

The will be no January Meeting of the Zoning Board of Appeals as no applications were received. The next scheduled meeting is on February 22, 2005.

[Meeting Agenda](#) (October 26, 2004)

Draft Minutes ([September 30, 2004](#))

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## **AGENDA**

### ZONING BOARD OF APPEALS AGENDA

OCTOBER 26, 2004

TOWN HALL 7:00PM

A. Call to Order

B. Approve the minutes of September 30, 2004

C. Old Business

D. New Business

1) To hear the request of Holly Ready, 1 Rocky Point Lane, Tax Map U14, Lot 12 for a variance to increase the floor area or volume expansion of 25% allowed in a resource protection buffer to 40% in accordance with Section 19-5-2(B) and pursuant to Section 19-4-5(A)(5)

E. Communications

F. Adjournment

## **DRAFT MINUTES**

TOWN OF CAPE ELIZABETH

ZONING BOARD OF APPEALS

September 30, 2004 7:00 pm Town Hall

Present: Jay Chatmas, Chair

Jim Walsh

Len Gulino

Michael Tranfaglia

Absent: Gib Mendelson

Steven LaPlante

Joseph Guglielmetti

Mr. Chatmas opened the meeting with a roll call. He stated there

was a quorum with 4 members present. The first order of business was approval of the minutes. With corrections noted, he asked for a motion.

Mr. Gulino made a motion to approve the minutes.

Mr. Tranfaglia seconded the motion. 3 in favor, 1 abstained.

## NEW BUSINESS

To hear the request of Lisa O. Hansen, 9 Maiden Cove Lane, Tax Map U05, Lot 38 to enlarge an existing foundation and reconstruction of an existing dwelling within the shoreland zone of the Town of Cape Elizabeth.

Mr. Chatmas gave an overview of the application.

Eric Peterson, Peterson Design Group and resident of 54 Oakhurst Road, was representing the Hansens. He thanked the Chair for his informative overview and described the proposed minor footprint and upward expansion of the home. The proposal is a 27% expansion of living space, which falls within the 20% lot coverage allowed by the Town. Currently the structures cover 16% of the lot and the proposed addition would increase that amount to 18.5%. The proposed house will fall below the 35' height limit and the design of the house will be in keeping of the architectural vernacular of the Cape Elizabeth coastline and he had elevations to reflect that. He discussed the one change that the applicant had wanted to make that evening, which is on one corner of the existing building to be moved back two feet away from the Shoreland Zone. They have received confirmation from the DEP that the Site Plan, as proposed, meets their requirements. This has been applied for and approved.

Mr. Chatmas asked if there was any written documentation to confirm this.

Mr. Smith stated that he has talked from Dawn Buker from the DEP and confirmed it had been approved.

Mr. Chatmas asked about the determination of the height and average grade.

Mr. Peterson stated that Owen Haskell Surveyors had prepared a complex calculation of the average original grade. The Town determines the formula for this calculation.

Mr. Walsh asked if the overhangs and bow windows were included in measurements of setbacks.

Mr. Peterson stated yes.

Mr. Chatmas asked how he determined the existing volume and the increase of the total square footage of impervious ground cover.

Mr. Peterson said the percentage of impervious cover was determined from a prior survey, and then added the proposed square footage, which can be supplied to the Board. He said there had been question about the gross living space. He stated that they did not include the basement area, as the Town guidelines allows. They did include the first floor, second floor, the garage and space adjacent to the garage that is at grade level. He also stated they could have used porches, decks, and stairs, which the town allows, but chose not to.

Mr. Tranfaglia asked if a similar house could be built on the existing foundation.

Mr. Peterson stated that they are using the existing foundation and the Hansens had looked at repairing the stucco and tiling. These repairs are exotic and could not find the people to do that work.

Mr. Chatmas asked what percentage of the structure is within the 75ft high water setback.

Mr. Peterson said 100 percent of it is.

Mr. Chatmas asked how he determined the high water line.

Mr. Peterson said it was from a survey provided to them from Royal River. He offered to submit a copy of this survey.

Mr. Gulino asked about the amendment to the plan he had mentioned.

Mr. Peterson stated that on the east face the closest existing point is a 38 ft to the high water line. Currently the proposed addition is shown 2 ft closer at 36 ft, they will be correcting the site plan to show the proposed addition to be at 38ft for compliance with the Ordinance.

Mr. Gulino asked Mr. Smith if the modification their proposing does not make the structure closer to the water.

Mr. Smith believes this to be true, however, will double check site plan prior to issuing a permit.

Mr. Chatmas asked if the Town Ordinance was as restrictive as the DEP.

Mr. Smith stated that it has to be at least as restrictive under state law.

Mr. Chatmas asked about the condition of the foundation and how much of it they will be reusing.

Mr. Peterson stated the majority of the foundation would stay and be retained.

Mr. Chatmas asked about the amount of tear down versus reuse of

structure.

Mr. Peterson stated that is why they are there this evening. He stated that it would not take a whole lot of renovation of that structure to trigger a review. The roof profiles have changed; the second floor will basically be redone in its entirety. Some portions of the first floor will remain. The dining room will now be a bedroom, the kitchen is in the same location but with a new layout, the living room and sunroom are in the same room. He stated they are not 100% sure of how much of the structure will be taken down until they get into the renovation and see how much rot there is.

Mr. Chatmas asked about the location of the septic system and what the new intention was for it.

Mr. Peterson described the location of the septic system. The Hansens have approached their two abutters and are planning to connect to the Town sewer system. Once the sewer connection is made the septic system will be abandoned.

Eric Hansen, 9 Maiden Cove Lane, stated they had hired BH2M to work with Bob Malley at Public Works and the Portland Water District to have sewer connection. They are still working on getting maps together to determine the best location for connection.

Mr. Chatmas asked about any impact of soil erosion from the enlargement.

Mr. Peterson stated this property is a good candidate for no soil erosion due to the fact that the lot is bounded on 3 sides with a retaining wall. The remainder of the property has a stone wall.

Mr. Walsh asked about the impact of views from expansion.

Mr. Hansen stated there is a huge tree that hides the house most of the time until the leaves fall. He said that even though the roof would rise 4 ft, it is basically in the same position. He said they had shown the plans to neighbors in Maiden Cove and they had liked the plans.

Mr. Chatmas opened the Public Hearing and asked if anyone would like to speak in support of the project.

Bob Baross, 5 Maiden Cove Lane, has been watching the project closely and met with the Code Enforcement Officer this week. He said as far as he could tell there wasn't any conflict with the rules and regulations with the Town. He stated his wife has written a letter stating they have no objection to the construction of this project.

Mr. Gulino asked if he was an abutter.

Mr. Baross stated yes, that they share a driveway.

Mr. Welch asked if he had discussed tying into the sewer system.

Mr. Baross stated yes, and that the monetary figures were shocking. The Town had at first turned down a sewer line going down the street because they didn't want to put a pumping station in the turnaround. Now there is technology so each residence will have a forced sewage pump, which they will maintain.

Mr. Chatmas asked for any other supporters of the project. Hearing none, he asked for anyone in opposition to approach the podium.

Joseph Calise, 15 Surf Road, believes the Hanson's are asking the Town to make an exception to the Ordinance. He stated they knew what they were buying when they bought it and the home would serve them well as it stands. The community expects the Board to uphold the Ordinance to its extent and protect the Town. He stated that it is incumbent upon the applicant to say this is the only way to use the property. He said it has already been determined to be substantially nonconforming. He said on page 40 in the Ordinance that if a home is destroyed by an act of God, you may rebuild it because this happened to you; you didn't ask for it to happen. It also states, " in no case shall a structured be reconstructed or replaced so as to increase it's nonconformity". That is where he objects to what is happening. He has no objection to improving it as it is. He believes it will impact visual site lines. He hopes the Board will consider his comments.

Mike Marino, 4 Birch Knolls, stated the Hansen home is part of their view line. He stated the community is a historic cottage neighborhood where most of the homes are 2-4,000 sq. ft. He said their home is very visual and that the scale and bulk should fit the nature of the property. He believes if it is a nonconforming property, it should not be allowed to be more nonconforming.

Elizabeth Monaghan, 4 Sea Star Lane, spent a lot of time growing up at this property. She stated it is a large and picturesque home and that Mr. Marino and Mr. Calise have hit it on the head with their comments about any increase making the project more nonconforming. She stated that the home should keep within the nature of the community. She does not believe a decision can be made without the highwater mark survey to be present. She also questions the interpretation of the value of the house and the costs. She strongly opposes this.

Mark McIntyre, 3 Birch Knolls, questions why he was notified if what they are proposing is within the law, as it exists.

Mr. Chatmas stated that the Ordinance requires that if a structure is rebuilt exceeding 50% of the value of that structure, that it come before the Board of Appeals.

Mr. McIntyre stated that whether he like the appearance of what is proposed is not germane. Mr. McIntyre stated he came because of a fence that has been erected and has offended him by not

allowing his grandchildren to play on the rocks.

Mr. Chatmas stated that there are 8 points that they need to look at and see if the enlargement meets the setback to the greatest possible extent as stated by the Ordinance.

Patricia Franson, 40 Surf Road, which is where she grew up and a potential inheritant. She was wondering what she could possibly do to prevent this. She stated that they are going to tear down this structure and not just add on and fix up. The house is 5300 sq.ft, which she believes should be comfortable living space for a family of four. She stated the proposal is to enlarge it to 6735 sq. ft., which is an increase of 1600 sq. ft. She wants to know if they are only going a foot here and a foot there, where is the expansion. She strongly opposes this and believes it is beautiful as it is. She thinks it is unfortunate that a home built in 1930 that hundreds and hundreds of people and the ships in the shipping lanes have admired over the years would no longer be there.

Maya Cohen, 20 Surf Road, stated she is not an immediate abutter but she does oppose this renovation project for all the reasons that Mr. Calise and Mrs. Franson mentioned. She said that all old houses have issues and she understands that as she lives in the old Benoit house. She stated that a lot of mariners unofficially use that house as a point of navigation. She wants to know how much of the house would be preserved. She interpreted the presentation that it was to be gutted and believes that would be a shame.

Mr. Gulino asked if there was particular provision in the Ordinance that she felt that this violates.

Ms. Cohen stated that she agrees with Mr. Calise that the proposed renovation should not be more nonconforming.

Mr. Gulino asked how this would be additionally nonconforming.

Ms. Cohen said from increasing the square footage.

Mr. Gulino stated that in 19.4.4B1A, basically allows the renovation of a structure so

long as the expansion, floor area or volume not increase by more than 30%.

Ms. Cohen reiterated that she opposes this and the house is already very large.

Mr. Calise questioned the authority for the Board to go forward. He stated he was Vice Chair of the Board 15 years ago. He said there is a lot of vaguery in the sited Ordinance. He stated that the provision added in the Ordinance came from changes that were added statewide on January 1, 1989 to clamp down on the amount of expansion in these sensitive areas. He discussed his interpretation of the reconstruction and what could be done to this structure. He believes that the burden of proof is on the applicant.

He said the Board should not have to defend itself for not granting a variance; there should be a substantial reason for granting it.

Ms. Monaghan thinks the reconstruction is key. The proposed reconstruction is not a Spanish style design. The new design is a New England style house. If you are rebuilding a house in size, that house would have to be completely torn apart. She reiterated if you are enlarging a property that is nonconforming already, including the drips and roof overhangs, is making it more nonconforming.

Mr. Gulino stated the duty of the Board is to apply the Zoning Ordinance. He said that what he is hearing is that she does not like the design change. He stated their duty is to apply the Ordinance. He asked if she could reference any provision in the Ordinance that would preclude a change in style.

Ms. Monaghan stated that it was really not about the change in style. That it is also the duty of the Zoning Board to listen to the people in the neighborhood affected by the change and support the community.

Mr. Gulino agreed with that and stated that they are bound by the Ordinance when making these decisions. He said that to be helpful in the deliberations that she pinpoint any provision in the Ordinance.

Ms. Monaghan stated on page 40, like Mr. Calise, this property is creating a more nonconforming property.

Lucinda Yates, 11 Birch Knolls, lives directly across cove from applicants. She said that it would be the Board's job to enforce the code and if the building is nonconforming, that they should not allow it to be more nonconforming.

Mr. Gulino stated the applicant has stated it doesn't make the property more nonconforming.

Mr. Smith stated there is case law and the courts have ruled that the nonconformance is only an issue when the applicant wants to build closer to the ocean, or body of water.

Mr. Gulino asked Mr. Smith if by his calculations, the applicant would not be building closer to the water.

Mr. Smith stated that is correct.

Mr. Calise stated the existing footprint is nonconforming and that the property is in an Overlay district. He wanted to know if the property was in conformance with the RC Zone and if the proposed addition would be in conformance.

Mr. Smith stated yes. He said the Ordinance was dated and the DEP has recognized that the intent was to include properties that people wanted to self-destruct and rebuild.

Mr. Chatmas gave a summary of the points mentioned from discussion and reminded all that what triggered the meeting was the percent of rebuild, which was in excess of 50% of the value of the structure.

Mr. McIntyre asked if there were a judgment to be made.

Mr. Chatmas stated that if they were searching for valid comments that could be applied to the Ordinance. If there is something that can be changed within their boundaries, then they give it strong consideration.

Mr. Gulino stated that this public forum is available to allow the people in the community an opportunity to review the plans and analyze the Ordinance and see if the applicant may be missing something and often times there is something that could be modified that would allow the applicant to be in compliance with the Ordinance.

Mr. Chatmas stated there were comments about the style and beauty of the existing house. He stated the Ordinance does not specify or define this for the Board to comment on.

Patricia Franson asked there was anything in the ordinance that referred to historic value.

Mr. Smith stated there was a historical reference that was removed a couple of years ago.

Ms. Franson stated that when Union Station in Portland was ripped down, people haven't forgiven themselves for that. She stated that the Hansens are ripping down this house and that people should think about this. Once it is taken down, it will never come back.

Mr. Gulino encouraged Mrs. Franson to talk to the Town Council about reinstating a historical provision.

Mr. Chatmas reviewed the eight points to be considered by the Board for making their decision.

Ms. Monaghan stated she would have liked to see the high water mark survey.

Mr. Walsh stated the plan with the dotted lines has been what is causing confusion. It appears as though the building is being built closer to the high water mark.

Mr. Gulino stated that the application that they are considering would be modified to make sure that they are not closer to the high water marks. They will also be submitting the survey to confirm accuracy of calculations, and Mr. Smith will be confirming they are not encroaching on the high water mark on three sides. He moved the application for approval.

Mr. Walsh wanted to commend Mr. Chatmas for welcoming



comments and looking for solutions or alternatives. He wanted to reiterate that the Board members are members of the community as well, however, there is a body of law that they must follow when making a decision.

Mr. Chatmas made the following motion to approve the application of Lisa Hansen, 9 Maiden Cove Lane, for the building enlargement and reconstruction of the structure and it's foundation in a Shoreland Overlay District within 75ft of the highwater mark.

Mr. Gulino seconded the motion. 4 in favor, 0 opposed.

Mr. Chatmas stated the next meeting was October 26, 2004.

Mr. Smith stated that there would be a workshop at 6:00 pm prior to the meeting on October 26, 2004.

Mr. Gulino made motion to adjourn.

Mr. Tranfaglia seconded the motion. All in favor.

Meeting adjourned at 9:15p.m.

Respectfully Submitted,

Laurie Palanza

Secretary

Zoning Board of Appeals

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