



TOWN OF CAPE ELIZABETH

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TO: Michael McGovern, Town Manager
FROM: Benjamin McDougal, Code Enforcement Officer *BTM*
DATE: April 1, 2016
RE: Property of Cheryl and Scott Joys, 10 Star Road

On April 11, 2016 the Town Council will be considering a request by Cheryl and Scott Joys of 10 Star Road. Unfortunately, due to prior commitments, I am unable to attend the meeting to answer questions. Hopefully this memorandum provides the necessary information in my absence.

A real estate transaction revealed a setback violation at 10 Star Road. In 2003, the owner of the property, Scott Joys, applied for a building permit to construct a 2 story addition on his house located at 10 Star Road. Mr. Joys listed himself as the applicant and contractor for the project. No other contractors were documented on the permitting. Accompanying the application was a site plan showing the distances of the proposed construction to the front and side property lines. The plan showed the proposed distance to the front property line to be 24' 6" and the proposed distance to the side property line to be 10' 6". The required setbacks are 20 feet and 10 feet respectively. A 2016 survey shows the 2003 addition to be 15' 6" from the front property line, which amounts to a 4' 6" encroachment into the front setback.

Mr. Joys has indicated that he measured his front setback to the edge of the road pavement, when in fact his property line is 9 feet closer to the house than the edge of pavement.

My general understanding of the events in 2003 is as follows:

The Code Enforcement Officer received a permit in 2003 for a house addition. The permit application showed the addition would be constructed 6 inches from the side setback and over 4 feet from the front setback requirement. It appears the Code Enforcement Officer checked the sideyard setback distance several times. Because the permit application showed a front yard setback with over 4 feet to spare, that setback was not the focus. No boundary survey was submitted with the building permit application and none was required at that time. The Code Enforcement Officer was well aware that roads sit within rights of way that exceed the width of the road, and property lines rarely coincide with the edge of the pavement. It is unlikely that he would have taken any measurement, but certainly not from the edge of pavement.

While considering the Joys' variance request last month, the Zoning Board considered whether the Code Enforcement Officer made an error that caused this problem and found that he did not.

For the following reasons I recommend the Town Council consider approving the Joys request:

1. There is no evidence that leads me to believe this encroachment was intentional.
2. The Joys had enough room in their yard to construct the addition without encroaching on the setback.
3. Requiring the Joys to remove a portion of the addition would have a detrimental effect on the character of the neighborhood.

In 2013, a Zoning Ordinance amendment was passed in order to prevent this type of situation from happening in the future. An applicant is now required to submit a boundary survey along with their building permit application for this type of project.