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# Town of Cape Elizabeth Minutes of the July 22, 2014 Zoning Board of Appeals Meeting

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**Present:**

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Josh Carver	Matthew Caton	Michael Tadema-Wielandt
John Thibodeau	Joanna Tourangeau	Michael Vaillancourt

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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:**

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1. Approval of the Minutes for June 24, 2014: A motion to approve the minutes was made by Mr. Tadema-Wielandt; seconded by Mr. Thibodeau. All were in favor. Vote: 6 – 0.

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**C. Old Business:** To hear the request of Mark Toothaker to have renewed proceedings regarding his variance application that was unanimously approved on December 11, 2013. The subject property is 2 Wheeler Road (Map U16, Lot 1).

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Chairman Carver stated that all documents submitted to the Board are available to the public at every meeting and at Town Hall (Assessing/Codes/Planning Office, Second Floor) prior to the meetings. Copies for tonight’s meeting are in a folder on a chair in the first row.

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Continuing with Mr. Toothaker’s request, Chairman Carver asked CEO McDougal for background on this matter.

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Mr. McDougal said that at the December meeting Mr. Toothaker’s variance was approved. The day after the variance was approved, his builder came into Town Hall very excited to start the project and wanted his permit quickly. So the CEO processed the Certificate of Variance and relayed all the information to the builder. For some reason all that information did not make it to Mr. Toothaker and he was not aware that he had 90 days to register his variance. The variance was not registered within 90 days and has expired.

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Ms. Tourangeau asked what triggers the 90 days; the CEO’s processing? Mr. McDougal did not know. Ordinance Section 19-5-4 states “within 90 days of final approval.” Based on that context, Mr. McDougal said it would be the Board’s action.

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Mark Toothaker came to the podium and explained extenuating circumstances stopped them from continuing with the project. He submitted a letter of explanation to the board but did not wish to comment publicly. He said the contractor never relayed the

1 information that he and the CEO talked about. He did not have permission to come up  
2 and talk to Ben; Mr. Toothaker had told him, he was going to do that. We delayed until  
3 spring because of the situation at the time. It was then that he realized it was too late  
4 by then.

5  
6 In response to questions, Mr. Toothacker said he never received the Certificate of  
7 Variance, or other paperwork concerning the request. Mr. Toothacker said the  
8 contractor did not take any of the paperwork. It would have been easy for him to have  
9 the variance recorded, had he known about it.

10  
11 The CEO placed the Certificate in the filing area, where items are placed when people  
12 say they are going to come back. The way the contractor had acted, so eager to get  
13 going on the project, it did not cross the CEO's mind that an oversight was occurring.

14  
15 In response to questions the CEO said had the contractor not come in, he would have  
16 mailed the Certificate of Variance to the Toothackers and made them aware that their  
17 variance was approved and that they had 90 days to register it. That is the standard  
18 procedure. However, about half the time it is just a personal conversation with the  
19 applicant or builder and hand-off because people are anxious to get started and come  
20 into the office. The other half of the time the certificate would get mailed with directions.  
21 The Certificate of Variance is a notarized certificate with a raised stamp so there are  
22 not multiple copies. Because the builder had come in, the Certificate was put in an  
23 inbox waiting for Mr. Toothacker to come in.

24  
25 Mr. Toothacker said in response to questions, that his builder was at the meeting in  
26 December and they had talked when leaving the meeting about starting in April. The  
27 builder left that following weekend to go home to start building through the winter for his  
28 mother in Calais. The builder has since told him that he failed to relay that information.  
29 Mr. Toothacker did not know the builder was coming up to Town Hall to do that.

30  
31 Finding no additional public comment, Chairman Carver closed the floor.

32  
33 There was board discussion on whether to renew the proceedings and then discuss  
34 substantive issues. Ms. Tourangeau cited Ordinance Section 19-5-3 D. "Decision  
35 Procedures. The Board shall cause written notice of its decision to be provided to the  
36 applicant within seven (7) days of the Board's decision." Which might be sufficient  
37 enough error to renew proceedings based on the previous record. Mr. Thibodeau noted  
38 Ordinance Section 19-5-3 E. where "a change has taken place in some essential aspect  
39 of the case sufficient to warrant reconsideration."

40  
41 Mr. Tadema-Wielandt moved to reconsider Mark Toothacker application for 2 Wheeler  
42 Road. Mr. Thibodeau seconded. All were in favor. Vote 6 -0.

43  
44 After additional discussion on renewed proceedings it was determined to begin afresh.

45  
46 Mr. Toothacker returned to the podium and stated that he and his wife would like to  
47 build a 12' by 27' sunroom on the back of the house facing Two Lights Road. About 10  
48 years ago the house was moved. They have slowly been refurbishing it. It is the final

1 project on the house before he retires. He did not bring any paperwork with him. A  
2 copy was provided for him to review.

3  
4 In response to questions, Mr. Toothacker said the northeast corner setback is less than  
5 before the house was moved. It is further away from the road than before. There was  
6 no comment or opposition at the December meeting. The neighbors' houses are not  
7 close; it is over 200 feet from their houses and the proposed sunroom. There are also  
8 many trees; the land is in a natural state. There is a farm the other way.

9  
10 Finding no additional public comment, Chairman Carver opened board discussion.

11  
12 Mr. Caton mentioned language in Ordinance Section 19-5-2 B.

13  
14 Ms. Tourangeau moved to approve the Variance Request for Map U16, Lot 1, at 2  
15 Wheeler Road, owned by Mark and Wendy Toothaker. Mr. Vaillancourt seconded. All  
16 were in favor. Vote 6 – 0. The variance is approved.

17  
18 **Findings of Fact:**

19  
20 1. Variance Request for Map U16, Lot 1, 2 Wheeler Road, Applicant: Mark Toothaker.

21  
22 2. Mark Toothaker is the owner of record of Map U16, Lot 1, 2 Wheeler Road.

23  
24 3. 2 Wheeler Road is a non-conforming lot in the RA district. The required setbacks are  
25 30 feet from Wheeler Road, 40 feet from Two Lights Road, and 20 feet on the remaining  
26 rear property line.

27  
28 4. In order to construct an addition on the side/rear of the house the applicant is  
29 requesting a variance that allows a setback of 14 feet on the Two Lights Road side of  
30 the property.

31  
32 5. This variance request was approved by the Zoning Board on December 11, 2013,  
33 but the variance certificate was not recorded at the registry of deeds within 90 days, so  
34 the variance granted in December 2013 is no longer valid.

35  
36 6. The Board incorporates the record from the December 11, 2013, Zoning Board  
37 Meeting into today's record.

38  
39 **Additional Findings of Fact:**

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41 1. The Zoning Board has considered the request as a renewed proceeding because the  
42 applicant has demonstrated that there was a mistake of law or misunderstanding of fact  
43 and injustice was done.

44  
45 **Conclusion:**

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

4  
5 All were in favor of the Findings of Fact, Additional Findings of Fact and Conclusion.  
6 Vote: 6 – 0.

7  
8 **D. New Business:**

9  
10 1. To hear the request of Anne Cranshaw, the owner of the property at 2 Star Road  
11 (Map U22, Lot 5) to reconstruct and expand a deck based on Section 19-4-3.B.3. of the  
12 Zoning Ordinance.

13  
14 Chairman Carver asked CEO McDougal for the background. The CEO stated that Mrs.  
15 Cranshaw came in six to eight weeks ago wanting to reconstruct a small deck on the  
16 side of her house. She wanted to expand the deck and based on the information he  
17 had, it looked like the deck was within the side setback. With additional research that  
18 was the case, and Mrs. Cranshaw was told she would need Zoning Board Approval in  
19 order to expand the deck. The deck is not getting closer to the property line than what  
20 the existing structure already is.

21  
22 Anne Cranshaw came to the podium and stated her husband Doug was also present.  
23 They want permission to reconstruct the deck and enlarge it at the same time. She  
24 asked the Board to look at photos submitted in her package while she explained the  
25 size of the original deck that was rotting. They would like to enlarge that area to be  
26 more practical and enjoyable. There is a 10-foot setback. There is a garage about four  
27 feet from their property line. She said that the new deck would stay within the distance  
28 of the existing deck but be angled so that it would respect the setback of the existing  
29 deck. The steps are smaller so there will be more useful space.

30  
31 She continuing saying even though they are very close to the property line on that side,  
32 there is a 40-foot strip of land on the west side on the property that was transferred to  
33 Brentwood West Association. So it is at least 40 feet from the deck to the rear of any  
34 abutting Brentwood houses. She has talked to many neighbors and has not heard any  
35 objections or concerns.

36  
37 Mrs. Cranshaw explained where the stairs would be and where the paper street of  
38 Dearborn Drive extension is located, in response to questions. It was determined that  
39 they were about 25 (to 40 feet – CEO estimated) from neighbors to the north.

40  
41 Finding no additional public comment, Chairman Carver closed the floor.

42  
43 Mr. McDougal said he received several positive emails that supported the application  
44 that were forwarded to the Board. They will be incorporated into the file.

45  
46 Mr. Thibodeau moved to approve the application for reconstruction of the residence at 2  
47 Star Road (Map U22, Lot 5). Ms. Tourangeau seconded. All were in favor. Vote 6 – 0.

1 **Findings of Fact:**

- 2
- 3 1. This is a request of Anne Cranshaw to rebuild and enlarge a deck attached to a  
4 nonconforming structure based on Section 19-4-3.B.3 of the Zoning Ordinance.  
5
- 6 2. The subject property is 2 Star Road (Map U22, Lot 5). Douglas & Anne Cranshaw  
7 are the owners of record for the subject property.  
8
- 9 3. 2 Star Road is a nonconforming lot in the RC Zone. There is currently a  
10 nonconforming single family dwelling on the lot.  
11

12 **Additional Findings of Fact:**

- 13
- 14 1. The Zoning Board of Appeals has considered the size of the lot, the slope of the  
15 land, the potential for soil erosion, the location of other structures on the property and  
16 on adjacent properties, the location of the septic system and other on-site soils suitable  
17 for septic systems, the impact on views, and the type and amount of vegetation to be  
18 removed to accomplish the relocation.  
19
- 20 2. The proposed structure will not increase the nonconformity of the existing structure.  
21
- 22 3. The proposed structure is in compliance with the setback requirement to the greatest  
23 practical extent.  
24

25 All were all favor of the Findings of Fact and Additional Findings of Fact.. Vote: 6 – 0.  
26

- 27 2. To hear the request of Sylvain and Sevigny Builders to enclose and expand an  
28 existing stairwell at 18 Smugglers Cove Road (Map U10, Lot 42) based on Section  
29 19-4-4 of the Zoning Ordinance. The existing house location and expansion were  
30 approved by the Zoning Board on February 22, 2005.  
31

32 Chairman Carver asked CEO McDougal for the background. The CEO stated the  
33 Zoning Board approved the expansion and rebuilding of this house in 2005. Several  
34 months ago Mr. Sevigny asked for a site visit. There was extensive water damage; he  
35 was repairing that damage. Part of the damage was caused by the open stairwell.  
36 There is a large roof deck on top of this house and there is a stairwell going to the roof  
37 deck that is open to the sky. That was one of the sources of water damage. In order to  
38 remedy that he wants to enclose that stairwell up to the roof deck. It is cantilevered. It  
39 is not entirely evident on these drawings. Looking at the back elevation, it is the tall  
40 windows where you see stairs through the windows. Right now there are stairs, but it is  
41 open air. They want to put that roof on in order to protect the stairs. In order to make  
42 the stairs wide enough for code they are cantilevering towards you relative to that  
43 picture – two feet out from the structure, so that it is a 10 square foot footprint expansion  
44 through that two-foot cantilever.  
45

46 In response to questions, the CEO said the stairs were from the second floor. The  
47 stairs are open to the elements and there is a wall there. There is sort of a bathtub  
48 effect. It is not a great design; the rain gets in there and has a hard time getting out and

1 there is first floor living space directly below. The stairs are enclosed on all sides but  
2 they are not covered. Plans were discussed. The cantilevered portion is entirely within  
3 the 75-foot setback. Probably two-thirds of the stairwell is within the 75 feet; one-third is  
4 outside.

5  
6 Josh Sevigny came to the podium and said from January until three or four weeks ago  
7 they have repaired about \$200,000 of rot damage associated with the original design.  
8 The homeowner lives out-of-state. Architect Kevin Brown did the preliminary sketch,  
9 the homeowner liked it, but the application needed to be submitted within hours to be  
10 considered so that is why there isn't more detail. If we just enclosed the stairs that are  
11 there, they would not be built to code. The small cantilever allows us to get the  
12 minimum 36 inches for the stairway. There was not a lot of room for expansion and this  
13 allows it to meet current building codes.

14  
15 The CEO said that this application was before the Board because a specific design was  
16 approved by the Zoning Board in 2005. It took views and many things into  
17 consideration. If anyone wants to further expand it would be up to the Zoning Board  
18 because they would be expanding beyond what was originally approved. The original  
19 approval was for reconstruction, relocation in the Shoreland Overlay; it wasn't a  
20 variance – they didn't get close to the ocean. The CEO has all the paperwork with the  
21 full approval. John Mitchell was the consultant that did the original approval and  
22 crunched all the numbers for the 30 percent expansion; there was a little bit of volume  
23 left in the 30 percent.

24  
25 There was discussion about the increase in the existing floor area – from 2086 to 2088.  
26 Mr. Sevigny stated that the new roof would be about four feet lower than the copula that  
27 is on the house. There is about a two and half foot increase in height of the existing  
28 roofline at the portion on top of the stairs. Rooflines and elevations and design were  
29 discussed. Mr. Sevigny said neighbors' views will not be affected – this is away from  
30 the ocean.

31  
32 CEO McDougal said he has had inquiries but no comments have been received from  
33 abutters. The neighbor directly across the street has reviewed the application.

34  
35 Mr. Caton questioned the relationship between the builder and the homeowner, due to  
36 the earlier issue. The CEO said that owner will be mailed a notice of Zoning Board  
37 approval.

38  
39 The chair asked for public comment.

40  
41 Walter Ghent, 9 Smugglers Cove Road, came to the podium. He stated he was  
42 satisfied with the explanation of where the stairs were going – on the waterside. He  
43 said "This is fine with us."

44  
45 There was board discussion concerning the drawings submitted and impact of views  
46 from the new roofline. The CEO said there will be architectural drawings done before  
47 the building permit is issued. Board jurisdiction in this matter was discussed.

1 A motion was made by Ms. Tourangeau to grant the request of Sylvain & Seigny  
2 Builders, representing Candice Warren, to rebuild and enclose an existing stairwell on a  
3 nonconforming structure in the Shoreland Overlay District based on section 19-4-4.B.3.  
4 of the Zoning Ordinance. Mr. Thibodeau seconded. Vote 6 – 0.

5  
6 **Findings of Fact:**

7  
8 1. This is a request of Sylvain & Seigny Builders, representing Candice Warren, to  
9 rebuild and enclose an existing stairwell on a nonconforming structure in the Shoreland  
10 Overlay District based on Section 19-4-4.B.3. of the Zoning Ordinance.

11  
12 2. The subject property is 18 Smugglers Cove Road (Map U10, Lot 42). Candice  
13 Warren is the owner of record for the subject property.

14  
15 3. 18 Smugglers Cove Road is a nonconforming lot in the RA Zone. It is also in the  
16 Shoreland Overlay District. There is currently a nonconforming single family dwelling on  
17 the lot.

18  
19 4. On February 22, 2005, the Zoning Board of Appeals approved the demolition,  
20 rebuild, and expansion of this house. The record from that approval is incorporated by  
21 reference herein.

22  
23 **Additional Findings of Fact:**

24  
25 1. The Zoning Board of Appeals has considered the size of the lot, the slope of the  
26 land, the potential for soil erosion, the location of other structures on the property and  
27 on adjacent properties, the location of the septic system and other on-site soils suitable  
28 for septic systems, the impact on views, and the type and amount of vegetation to be  
29 removed to accomplish the reconstruction.

30  
31 2. The proposed structure will not increase the nonconformity of the existing structure.

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

35  
36 4. The lot coverage in the Shoreland Overlay District is currently nonconforming and  
37 will not become more nonconforming.

38  
39 5. The cumulative expansion of the portions of the structure within 75 feet of the normal  
40 high water line shall be certified by an architect not to exceed the limitations for floor  
41 area and volume as presented in the July 8, 2014, application.

42  
43 All were in favor of the Findings of Fact and Additional Findings of Fact. Vote 6 – 0.

44  
45 **E. Communications:** None.

46  
47 **F. Adjournment:** Ms. Tourangeau moved to adjourn; Mr. Vaillancourt seconded. All  
48 were in favor. Vote 6 – 0. Chairman Carver adjourned the meeting 8:35 p.m.