemed not feasible to remodel due the poor condition of the
42 foundation. The plans are to demolish the house and built the new home in the existing
43 spot – not moving the location at all.

44
45 CEO McDougal said they are aware that a survey would be required for this. One is
46 provided in the back of the submission with the additional documentation.

1 Mr. Doucette said he has met with the CEO to ensure everything is up to code and
2 satisfactory.

3
4 In response to questions Mr. Doucette replied the existing house is 1393 square feet. It
5 also has an existing deck that is 12 by 16, which is another 192 square feet for a total of
6 1585 square feet. The new structure is 1743 square feet, which is a little less than 25%
7 of the land coverage. The height is just under 28 feet. The existing height is roughly 22
8 feet. We are increasing the front by two feet, but we are still within the 25-foot setback.

9
10 The plans were discussed.

11
12 A small portion of the property is in the Shoreland Overlay according to Mr. McDougal;
13 however, there is no variance that relates to the Shoreland Overlay. The discrepancy
14 that we are dealing with is with the base zone requirements not the Shoreland
15 requirements. Ordinance Section 19-4-3 applies vice 19-4-4.

16
17 Mr. Doucette said the existing foundation will be removed. There was additional
18 discussion of the plans. Because they are adding floor area, ZBA review is required.

19
20 The CEO said that he had not received any public comment. Mr. Doucette said the
21 association and neighbors have been informed. They have heard great reviews from
22 just about everybody.

23
24 Ed Perry who owns the abutting property at 6 Tucker Lane spoke in favor of the
25 proposal.

26
27 Penny Pollard of 3 Peabbles Point Lane said the Burkas have been very diligent
28 presenting their plans to neighbors and following all the rules and guidelines of the
29 association. She has no objection to the variance or what they are proposing.

30
31 Chairman Carver closed the floor to public discussion.

32
33 Board discussed compliance with Ordinance Section 19-4-3.B.3.

34
35 Ms. Tourangeau moved to approve the request of Russ Doucette, representing Doug
36 and Alli Burke, to completely demolish and reconstruct a nonconforming structure based
37 on section 19-4-3.B.3 of the Zoning Ordinance. Mr. Caton seconded. All were all favor.
38 It is approved. Vote: 5 – 0.

39
40 **Findings of Fact:**

41
42 1. This is a request of Russ Doucette, representing Doug and Allison Burka, to
43 completely demolish and reconstruct a nonconforming structure based on section 19-4-
44 3.B.3 of the Zoning Ordinance.

45
46 2. The subject property is 73 Long Point Lane (Map R3, Lot 9Q). Doug and Allison
47 Burka are the owners of record for the subject property.

48

1 3. 73 Long Point Lane is a nonconforming lot in the RA Zone. There is currently a
2 nonconforming single family dwelling on the lot.
3

4 **Additional Findings of Fact:**
5

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

11
12 2. The proposed structure will not increase the nonconformity of the existing structure.
13

14 3. The proposed structure is in compliance with the setback requirement to the greatest
15 practical extent.
16

17 4. The lot coverage in the Shoreland Overlay District is currently nonconforming and
18 will not become more nonconforming.
19

20 All were in favor of the Findings of Fact and Additional Findings of Fact. Vote 5 – 0.
21

22 Agenda item four to hear the request of Elizabeth M. Knauff and Marie Ahern for a
23 variance to add a front porch to their house at 8 Elmwood Road (Map U03 Lot 21) was
24 not heard and will be carried over to the next meeting.
25

26 **E. Communications:** None.
27

28 **F. Adjournment:** Chairman Carver adjourned the meeting 11:59 p.m.