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April 8, 2008

Town Council
Town of Cape Elizabeth
320 Ocean House Road
P.O. Box 6260
Cape Elizabeth, Maine 04107-0060

Re: Proposed Zoning Ordinance Amendment to Exempt Flagpoles from Setback Requirements

Dear Members of the Council:

I am writing on behalf of Bruce Nelson of 890 Shore Road. Mr. Nelson first moved to Cape Elizabeth over 35 years ago and has resided at 890 Shore Road for the past 23 years.

We are writing to the Council to comment on the March 5, 2008 letter to the Council from Peggy McGehee, Esquire, counsel for Charles and Holland Filliettaz. The Filliettazes, residents of Los Angeles, California, are asking the Town Council to involve itself in a matter which has already been properly handled by Code Enforcement, and to make policy for an entire zoning district based on the Filliettazes' refusal to accept the decision of the Code Enforcement Officer. They are asking the Town Council to change a definition ("structure") which has been in the Cape Elizabeth Zoning Ordinance for decades.

Under Section 19-10-3.A.4 of the Cape Elizabeth Zoning Ordinance, when the Town Council undertakes an initial review of any request for a zoning amendment, the Council has the discretion to deny the request without further action if the Council finds that the request is "clearly contradictory to established town policy...." We hope that the Council, exercising its judgment as the legislative body of the Town, will deny this request to change the Town's zoning requirements just because one property owner does not want to comply with the Town's long-established setback requirements.

We will discuss why it would be bad policy for the Council to overrule the Code Enforcement Officer's judgment by changing the ordinance. Before we do so, because Ms. McGehee's letter is part of the public record, we feel we need to correct some of the numerous inaccuracies in that letter.

First, the pole installed by the Filliettazes is not 9.5 feet from the side lot line, as Attorney McGehee asserts; the pole is only about 7 feet from Mr. Nelson's property line, and the crossbar approximately two thirds of the way up the pole is approximately 5½ to 6 feet across, so that it comes within 4 or 5 feet of Mr. Nelson's property. The pole appears to be about 30 feet tall. The Filliettazes should be aware of the actual location because their property was surveyed late last year and there is a boundary marker stake in close proximity to the spot where they chose to locate their flagpole.

Second, while it is true that Mr. Nelson raised no objection to the Filliettazes' flying the American flag on their property, he objected immediately when the Filliettazes placed the flagpole in violation of the 20-foot side setback requirement. Ms. McGehee's letter suggests that complying with the current setback requirements would force the Filliettazes to place the flagpole "in the middle of their yard...." Nothing could be further from the truth. The Filliettazes' property (according to a building permit application they filed with the Town last October) is 1.7 acres. There are quite literally hundreds of locations on their lot for a flagpole which would comply with the Town's current setback requirements.

Third, while any discussions about possible real estate transactions between Mr. Nelson and Mr. Filliettaz are entirely irrelevant to the zoning amendment request, Mr. Nelson wants the Council to know that Ms. McGehee's description of the events is not correct. Further, it is highly inappropriate to attempt to inject private discussions into a public policy matter.

Concerning the requested amendment to the Zoning Ordinance, there is every reason to leave the current zoning intact and require flagpoles, like any other structure, to be set back from a side property line. The 20-foot setback is designed to protect property owners from adverse impacts of uses located on neighboring properties. Because all properties are subject to setback requirements, it is a reciprocal arrangement which provides mutual protection for all property owners.

A flagpole is not an innocuous structure. A flag generates a substantial amount of noise on a breezy day. Even when the flag is not flying, the ropes, wires and hardware can be extremely noisy, particularly with a hollow flagpole. A flagpole can create glare from reflected sunlight, cast shadows, obstruct views and become an eyesore and even a safety hazard if not properly maintained. None of those is a reason to disallow flagpoles – and that is not what Mr. Nelson advocates. But those are compelling reasons why flagpoles should comply with setback requirements. That is especially true since nothing in the ordinance limits the size or number of flagpoles on a property or the size or number of flags that can be flown on any flagpole.

If the Council would like to see a real-life example of the detrimental effects of an improperly placed flagpole, Mr. Nelson welcomes the Council to visit his property and see where the Filliettazes have chosen to locate their flagpole. Right now the flagpole is lying on the ground, placed there by the Filliettazes to avoid a violation notice from the Code Enforcement Officer. But when the flagpole was upright for several weeks, Mr. Nelson had to endure the constant noise from the ropes and hardware – not a problem, of course, for the Filliettazes in Los Angeles. And because the concrete foundation for the flagpole is in the ground, the Council could see how the flagpole located so close to the property line, with its

crossbar and the potential to fly multiple flags, would have a significant impact on the view from Mr. Nelson's property, potentially devaluing the property value significantly. Most of all, we think it would become apparent to the Council that the specific location chosen by the Filliettazes has less to do with a patriotic display and more to do with deliberately impinging on Mr. Nelson's view.

Inappropriate placement of flagpoles is best avoided by leaving intact the current ordinance provisions which the Code Enforcement Officer has interpreted as requiring flagpoles to meet setbacks. The Council is being asked to enact special purpose legislation (the Filliettazes are asking for the change only in the RC zone, where their property is located) rather than to consider the welfare of the Town as a whole. The current ordinance is not broken and the Council should reject the requested "fix." We thank you for your attention to this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher L. Vaniotis", written in a cursive style.

Christopher L. Vaniotis

CLV/lc

cc: Bruce Nelson, M.D.
Michael McGovern, Town Manager (via e-mail)