

[Meeting Agenda](#) (November 22, 2005)

Draft Minutes ([October 25, 2005](#))

Notice: There will be no **January** Meeting of the Zoning Board of Appeals as no applications were received. The next scheduled meeting is on February 28, 2006.

AGENDA

ZONING BOARD OF APPEALS AGENDA

NOVEMBER 22, 2005

TOWN HALL 7:00PM

A. Call to Order

B. Approve the minutes of October 25, 2005

C. Old Business

D. New Business

1) To hear the request of Mark Mueller Architects to reconstruct & enlarge an existing structure within 75 ft of the high water line of the Atlantic Ocean located at 7 Peabbles Point Lane, Tax Map R03, Lot 9F.

E. Communications

F. Adjournment

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DRAFT MINUTES

TOWN OF CAPE ELIZABETH

MINUTES OF THE ZONING BOARD

October 25, 2005 7:00 PM Town Hall

Present: Jay Chatmas, Chair

Jim Walsh

Joe Guglielmetti

Gib Mendelson

Michael Tranfaglia

Len Gulino

Absent: Steve LaPlante

Also present was Bruce Smith, Code Enforcement Officer.

Mr. Chatmas started the meeting with roll call and approval of the September minutes. With an amendment, he asked for a motion.

Mr. Gulino made a motion to accept the amended minutes.

Mr. Tranfaglia seconded the motion. 6 in favor, 0 opposed.

OLD BUSINESS

To hear the administrative appeal of Paul Coulombe, John Fatula and Audrey Fatula of the Code Enforcement Officer's issuance of building permit # 050343 and flood hazard development permit # 050344 on property at 24 Reef Rd, Tax Map U13, Lot 14, and issuance of subsurface wastewater disposal system permit #'s 3143 & 3144 on property at 26 Reef Rd, Tax Map U13, Lot 14B, all for development of 24 Reef Road.

Mr. Chatmas gave a brief history of the appeal and stated that the permits for the property have been withdrawn. He stated his concern on making preemptive decisions on the property without building permits. He asked the appellant's counsel to approach the podium for comment.

Richard Bryant, Van Meer & Belanger, acknowledged the appealed permits. When the appeals were filed, under the Zoning Ordinance sec. 19-2-5, they asked for a determination of the wetland boundaries. The Code Enforcement deferred making any determination of the wetland boundaries as the two parties were trying to negotiate. They have not been able to reach a consensual agreement, but are still asking for a determination of the delineation of the wetland boundaries. He believes there is also a violation of the Zoning Ordinance from a conveyance between abutting property owners and cited Section 19-4-2, reduction in nonconforming lots.

Mr. Chatmas stated he was not sure that the Board could not make any judgments concerning the conveyance of properties, since the building permits had been withdrawn. The moving of the sideline on lot 26, resulted in a net increase of the nonconforming lot.

Mr. Bryant stated there are differences concerning the minimum lot size from the State of Maine Statute and the Town of Cape Elizabeth Ordinances.

Mr. Chatmas questioned if the Board even needs to hear the appeal at this time and asked the Town Attorney to address this issue.

Michael Hill, Attorney representing the Town of Cape Elizabeth, stated there is no controversy at this time as there is no building permit to have controversy from. The appellant had a standing when the appeal was made and now the matter is moot, including the nonconforming lot issue. Mr. Smith was correct in not

addressing the wetlands delineation. The appellant may appeal determination of the wetland boundary at a later date.

Mr. Gulino asked if there was a time limit on which an action could take place.

Mr. Hill does not believe there is.

Mr. Smith stated it is not unusual for someone to create a lot that may be illegal and let it sit for a period of time. When someone applies for a permit, he would review the files and the project may or may not be approved and a neighbor may appeal at that time.

Scott Anderson, on behalf of Pya Chang, stated the Ordinance provides any person aggrieved by a decision from the Code Enforcement Officer, may come before the Board and have that decision reviewed. He stated there may be issues with the delineations of the wetlands and issues with the lot lines, however any appellant must show they have been injured by the determination. They are asking the Board to dismiss this appeal, as the appellants cannot show they have suffered any injuries thus far. He has submitted a letter to the Board summarizing this.

Mr. Chatmas asked Mr. Hill if the wetlands issue could be brought before the Board in a preemptive need without a permit in hand.

Mr. Smith stated if the delineation of the wetland issue is disputed, then it would be sent to the Planning Board for their review.

Mr. Chatmas closed the Public Hearing and asked for comments from the Board.

Mr. Gulino stated that he was in agreement with Mr. Hill.

Mr. Tranfaglia made the following motion.

Motion to Dismiss Administrative Appeal of Paul Coulombe and Mr. & Mrs. Fatula based on the following:

- 1) The applicant brought an administrative appeal of the issuance of a building permit, flood hazard development permit, and subsurface wastewater disposal system for 24 Reef Road and 26 Reef Road.
- 2) The permits were withdrawn by the property owner, Pya Chang LLC, on August 8th, and August 12th, 2005.
- 3) Since the permits at issue have been withdrawn, this matter is moot and the appeal should be dismissed.

Mr. Gulino seconded the motion. 6 in favor, 0 opposed.

Mr. Chatmas introduced the 2nd item under Old Business.

To hear the request of Ariette McDonald, 36 Trundy Road, Tax

Map U12, Lot 38 for a front (Overlook Lane) property line variance of 10' from the required 25' and a side (westerly) property line variance of 15' from the required 25' to construct an addition and add a second story over the existing structure.

Mr. Gulino recused himself as he has a pending legal matter in behalf of the client.

Ariette McDonald Higgins and Michael Higgins, 36 Trundy Road, revised portions from last month's meeting and addressed the problems on the backside of the house.

Mr. Chatmas stated it appeared they were not going to expand on the Overlook Lane side of the property.

Ms. Higgins stated that was correct.

Mr. Mendelson asked the applicant for clarity on the setback issue, as he was absent from the last meeting.

Ms. Higgins approached the Board and gave a brief overview for the benefit of Mr. Mendelson and Mr. Guglielmetti (who was also absent from the prior meeting).

Mr. Chatmas stated the applicant submitted neighborhood comparisons. The applicant was able to satisfy the two separate side setbacks, but not the front setback on Overlook Lane.

Mr. Mendelson asked if there had been an amendment to the application to withdraw the front setback variance?

Mr. Smith stated that when a motion is made, only the side variance could be approved.

Mr. Chatmas stated, as there was no one in the audience, there would not be public comment.

Mr. Chatmas opened the floor to Board discussion. Since there was no discussion, he proceeded to vote on the elements.

1. The proposed variance is not a substantial departure from the intent of the Ordinance. 5 in favor, 0 opposed, 0 abstained

2. A literal enforcement of the Ordinance would cause a practical difficulty.

5 in favor, 0 opposed, 0 abstained

3. The need for the variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.

5 in favor, 0 opposed, 0 abstained

4. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of

abutting properties. 5 in favor, 0 opposed, 0 abstained

5. The practical difficulty is not the result of action taken by the applicant or a prior owner. 5 in favor, 0 opposed, 0 abstained

6. No other feasible alternative to a variance is available to the petitioner.

5 in favor, 0 opposed, 0 abstained

7. The granting of a variance will not unreasonably adversely affect the natural environment. 5 in favor, 0 opposed, 0 abstained

8. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435. 5 in favor, 0 opposed, 0 abstained

JUDGMENT

Mr. Tranfaglia made the following motion:

In the matter of Ariette Higgins, who resides at 36 Trundy Road, Tax Map U12-38, at the said applicant's request for a side westerly property line variance of 15 ft from the required 25 ft to construct an addition and a second story structure be granted.

Mr. Walsh seconded the motion. 5 in favor, 0 opposed.

Mrs. Higgins thanked the Board for their time and assistance.

Mr. Chatmas stated there were no new business or communication items.

Mr. Smith brought to the Board's attention that the next meeting would be held November 22, prior to Thanksgiving. He wanted to know if any Board members had any conflicts with this.

It appeared that all members would be present.

Mr. Chatmas strongly encouraged response from Board members concerning attendance for the next meeting at their earliest convenience.

Mr. Guglielmetti made a motion to adjourn.

Mr. Mendelson seconded the motion and was unanimous.

Meeting adjourned at 8:50 pm.

Respectfully submitted,

Laurie Palanza

Minutes Secretary

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