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\*also admitted to practice in MA

March 30, 2016

BY E-MAIL ([michael.mcgovern@capeelizabeth.org](mailto:michael.mcgovern@capeelizabeth.org))

Michael McGovern, Town Manager  
PO Box 6260  
Cape Elizabeth, ME 04107

RE: Property of Cheryl and Scott Joys, 10 Star Road, Cape Elizabeth  
Our File No.: 160182

Dear Mr. McGovern:

By way of introduction, I represent Cheryl and Scott Joys, who own their home at 10 Star Road, Cape Elizabeth. They come to you looking for your assistance in correcting a setback mistake made in 2003.

They purchased their home in 1999. In 2003, with a growing family, they requested and obtained a Building Permit to construct an 18'-6" x 33' two-story addition to their home. Prior to granting the permit, Bruce Smith, then Cape Elizabeth's Code Enforcement Officer, met with Scott Joys and his builder, Peter Palanza of Cape Cottage Home Design, at the property and measured the setbacks. Finding that the proposed structure to be conforming, the Town granted the permit. Copies of their Application and Permits are attached as Tab 1. Mr. Smith returned and measured after the foundation was poured and confirmed compliance.

Almost exactly thirteen years later, on March 3, 2016, Mr. and Mrs. Joys had a mortgage survey performed on their property which uncovered that the Code Enforcement Officer and the Joys' builder had both measured from the wrong pin back in 2003. The addition was not 24'-6" from the front property line; it was 15'-5" from that line. This was confirmed by a complete property survey. A copy of the survey is attached as Tab 2.

After discussing the mistake with the Town; the Joys sought an after-the-fact variance from the Cape Elizabeth Zoning Board of Appeals. The hearing was held on March 22, 2016. The Joys' neighbors appeared and supported the variance request. Despite many comments from

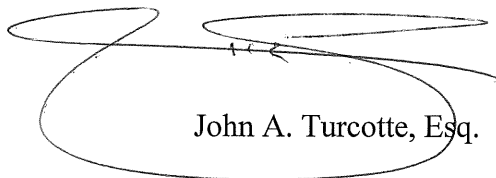
Board members that demonstrated sympathy for the Joys' plight, the Board ultimately did not grant the requested variance.

And so the Joys now come to you and the Town Council. This is a case of mutual mistake. The Joys never intended to encroach on the setback requirements; they did everything the right way and everything reasonably prudent homeowners should so. They worked with the Town to ensure that they complied with all zoning requirements and their addition was constructed based upon that assurance. The Town made the same measuring error the builder did which, if detected at the time, would have resulted in a corrected and complying structure. Cheryl and Scott Joys seek the Council's authority to enter into a consent agreement with the Town.

There is precedent for this. This is purely persuasive authority, and not mandatory, but the Town has encountered situations like that the Joys now find themselves in and the Town has remedied those mistakes through consent agreements. In January 2006, the Town Council authorized a Consent Agreement for the owners of 16 Beacon Lane. A second story was permitted and constructed at the home and five years later it was discovered that a measuring error was made and the second story encroached on the front yard setback. Copies of that authorization and agreement are attached as Tab 3. In 2012, a consent agreement was authorized for the home at 21 Woodcrest Road. In that case, a measuring mistake led to a building permit that inadvertently resulted in a side yard set-back violation discovered thirteen years later. In that instance, the Council authorized an agreement with the homeowners. Copies of that authorization and consent agreement are attached as Tab 4. Following that 2012 consent agreement, the Town Planner and Planning Board addressed the issue of these kinds of cases. They could find no instance of demolitions where mistaken setback violations occurred. In each instance, the structure was allowed to remain and the remedy has either been a granted variance through the ZBA or, if the ZBA would not grant an after-the-fact variance, a consent agreement. A copy of the August 7, 2012 Memorandum is attached as Tab 5.

This, too, is a measuring mistake made thirteen years ago. Mr. and Mrs. Joys are eager and willing to work with the Town to prepare a resolution. They respectfully request that they be placed on the Town Council agenda. They understand that they will be responsible for paying for the cost of the resolution and they look forward to your assistance.

Sincerely,



John A. Turcotte, Esq.

Enc.

cc: Cheryl and Scott Joys (w/enc)  
Ben McDougal, Code Enforcement Officer (w/enc) *via* [benjamin.mcdougal@capeelizabeth.org](mailto:benjamin.mcdougal@capeelizabeth.org)





APPROVED  
4/11/03  
bhl

# TOWN OF CAPE ELIZABETH

030526

Code Enforcement Office  
P.O. Box 6260  
320 Ocean House Road  
Cape Elizabeth, Maine 04107-0060

Phone: 207-799-1619  
Fax: 207-799-5598  
Email: cecodes@maine.rr.com

## APPLICATION FOR BUILDING PERMIT

MAP U22 LOT 7 LOT SIZE 9900 <sup>SF</sup>

LOCATION 10 Star Rd.

OWNER Scott + Cheryl JOYS

OWNER ADDRESS 10 Star Rd Cape Elizabeth

TELEPHONE HOME 767 6598 WORK 854-0011

APPLICANT SCOTT JOYS

APPLICANT ADDRESS \_\_\_\_\_ TELEPHONE \_\_\_\_\_

CONTRACTOR By owner

ADDRESS \_\_\_\_\_ TELEPHONE \_\_\_\_\_

### APPLICATION TYPE:

NEW CONSTRUCTION  ADDITION  RELOCATE  SIGN  
 ALTERATION  REPAIR  REPLACEMENT  USE PERMIT

ESTIMATED COST \$ 45,000

TOTAL ESTIMATED VALUE \$ 45,000

PERMIT FEE \$ 315  
\$7.00 PER \$1000 ESTIMATED VALUE  
MINIMUM FEE \$25.00

APR 4 2003

**PROJECT DESCRIPTION:**

FULLY EXPLAIN SCOPE OF WORK TO BE DONE:

MAP \_\_\_ LOT \_\_\_

Add 2 story addition where existing car port sits

DIMENSIONS OF PROPOSED STRUCTURE 18' x 33'

**PROPOSED FOUNDATION TYPE:**

\_\_\_ FULL 10' \_\_\_ FULL 8'  4' FROST WALL \_\_\_ PIER \_\_\_ SLAB

**SETBACKS:**

EXISTING STRUCTURES

FRONT 31' SIDES 26' / 29' REAR 42' / 53'

PROPOSED STRUCTURES

FRONT 24' SIDES 26' / 10' REAR 42' / 53'

**BUILDING HEIGHT**

THE VERTICAL DISTANCE FROM THE AVERAGE ORIGINAL GRADE TO THE TOP OF THE HIGHEST ROOF BEAMS OF A FLAT ROOF, OR TO THE MEAN LEVEL OF THE HIGHEST GABLE OR SLOPE OF GABLE OR HIP ROOF. (MAX 35' ALLOWED)

EXISTING STRUCTURES 17' PROPOSED STRUCTURES 23'

**FOR STRUCTURES TO BE OCCUPIED OR FOR AN INCREASE IN THE # OF BEDROOMS:**

SERVICED BY:

\_\_\_ PRIVATE SEPTIC SYSTEM

SIZE OF SEPTIC TANK \_\_\_ DESIGN FLOW \_\_\_ GAL PER DAY

# OF EXISTING BEDROOMS \_\_\_ # OF ADDITIONAL BEDROOMS \_\_\_

\_\_\_ PUBLIC SEWER

NO BUILDING HEREAFTER ERECTED SHALL BE OCCUPIED OR USED, IN WHOLE OR IN PART, UNTIL A CERTIFICATE OF OCCUPANCY SHALL HAVE BEEN ISSUED BY THE CODE ENFORCEMENT OFFICER

APPROVED PLANS MUST BE RETAINED ON JOB ALONG WITH PERMIT UNTIL FINAL INSPECTION HAS BEEN MADE.

MINIMUM OF THREE INSPECTIONS REQUIRED FOR ALL CONSTRUCTION WORK. PLEASE SCHEDULE INSPECTIONS WITH THE CEO SECRETARY. 1. FOUNDATIONS (FOOTINGS, WALLS, DRAINAGE, WATER PLUG) 2. FRAMING (PRIOR TO COVERING STRUCTURAL MEMBERS) 3. FINAL INSPECTION BEFORE OCCUPANCY.

WHERE APPLICABLE, SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING, AND MECHANICAL INSTALLATIONS.

THIS PERMIT APPLICATION DOES NOT PRECLUDE THE APPLICANT(S) FROM MEETING APPLICABLE STATE AND FEDERAL RULES.

THIS PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION IS NOT STARTED WITHIN SIX MONTHS OF PERMIT ISSUE DATE.

I HEREBY CERTIFY THAT I AM THE OWNER OF RECORD OF THE NAMED PROPERTY, OR THAT I HAVE BEEN AUTHORIZED BY THE OWNER TO MAKE THIS APPLICATION AS THEIR AGENT. I AGREE TO CONFORM TO ALL APPLICABLE LAWS OF THIS JURISDICTION. IN ADDITION, IF THIS PERMIT IS ISSUED, I CERTIFY THAT THE CODE OFFICIAL OR HIS REPRESENTATIVE SHALL HAVE THE AUTHORITY TO ENTER ALL AREAS COVERED BY SUCH PERMIT AT ANY REASONABLE HOUR FOR THE PURPOSES OF INSPECTING SAID WORK.

SIGNED Scott Aarp  
OWNER / AUTHORIZED AGENT

DATE 3/25/03

**PROJECT DESCRIPTION:**

MAP \_\_\_ LOT \_\_\_

PLEASE FULLY EXPLAIN SCOPE OF WORK TO BE DONE:

Add 2 story addition where existing  
garage sits

DIMENSIONS OF PROPOSED STRUCTURE 18' x 33'

PROPOSED FOUNDATION TYPE:

\_\_\_ FULL 10' \_\_\_ FULL 8'  4' FROST WALL \_\_\_ PIER \_\_\_ SLAB

**SETBACKS:**

EXISTING STRUCTURES

FRONT 31' SIDES 26' / 29' REAR 42' / 53'

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\_\_\_ PRIVATE SEPTIC SYSTEM

SIZE OF SEPTIC TANK \_\_\_ DESIGN FLOW \_\_\_ GAL PER DAY

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SIGNED Scott Goup  
OWNER / AUTHORIZED AGENT

DATE 3/25/03

**PERMIT # 030526 APPROVED**

MAP# U22 LOT# 7 ADDRESS 10 STAR RD. FLOOD ZONE C

LOT SIZE 10,000 SF. FRONTAGE 100 FT. DISTRICT(S) RC SOD NO

NONCONFORMING YES CO REQUIRED YES

ADDITIONAL PERMITS REQUIRED:

PLUMBING

SEPTIC SYSTEM

ELECTRIC

HEATING

FLOOD HAZARD

SEWER ENTRANCE

DEP

STREET ENTRANCE

STATE FIRE MARSHALL

OTHER

BOARD OF APPEALS APPROVAL REQUIRED NO

APPEAL TYPE  APPROVED  YES  NO

APPROVAL DATE \_\_\_\_\_

PLANNING BOARD APPROVAL REQUIRED NO

APPLICATION TYPE  APPROVED  YES  NO

APPROVAL DATE \_\_\_\_\_

**DEMO EXISTING CARPORT & REPLACE WITH 18' - 6" X  
33' TWO STORY ADDITION**



BRUCE A. SMITH  
CODE ENFORCEMENT OFFICER

April 11, 2003

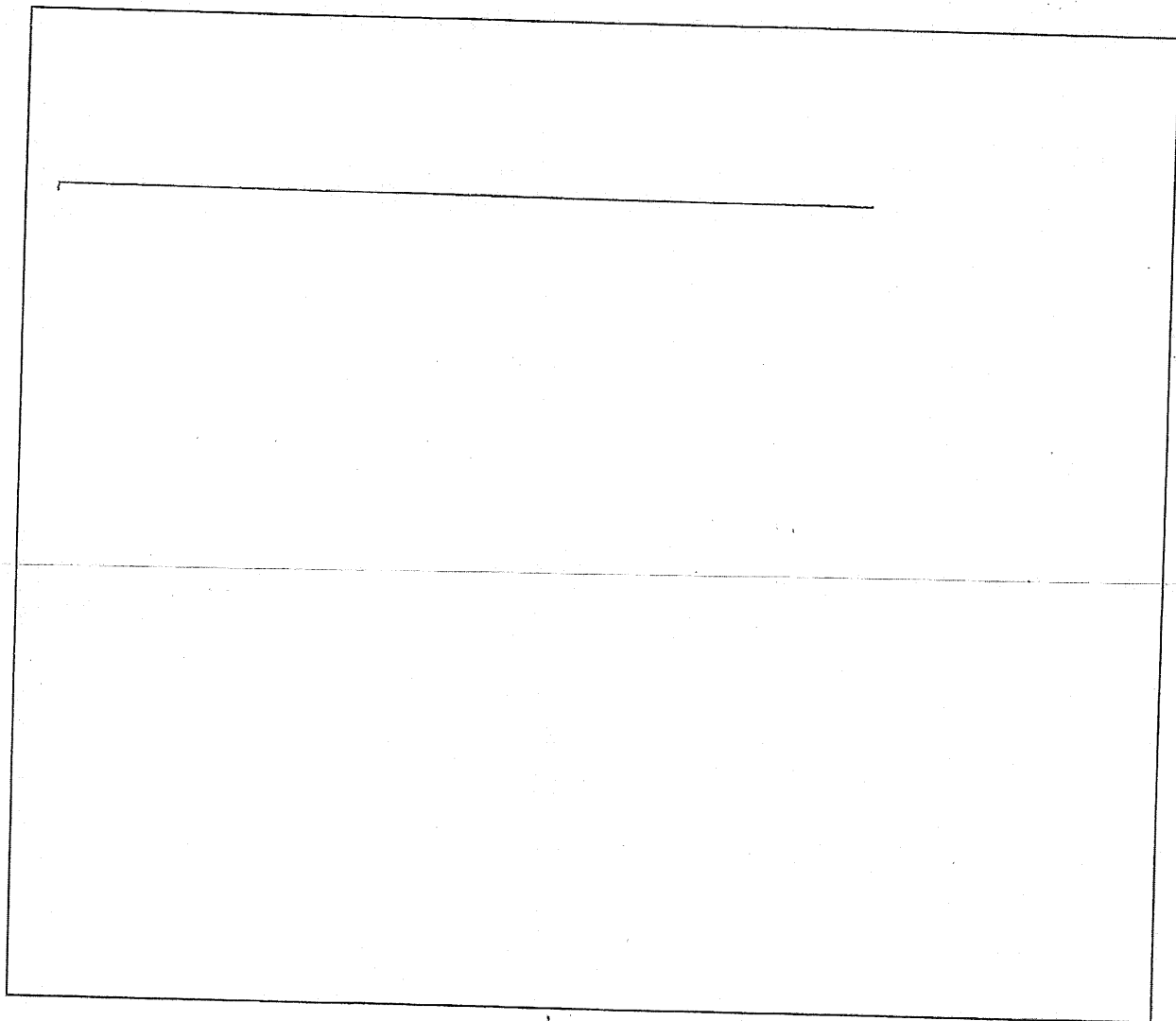
DATE

**TOWN OF CAPE ELIZABETH  
SEC.19-3-3 BUILDING PERMITS**

**C. APPLICATIONS FOR PERMITS MUST BE ACCOMPANIED BY THE FOLLOWING:**

A site plan drawn to an indicated scale and showing the location and dimensions of all buildings to be erected, the sewage disposal system, driveways and turnarounds, and abutting lot and street lines. The site plan shall accurately represent the relationship between any proposed building or structure or addition to an existing building and all property lines to demonstrate compliance with setback requirements of the Ordinance. If there is any doubt as to the location of a property line on the ground or if the Code Enforcement Officer cannot confirm that all setback requirements are met from the information provided, the Code Enforcement Officer may require the applicant to provide a boundary survey or mortgage inspection plan.

**SITE PLAN**



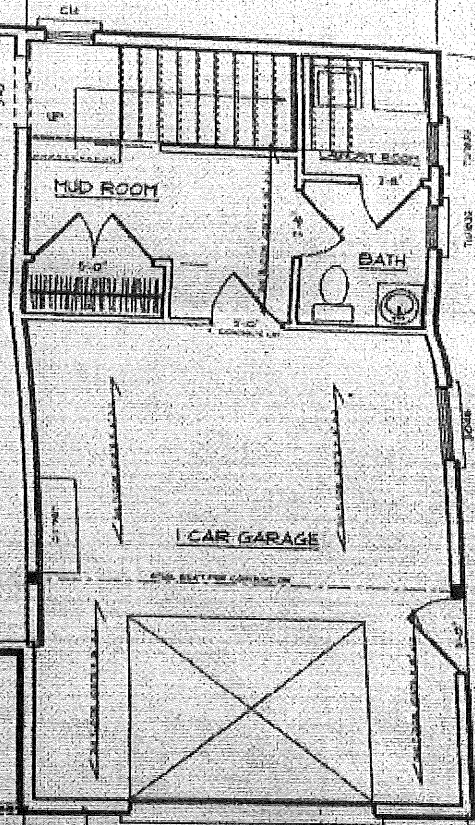
100'  
Road



44.6'

18'-0"

EXISTING HOUSE



S 90°0'0" E 100.00'

STAR RD

# DISPLAY THIS CARD ON PRINCIPAL FRONTAGE OF WORK

TOWN OF CAPE ELIZABETH

**NO. 030526**

## CODE ENFORCEMENT OFFICE

This is to certify that **SCOTT JOYS**

at **MAP # U22 LOT # 7**

has permission to **DEMO EXISTING CARPORT & REPLACE WITH 18' - 6" X 33' TWO STORY ADDITION**

provided that the person or persons, firm or corporation accepting this permit shall comply with all of the provisions of the Statutes of Maine and of the Ordinances of the **TOWN OF CAPE ELIZABETH** regulating the construction, maintenance and use of buildings and structures, and with the approval granted.

### **IMPORTANT NOTICE**

A certificate of occupancy must be procured by owner before this building or part thereof is occupied, unless waiving of such requirement is indicated in space below.

Waived

*BASmith*

**BRUCE A. SMITH, CEO**

### **IMPORTANT NOTICE**

Notification for inspection must be given and permission procured before any structure or part thereof is lathed or otherwise closed in, unless waiving of these requirements is indicated.

Waived

APRIL 11, 2003

**APPROVAL DATE**

PERMIT # 030526 APPROVED

MAP# U22 LOT# 7 ADDRESS 10 STAR RD. FLOOD ZONE C

LOT SIZE 10,000 SF. FRONTAGE 100 FT. DISTRICT(S) RC SOD NO

NONCONFORMING YES CO REQUIRED YES

ADDITIONAL PERMITS REQUIRED:

PLUMBING

SEPTIC SYSTEM

ELECTRIC

HEATING

FLOOD HAZARD

SEWER ENTRANCE

DEP

STREET ENTRANCE

STATE FIRE MARSHALL

OTHER

BOARD OF APPEALS APPROVAL REQUIRED NO

APPEAL TYPE  APPROVED  YES  NO

APPROVAL DATE \_\_\_\_\_

PLANNING BOARD APPROVAL REQUIRED NO

APPLICATION TYPE  APPROVED  YES  NO

APPROVAL DATE \_\_\_\_\_

**DEMO EXISTING CARPORT & REPLACE WITH 18' - 6" X  
33' TWO STORY ADDITION**



BRUCE A. SMITH  
CODE ENFORCEMENT OFFICER

April 11, 2003

DATE



RC ZONE:  
 FRONT SETBACK: = 20'  
 SIDE SETBACK: = 20'  
 REDUCED TO 10'  
 REAR SETBACK: = 30'  
 REDUCED TO 15'  
 MINIMUM AREA: 20,000  
 REDUCED TO 10,000 SQ  
 FT.  
 SEE SEC. 19-4-3.2 OF  
 THE ZONING ORDINANCE  
 CONCERNING  
 NON-COMFORMING LOTS.

RAMBLE ROAD

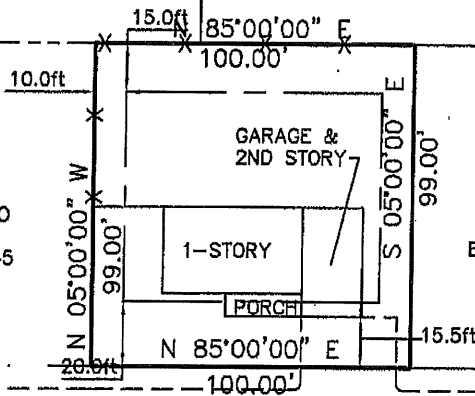


N/F  
 ELIZABETH M. MONTPELIER  
 BOOK 2824, PAGE 294

N/F  
 PATRICA CARIGNAN  
 BOOK 4205, PAGE 268

N/F  
 BRADFORD J. MARINO  
 ANN C. MARINO  
 BOOK 8936, PAGE 045

N/F  
 LAURA J. DEPAOLO  
 PETER D. DEPAOLO  
 BOOK 18138, PAGE 342



STAR ROAD

PLAN SHOWING TAX MAP U22 LOT 007

THIS PLAN DEPICTS THE RESULTS OF AN ON THE GROUND SURVEY TO SHOW THE EXISTING DWELLING ON THE LOT DESCRIBED IN A DEED TO THE HEREIN OWNER SCOTT R. JOYS AS DESCRIBED IN A DEED RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS IN DEED BOOK 14647, PAGE 120 THE EXISTING DWELLING WAS CONSTRUCTED IN 1958 PRIOR TO THE ADOPTION OF ZONING ORDINANCES.

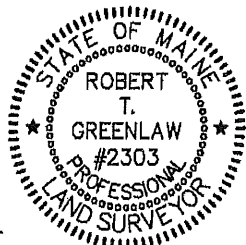


**CERTIFICATE:**

I HEREBY CERTIFY THAT THIS SURVEY CONFORMS TO THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS' STANDARDS OF PRACTICE AS ADOPTED APRIL 01, 2001 WITH THE FOLLOWING EXCEPTIONS:

- a) NO WRITTEN REPORT
- b) NO NEW DESCRIPTION
- c) NO NEW PROPERTY CORNERS SET

ROBERT T. GREENLAW P.L.S., #2303  
 DATE: 03-03-16



PLAN SHOWING EXISTING DWELLING  
 AT 10 STAR ROAD CAPE ELIZABETH, MAINE  
 FOR JOE FRUSTACI

Prepared by  
 Robert T. Greenlaw  
 Professional Land Surveyor  
 PLS #2303  
 134 Portland Ave  
 Old Orchard Beach, ME 04064

Scale: 1"=50'	Date: 03/03/16	LT:
Drawn: RTG	Checked: KGG	Job: 2016002



STATE OF MAINE  
CUMBERLAND, SS.

MAINE DISTRICT COURT  
NINTH DISTRICT  
DIVISION OF SOUTH CUMBERLAND  
CIVIL ACTION  
DOCKET NO.

TOWN OF CAPE ELIZABETH,

Plaintiff

v.

STEVEN D. SULLIVAN and  
AMY J. SULLIVAN,

Defendants

CONSENT DECREE AND  
COURT ORDER

NOW COMES, the parties in the above entitled action and stipulate and consent to judgment as follows:

1. The Plaintiff, Town of Cape Elizabeth, is organized as a municipal corporation under the laws of the State of Maine, and is located at Cape Elizabeth, County of Cumberland and State of Maine.
2. The Defendants, Steven D. Sullivan and Amy J. Sullivan, are the owners of real estate located at 16 Beacon Lane, Cape Elizabeth, Maine identified on the Cape Elizabeth Assessor's Maps as Map U15, Lot 3 (the "Premises").
3. Both parties consent to the filing of this Consent Decree and issuance of this Order pursuant to M.R.Civ.P Rule 80K and waive any requirements of service of process, formal citation, and any other jurisdictional issues.
4. In 2000, the Defendants' predecessors in interest constructed a second floor on the premises pursuant to a building permit duly authorized by the Town of Cape Elizabeth.
5. The Plaintiff has at all time relevant hereto enforced a zoning ordinance containing dimensional requirements pertaining to setbacks of structures from property lines. One of the applicable setback requirements affecting the Premises is a front yard setback of 25 feet.
6. Defendants have obtained a mortgage loan inspection plan of the Premises which shows that the second floor addition constructed by Defendants' predecessors in interest does

not conform with the required front yard setback of the Town's ordinances.

WHEREFORE, it is hereby agreed, stipulated and Ordered:

1. The Defendants shall pay attorneys fees and costs in the total amount of \$550.00.
2. The existing structure shall be allowed to remain and be maintained and repaired in its existing location.
3. Plaintiff agrees to relinquish its rights to prosecute the Defendants, their heirs and assigns, for violating the front yard setback provisions of the Cape Elizabeth Zoning Ordinance only to the extent as set forth herein.
4. The Clerk is specifically directed pursuant to M.R.Civ.P. Rule 79(a) to enter this Order on the civil docket by a notation incorporating it by reference.

Dated this 18<sup>th</sup> day of January, 2006.

MONAGHAN LEAHY, LLP

By Michael H. Hill  
 Michael H. Hill, Esq., Bar #3838  
 Attorney for Plaintiff

TOWN OF CAPE ELIZABETH

Michael K. McGovern  
 By Michael K. McGovern  
 Its Town Manager

Steven D. Sullivan  
 Steven D. Sullivan, Defendant

Amy J. Sullivan  
 Amy J. Sullivan, Defendant

\_\_\_\_\_  
Judge, District Court

\_\_\_\_\_  
Date



**CAPE ELIZABETH TOWN COUNCIL MEETING**

**Regular Meeting # 2-2006**

**Monday, January 9, 2006 7:30 p.m.**

		<b>Present</b>	<b>Absent</b>
David J. Backer, Chairman	2 Rugosa Way	X	772-5845 ext 122 12/2006
Cynthia Dill	1227 Shore Road	X	767-7197 12/2008
Carolyn M. Fritz	1 Stirrup Road	X	767-3737 12/2006
Mary Ann Lynch	2 Olde Colony Lane	X	232-1048 12/2007
Paul J. McKenney	5 Katahdin Road	X	899-0045 12/2007
Michael D. Mowles, Jr.	423 Ocean House Road	X	741-2552 12/2006
Anne E. Swift-Kayatta	14 Stone Bridge Road	X	767-5754 12/2008

Manager Michael McGovern X  
Town Clerk Deborah Cabana X  
Roll Call by the Town Clerk  
Pledge of Allegiance to the Flag

**Minutes of Meeting # 1-2006 held December 12, 2005**

Moved by M.A. Lynch and Seconded by A. Swift-Kayatta

**Ordered the Cape Elizabeth Town Council approve the minutes of meeting # 1-2006 held December 12, 2005, as presented.**

(7 Yes)

**Reports and Correspondence**

*Councilor M. Mowles* – expressed concern with the current mooring ordinance and distributed material to the Town Councilors. He stated that he would be requesting that this issue be added to a future town council agenda for consideration.

**Town Manager's Report**

*Manager McGovern* – had received questions about the status of the construction to the property formerly owned by the Town located at 316 Ocean House Road. He noted that site plan construction must be substantially complete by the end of this calendar year.

There have been several articles in the local papers regarding the on-going police negotiations. Manager McGovern explained the process of the negotiations, the status of the current negotiations, and discussed statements made in recent media articles. He also provided written answers to questions that had been posed by Councilor A. Swift-Kayatta.

**Citizens Discussion of Items Not on the Agenda:** None

**Item# 32-2006 Winnick Woods Master Plan Public Hearing**

Town Planner O' Meara and Chairman of the Conservation Commission John Herrick were present at the meeting to answer questions.

The Public Hearing opened at 7:48 p.m.

- *Janice Chapman of 1108 Sawyer Road* stated that she and her husband had offered a few changes to the proposed plan and were very happy with the current plan.

The Public Hearing closed at 7:52 p.m.

Councilor M.A. Lynch had understood that this item is to adopt the Master Plan only. The Town Council is still waiting for information on the legal implications of designating a New England Cottontail habitat. Approval with respect to the habitat would require additional Town Council consideration and action. Manager McGovern confirmed that Councilor Lynch understood accurately.

Moved by C. Fritz and Seconded by M. Mowles

**Ordered the Cape Elizabeth Town Council approve the Winnick Woods Master Plan as proposed.**

(7 Yes)

**Item# 33-2006 Proposed Amendment to the Zoning Ordinance-Bisected Lots**

Moved by M. Mowles and Seconded by A. Swift-Kayatta

**Ordered the Cape Elizabeth Town Council refer the proposed amendment to the Zoning Ordinance-Bisected Lots to the Ordinance Committee.**

(7 Yes)

**Item# 34-2006 16 Beacon Lane - Consent Agreement**

Councilor M. Mowles requested that he be recused from voting on this item, as he felt this item is a possible conflict of interest.

Moved by A. Swift-Kayatta and Seconded by M.A. Lynch

**Ordered the Cape Elizabeth Town Council recuse Councilor M. Mowles from voting on Item #34-2006.**

(6 Yes) (1 Abstention – M. Mowles)

Moved by M.A. Lynch and Seconded by P. McKenney

**Ordered the Cape Elizabeth Town Council authorize the Town Manager to sign a consent agreement permitting an exiting second floor to remain as is at 16 Beach Lane. The property owner would be responsible for the cost of the Town legal work required in the drafting of the consent agreement.**

(6 Yes)

**Item# 35-2006 Personnel Code Amendments**

Moved by M. Mowles and Seconded by P. McKenney

**Ordered the Cape Elizabeth Town Council table Item # 35-2006 until legal counsel can completely review the Code.**

(7 Yes)

**Item# 36-2006 Update of Spurwink Church Regulations and Fees**

Assistant Town Manager Debra Lane and Spurwink Church Representative Janet Hannigan were present at the meeting to answer questions.

Moved by M.A. Lynch and Seconded by A. Swift-Kayatta

**Ordered the Cape Elizabeth Town Council approve the proposed amendments to the Spurwink Church Regulations and Fees.**

(7 Yes)

**Citizens Discussion of Items Not on the Agenda:**

- *Anne Pokras of 79 Bowery Beach Road* – offered recommendations for slowing traffic down.

**Item# 37-2006 Executive Sessions**

Moved by A. Swift-Kayatta and Seconded M. A. Lynch

**Ordered the Cape Elizabeth Town Council in accordance with 1 MRSA Sec. § 405 Paragraph A and D, enter into executive for the purpose of beginning the annual evaluation of the town manager and to discuss labor contracts at 8:17 p.m.**

(7 Yes)

Moved by A. Swift-Kayatta and Seconded M. A. Lynch

**Ordered the Cape Elizabeth Town Council exit executive session at 9:30 p.m.**

(6\* Yes)

\* *Councilor M. Mowles had already left the executive session.*

Following the executive session, the Town Council conducted a workshop to discuss the annual presentation of the Ralph Gould Award.

**Adjournment:**

Moved by P. McKenney and Seconded by M. A. Lynch

**Ordered the Cape Elizabeth Town Council adjourn at 9:55 p.m.**

(6 Yes)

Respectfully submitted,

Deborah S. Cabana  
Town Clerk



STATE OF MAINE  
COUNTY OF CUMBERLAND, SS:

DISTRICT COURT  
LOCATION: PORTLAND  
CIVIL ACTION  
Docket No. CV-12- 160

TOWN OF CAPE ELIZABETH,

Plaintiff

v.

ANDREW V. HOWE and GAY B.  
HOWE,

Defendants

CONSENT ORDER

NOW COME the parties in the above captioned matter and stipulate to the entry of the following Order:

**STIPULATED FACTS**

1. Plaintiff Town of Cape Elizabeth ("Town") is a body corporate and politic which enforces its zoning ordinance through its Code Enforcement Department.
2. Defendants Andrew V. Howe and Gay B. Howe ("Howes") are individuals who own and reside at real property situated at 21 Woodcrest Road in Cape Elizabeth ("Premises").
3. In 1999 or 2000, the Howes constructed an addition to the Premises that violates the Town's ordinance requirement on side setbacks.
4. The Howes obtained a building permit from the Code Enforcement Officer for their addition.

5. The violation was discovered when an abutter commissioned a survey to determine the lines between the properties before beginning their own addition project.
6. Although the Howes relied on a survey done at the time of their addition, it turned out to be inaccurate.
7. The Premises are located in the Residence C ("RC") District of Cape Elizabeth.
8. Prior to the construction of the Howes' addition, the Premises were a Developed Nonconforming Lot under the Town's Ordinance. *See* Town of Cape Elizabeth Ordinance § 19-1-3.
9. The Town's ordinance requires a twenty five (25) foot setback for side yards in the RC District, unless the lot is a Developed Nonconforming Lot and the Code Enforcement Officer has issued a permit, in which case the side yard setback is reduced to ten (10) feet. *See* Town of Cape Elizabeth Ordinance §§ 19-6-3(E)(2), 19-4-3(A)(2)(a) and 19-4-3(A)(1)(a).
10. The addition is eight feet, four inches (8' 4") from the property's sideline.

#### **STIPULATED ORDER**

The parties hereby stipulate that the Court ORDER as follows:

1. The Howes' addition is in violation of the Town's Ordinance.
2. Based on the Howe's unintentional violation of the zoning setback, the Town hereby further waives any right of enforcement which might arise from the location of the addition.
3. A certified copy of this Order shall be duly recorded in the Cumberland County Registry of Deeds, indexing the parties as grantors and grantees, with a marginal

reference to the Howes' source deed, namely, a deed recorded in said registry in Book 11536, Page 249.

- 4. The Order shall be incorporated by reference on the civil docket.

**SEEN AND AGREED**

TOWN OF CAPE ELIZABETH

Date: 3/6/12

*Michael McGovern*  
By: Michael McGovern  
Its: Manager

Date: 3/6/12

*Andrew Howe*  
Andrew Howe

*Gay Howe*  
Gay Howe

**SO ORDERED**

Date: 3/9/12

*[Signature]*  
Judge, Maine District Court

A True Copy

Attest: *Sally A. Bangit*  
Clerk of Courts

**SEAL**

Received  
Recorded Register of Deeds  
Mar 16, 2012 10:04:38A  
Cumberland County  
Panama E. Lovley



for

## TOWN OF CAPE ELIZABETH

Code Enforcement Office  
P. O. Box 6260  
320 Ocean House Road  
Cape Elizabeth, Maine 04107-0060

Phone: 207-799-1619  
Fax: 207-799-5598  
Email:  
bruce.smith@capeelizabeth.org

February 14, 2012

Michael McGovern  
PO Box 6260  
320 Ocean House Rd  
Cape Elizabeth, ME 04107

RE: Andrew & Gay Howe  
21 Woodcrest Road  
Map U04, Lot 118 Setback Violation

Dear Mr. McGovern,

It is my understanding that the Town Council last night authorized you to file an action in the Maine District Court and enter into a consent judgement under which the Town would agree not to seek further enforcement of a setback violation at the above referenced property. That authorization was conditioned upon "the Code Enforcement Officer recommending such action after determining the views of all abutting property owners".

I have talked directly with Kelly Hemeon, the owner of 25 Woodcrest Road (the property abutting the Howe's left side property line) and Helen Ginder, the owner of 3 Woodcrest Road (the property abutting the Howe's rear property line. Each said they did not have a problem with the proposed setback reduction. I saw no need to contact Zachery Greenfield, the owner of property at 17 Woodcrest Road (the property abutting the right side property line and the one most affected) as the Council already has a copy of a letter from him that "fully supports" the Howe's setback issue.

Therefore, based on the fact that the direct abutters have no issue with the setback violation, it is my recommendation that the above action be taken.

Sincerely,

  
Bruce A. Smith  
Code Enforcement Officer





Google

Bruce Smith <[bruce.smith@capeelizabeth.org](mailto:bruce.smith@capeelizabeth.org)>

---

## 21 Woodcrest Road Town Council Action

1 message

**Bruce Smith** <[bruce.smith@capeelizabeth.org](mailto:bruce.smith@capeelizabeth.org)>

Mon, Feb 13, 2012 at 12:28 PM

To: Michael McGovern <[michael.mcgovern@capeelizabeth.org](mailto:michael.mcgovern@capeelizabeth.org)>

Good Afternoon Michael,

I have talked to the owners of the property to the rear (3 Woodcrest Rd.) and to the left (25 Woodcrest Rd.) of 21 Woodcrest Road. They have informed me that they have no issue with the proposed Town Council action. The Howes have submitted, as part of their packet to the Council, a letter from the Greenfields (17 Woodcrest Rd. and to the right) stating their support of the Howes. Therefore, with no negative feedback, I recommend the proposed Council action.

--

Bruce A. Smith  
Code Enforcement Officer  
320 Ocean House Road  
PO Box 6260  
Cape Elizabeth, ME 04107

Email: [bruce.smith@capeelizabeth.org](mailto:bruce.smith@capeelizabeth.org)

Office: 207-7991619

Cell: 207-2320183

Fax: 207-7995598



Google

Bruce Smith &lt;bruce.smith@capeelizabeth.org&gt;

---

## Setback Violation

1 message

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**Michael McGovern** <michael.mcgovern@capeelizabeth.org>

Tue, Feb 14, 2012 at 8:09 AM

To: Bruce Smith <bruce.smith@capeelizabeth.org>, Thomas Leahy <tleahy@monaghanleahy.com>  
Cc: Andrew Howe <swag@gwi.net>

Dear Bruce:

At last night's town council meeting the following item was unanimously approved:

That the Council authorize the Manager to file an action in the Maine District Court in connection with a modest side yard set-back violation at 21 Woodcrest Road created when an addition was constructed in 1999-2000 and the owners mistakenly assumed the location of their boundary with 17 Woodcrest Road, and to thereafter enter into a consent judgment under which the Town would agree not to seek further enforcement of the setback violation, conditioned upon: (a) the owners paying to the Town the cost of such action (estimated at \$1,000); and (b) the Code Enforcement Officer recommending such action after determining the views of all abutting property owners.

Please provide a written recommendation on letterhead to me indicating whether or not you recommend the action and include information on how you have determined the views of all abutting property owners.

Thank you very much.

Mike

--

Michael K. McGovern  
Town Manager  
Town of Cape Elizabeth, Maine  
PO Box 6260, 320 Ocean House Road  
Cape Elizabeth, ME 04107  
[michael.mcgovern@capeelizabeth.org](mailto:michael.mcgovern@capeelizabeth.org)  
[www.capeelizabeth.com](http://www.capeelizabeth.com)  
Phone: [207-799-5251](tel:207-799-5251)

**CAPE ELIZABETH TOWN COUNCIL AGENDA**

**Regular Meeting # 3-2012  
Cape Elizabeth Town Hall  
Monday, February 13, 2012  
7:00 p.m.**

**Roll Call by the Town Clerk**

Sara W. Lennon, Chairman	Term Expires 12/2012	<a href="mailto:slennon@maine.rr.com">slennon@maine.rr.com</a>
Frank J. Governali	Term Expires 12/2013	<a href="mailto:frank.governali@capeelizabeth.org">frank.governali@capeelizabeth.org</a>
Caitlin R. Jordan	Term Expires 12/2013	<a href="mailto:caitlin.jordan@capeelizabeth.org">caitlin.jordan@capeelizabeth.org</a>
Katharine N. Ray	Term Expires 12/2014	<a href="mailto:katharine.ray@capeelizabeth.org">katharine.ray@capeelizabeth.org</a>
David S. Sherman, Jr.	Term Expires 12/2014	<a href="mailto:dsherman@dwmlaw.com">dsherman@dwmlaw.com</a>
Jessica L. Sullivan	Term Expires 12/2012	<a href="mailto:jsullivan08@maine.rr.com">jsullivan08@maine.rr.com</a>
James T. Walsh	Term Expires 12/2012	<a href="mailto:jim.walsh@capeelizabeth.org">jim.walsh@capeelizabeth.org</a>

The Pledge of Allegiance to the Flag  
Town Council Reports and Correspondence  
Citizen Opportunity for Discussion of Items Not on the Agenda  
Town Manager's Report

Review of Draft Minutes of January 9, 2012 Meeting

Public Hearing: Sewer Rates

**Item # 37-2012      Sewer Rates**

Draft Motion:

**ORDERED**, that the Cape Elizabeth Town Council, pursuant to Sec. 15-1-11 of the Town Ordinances, does hereby revise and adopt the following Sewer Service Charge and Schedule:

A.      The following user charge shall be effective for the first bill issued after the indicated date for all buildings within the Town of Cape Elizabeth connected to the public sanitary sewers of the Town:

Effective March 1, 2012

\$ 40.00      Up to 100 cubic feet of monthly measured water usage  
\$ 5.10      Each additional 100 cubic feet, or fraction thereof, of monthly measured usage

Effective March 1, 2013

\$ 43.00      Up to 100 cubic feet of monthly measured water usage  
\$ 5.25      Each additional 100 cubic feet, or fraction thereof, of monthly measured usage

Effective March 1, 2014

\$ 46.00      Up to 100 cubic feet of monthly measured water usage  
\$ 5.41      Each additional 100 cubic feet, or fraction thereof, of monthly measured usage

Effective March 1, 2015

\$ 48.00      Up to 100 cubic feet of monthly measured water usage

\$ 5.57 Each additional 100 cubic feet, or fraction thereof, of monthly measured usage

The sewer service charge shall be applied directly for each water meter in place and for every structure attached to the municipal sewer.

**B. Sewer Connection Fee Effective January 1, 2010**

Pursuant to Sec. 15-1-6 (b) and 15-1-6 (c) of the Town Ordinances, the connection fee, including inspection and start-up assessment, shall be as follows:

\$4,000 for each unit to be served by the municipal sewer system with said fee to be paid prior to any connection to said system.

C. **ORDERED**, in accordance with Sec. 15-1-11 (c) of the Sewage Ordinance, interest for past-due sewage charges shall be assessed beginning twenty-five (25) days after date of billing at the same interest rate as is charged for past due taxes.

**Public Hearing: Fort Williams Park Master Plan Update**

**Item # 38-2012**

**Fort Williams Park Master Plan Update**

**Link to Summary**

It is recommended the Town Council refer to the Planning Board and the Fort Williams Advisory Commission the proposed master plan update (amendments) dated January 2012 for Fort Williams Park and hereby request comments within sixty days. This is in conformance with Sec 19-6-8 D.1. of the Cape Elizabeth Zoning Ordinance

**Item # 39-2012**

**Short Term Rentals Proposed Referral to Planning Board**

At the September 12, 2011 meeting, the Town Council forwarded to the Ordinance Committee a request to “review whether or not the Town should consider limitations on specific uses of short term rental properties in residential areas.”

The Ordinance Committee met four times in November, 2011 and 2 times in January 2012 regarding short term rentals. All meetings were held at 8:00 a.m. on weekday mornings. There were over 100 citizen comments and correspondence during the Ordinance Committee process. At the January 20, 2012 meeting, the Ordinance Committee voted 3-0 to forward the attached draft Short Term Rental amendments to the Zoning Ordinance to the Town Council for consideration.

The linked amendments reflect the Ordinance Committee’s effort to balance the concerns of neighbors with the desire of private property owners to rent their property on a short-term basis. The draft establishes a permit requirement for all short term rentals, and more specific standards for properties on lots of less than 30,000 sq. ft. where the property owner does not live on the same lot or an abutting lot. One of the standards limits the total number of tenants at a short term rental at 12 plus no more than one-half the total number of tenants as day guests.

**Item # 40-2012**

**Old Setback Violation Material A Material B**

A setback violation mistakenly occurred at 21 Woodcrest Road in 1999. It is not possible to have a variance granted at this time. The town attorney has worked with the attorney for the property owner and in consultation with the code enforcement officer and the town manager to prepare a proposed resolution.

Draft Motion: That the Council authorize the Manager to file an action in the Maine District Court in connection with a modest side yard set-back violation at 21 Woodcrest Road created when an addition was constructed in 1999-2000 and the owners mistakenly assumed the location of their boundary with 17 Woodcrest Road, and to thereafter enter into a consent judgment under which the Town would agree not to seek further enforcement of the setback violation, conditioned upon: (a) the owners paying to the Town the cost of such action (estimated at \$1,000); and (b) the Code Enforcement Officer recommending such action after determining the views of all abutting property owners.

**Item # 41-2012**

**Bus Trolley Program for Fort Williams Park .**

Draft Motion: Ordered: The original fees adopted by the Town Council shall remain in place except that any locally based tour operator who agrees in advance to participate in our invoicing program shall pay \$35.00 per bus instead of \$40.00 per bus. This includes the cruise ship buses and all buses coordinated by locally based operators. The trolleys will be \$1,500 for each of the three trolleys in regular circulation with the billing schedule to be determined by the Portland Head Light Museum Director. . A backup trolley occasionally used by the operator will not be additionally charged.

In addition, the Portland Head Light Museum Director .may have the flexibility to waive some bus fees, in 2012 only, for any tour where evidence can be shown that the tour and pricing were set before November 1, 2011. This is in the interest of building long term cooperative arrangements with the tour operators and does not apply to tours in conjunction with cruise ships. The Portland Head Light Museum Director will also work with our webmaster in providing bus and tour operators an opportunity to prepay fees through the Portland Head Light website.

The Town Council also agrees to authorize the hiring of greeters at Portland Head Light in 2012 provided 75% of the cost is paid through the budget for Portland Head Light. The greeter program shall be in effect from May through October and shall not exceed \$15,000 in total cost.

**Item # 42-2012**

**Bond Refunding**

We have an opportunity to call our 2002 bonds which paid for the renovation of the community center. The estimated savings is \$115,000.

TOWN OF CAPE ELIZABETH, MAINE  
TOWN COUNCIL VOTE AUTHORIZING REFUNDING BONDS IN AN AMOUNT NOT TO  
EXCEED \$780,000

WHEREAS, the Town has previously issued its \$1,500,000 2002 General Obligation Bonds dated June 1, 2002 (the "Prior Bonds"); and

WHEREAS, the Town wishes to refinance up to \$780,000 of the Prior Bonds in order to take advantage of a drop in interest rates and effect a cost savings to the Town.

NOW, THEREFORE, it is hereby

VOTED: Pursuant to the provisions of Section 5772 of Title 30-A of the Maine Revised Statutes and all other authority thereto enabling, and in order to provide funds to refinance the Prior Bonds, the Town Council of the Town of Cape Elizabeth hereby authorizes the Treasurer to borrow on behalf of the Town up to \$780,000 in principal amount to refinance the Prior Bonds.

VOTED: That in order to effect the borrowing heretofore authorized, the Treasurer be and hereby is authorized to prepare, issue and sell notes or bonds of the Town in the aggregate principal amount not to exceed \$780,000, such notes or bonds to be signed by the Treasurer, countersigned by the Chairman of the Town Council and attested by the Town Clerk under the seal of the Town and to be in such form, have such maturity and bear interest at such rate as may be approved by the Treasurer and Chairman of the Town Council by their execution thereof.

VOTED: The form, maturity, interest rate and other details of said notes or bonds shall be as determined by the Treasurer and the Chairman of the Town Council by their execution thereof, but shall have a final maturity not later than 20 years from date of issuance, and shall not be inconsistent with the provisions hereof. Such notes or bonds and any notes issued in anticipation thereof may be issued as callable notes or bonds in the discretion of the Treasurer and Chairman of the Town Council.

VOTED: That the Treasurer is authorized to negotiate, execute and deliver, in the name of and on behalf of the Town such contracts, agreements, and other documents, including refunding escrow agreements, verification reports, Bond Purchase Agreements, instruments and certificates as may be necessary or appropriate as determined and approved by the Treasurer in connection with the refinancing of the Prior Bonds, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Treasurer, such approval to be conclusively evidenced by his execution thereof.

VOTED: That the Treasurer be and hereby is authorized to engage Moors & Cabot, Inc. as financial advisor to the Town in connection with the issuance and sale of the Bonds.

VOTED: That the Treasurer be and hereby is authorized to select the underwriter for the Bonds heretofore authorized and the Treasurer be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith.

VOTED: That the Treasurer be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Treasurer, with the advice of the bond counsel for the Town, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the Town in connection with offering the Bonds for sale be and hereby is approved.

VOTED: That the Treasurer be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds heretofore authorized and an escrow agent for the Prior Bonds and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services.

VOTED: That the Bonds heretofore authorized shall be transferable only on the registration books of the Town kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of \$5,000 and any integral multiple in excess thereof (or such other minimum denomination as the Treasurer shall approve) upon surrender thereof at the principal office of the Transfer Agent, with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond, the Town and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same.

VOTED: That the Treasurer be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds, and the Treasurer be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds for and participate in the Depository Trust Company Book-Entry Only System.

VOTED: That the Treasurer and Chairman of the Town Council from time to time shall execute such bonds as may be required to provide for exchanges or transfers of Bonds as heretofore authorized, all such Bonds to bear the original signature of the Treasurer and Chairman of the Town Council, and in case any officer of the Town whose signature appears on any Bond shall cease to be such officer before the delivery of said Bond, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof.

VOTED: That the Treasurer be and hereby is authorized and directed to covenant and certify on behalf of the Town that no part of the proceeds of the issue and sale of the Bonds authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended.

VOTED: That if the Bonds or any part of them, are issued on a tax-exempt basis, the officers or officials executing the Bonds be and hereby are individually authorized to covenant and agree, on behalf of the Town, for the benefit of the holders of such Bonds, that the Town will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the Town will refrain from any action that would cause interest on the Bonds to be subject to federal income taxation.

VOTED: That the officers executing the Bonds be and hereby are individually authorized to covenant, certify and agree, on behalf of the Town, for the benefit of the holders of such Bonds, that the Town will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met.

VOTED: That any or all of the Bonds issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the Town Council of the Town of Cape Elizabeth.

VOTED: That the Treasurer and Chairman of the Town Council and Clerk and other proper officials of the Town be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds hereinabove authorized.

VOTED: That if any of the officers or officials of the Town who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds so signed and sealed shall have been actually authenticated or delivered by the Town, such Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the Town by those persons who, at the actual date of the execution of such Bonds, shall be the proper officers and officials of the Town, although at the nominal date of such Bonds any such person shall not have been such officer or official.

VOTED: That if the Treasurer or Chairman of the Town Council or Clerk are for any reason unavailable to approve and execute the Bonds or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

VOTED: That the investment earnings on the proceeds of the Bonds, if any, and the excess proceeds of the Bonds (including premium), if any, be and hereby are authorized to be used to fund the refunding escrow for the Prior Bonds, to pay redemption premium on the Prior Bonds, if any, to pay interest on the Prior Bonds or the Bonds and to pay issuance costs for the Bonds.



**Item # 43-2012**

**Town Council Goals for 2012**

It is proposed to approve the draft goals the town council has discussed and reviewed at two previous workshop meetings.

**Item # 44-2012**

**Thomas Memorial Library and Cultural Center**

The following proposed actions reflect discussion at a town council workshop held on February 6, 2012

Ordered: The town council hereby:

1. Requests the Trustees of the Thomas Memorial Library to finalize and present to the town council a cultural center plan which optimizes functionality and accessibility of space and resources, adaptability for current and emerging technology and which emphasizes programming and resources for youth. As part of this plan, a pro forma operating budget should be prepared for programs, staff and utility costs for the new facility.
2. Requests the town manager to work with the Trustees and the Cape Elizabeth Historic Preservation Society to re-evaluate the space needed for archival storage in the proposed new facility.
3. Requests the town council chairman, the finance committee chair and the town manager to work with school officials and others to evaluate capital needs in light of the upcoming retirement of debt service payments for past school projects.
4. Requests the town manager to include in his recommended FY 2013 budget funds for part-time library staff so that the library director and the children's librarian may free up time for project planning and for implementation of enhanced library programming
5. Expresses its sincere appreciation to the Trustees of the Thomas Memorial Library, to the Thomas Memorial Library Foundation, to Demont Associates, to the library study oversight committee, to Jay Scherma, to Judy McManany and to all of the citizens who participated in the library study through meeting with representatives of Demont Associates.

**Item # 45-2012**

**Drainage Easements**

It is proposed to gratefully accept two drainage easements on Rocky Knoll Road from the Dinmore and Kerrigan properties. The town attorney shall file the deeds upon receiving releases from any mortgage holders.

Quit-claim Deed from Dinmore

Easement from Kerrigan

Survey showing both

**Item # 46-2012**

**Great Pond Boat Rack Program**

It is recommended the Town Council thank the Conservation Commission for their report on the Great Pond Boat Rack Program and approve its recommendations.

**Item # 47-2012**

**Hardship Abatement Guidelines**

Chairman Lennon, Councilor Sherman, Debra Lane and Michael McGovern served as a study group to prepare guidelines for consideration of applications for hardship abatements. It is recommended the Town Council approve the proposed guidelines.

**Citizen Opportunity for Discussion of Items Not on the Agenda**

**Item # 48-2012**

**Town Manager Annual Evaluation**

It is recommended the Town Council in conformance with 1 MRSA §405 6 A enter executive session to continue the annual evaluation of the town manager.

**Adjournment**

**Link to Monthly Financial Information**

**Public Participation at Town Council Meetings**

After an item has been introduced, any person wishing to address the council shall signify a desire to speak by raising their hand or by approaching the lectern. When recognized by the chairman, the speaker shall give his or her name and address or name and local affiliation, if the affiliation is relevant, prior to making other comments. All remarks should be addressed to the Town Council. Comments shall be limited to three minutes per person; however, the time may be extended by majority vote of councilors present. For agenda items that are not formally advertised public hearings, the time for public comments is limited to 15 minutes per agenda item. This time may be extended by a majority of the Town Council. The chairman may decline to recognize any person who has already spoken on the same agenda item and may call on speakers in a manner so as to balance debate. Once the Council has begun its deliberations on an item, no person shall be permitted to address the Council on such item.

**Speaking at the meeting on topics not on the agenda at regular Council meetings**

Persons wishing to address the Council on an issue or concern local in nature not appearing on the agenda may do so at a regular Town Council meeting before the town manager's report and/or after the disposition of all items appearing on the agenda. Any person wishing to address the Council shall signify a desire to speak by raising their hand or by approaching the lectern. When recognized by the chairman, the speaker shall give his or her name and address or name and local affiliation if the local affiliation Council. Comments in each comment period shall be limited to three minutes per person and 15 minutes total; however, the time may be extended by majority vote of councilors present.

**Decorum**

Persons present at Council meetings shall not applaud or otherwise express approval or disapproval of any statements made or actions taken at such meeting. Persons at Council meetings may only address the Town Council after being recognized by the chairman.

DRAFT MOTION  
re: 21 Woodcrest Road

That the Council authorize the Manager to file an action in the Maine District Court in connection with a modest side yard set-back violation at 21 Woodcrest Road created when an addition was constructed in 1999-2000 and the owners mistakenly assumed the location of their boundary with 17 Woodcrest Road, and to thereafter enter into a consent judgment under which the Town would agree not to seek further enforcement of the setback violation, conditioned upon: (a) the owners paying to the Town the cost of such action (estimated at \$1,000); and (b) the Code Enforcement Officer recommending such action after determining the views of all abutting property owners.



## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: August 7, 2012  
SUBJECT: Survey Zoning Amendment

### Introduction

The Cape Elizabeth Town Council has referred to the Planning Board an amendment crafted by the Ordinance Committee that would require a standard boundary survey for some building permits. The proposed amendment to the Zoning Ordinance would require a standard boundary survey for projects of \$10,000 or more in value where construction will be located within 5' of the minimum setback. Provision of only the property boundaries closest to the construction is an option.

### Background

Currently, an applicant must show the location of property boundaries on a building permit application, but there is no minimum requirement of property line accuracy. Consequently, some building permits are issued on faulty location of property line information. Errors are usually uncovered when the property is being sold. Options to cure the problem and clear the title are limited.

The property owner can remove the portion of the structure in violation of the setback. This is almost never desired as it can be costly and devalue the property. The property owner can apply for a variance from the Zoning Board of Appeals. The Zoning Board must find that the variance standards have been met. Further, the Zoning Board cannot grant a variance to allow a setback of less than 10', so the variance option is not always available. Finally, the property owner can seek a Consent Agreement with the Town Council essentially agreeing not to enforce minimum setbacks where the violation occurs. This option is also costly and the Town Council is reluctant to enter into Consent Agreements.

Following a Consent Agreement item on the February, 2012 Town Council agenda, the Ordinance Committee reviewed the existing building permit requirements, a range of survey options, and recommended that the property boundary information required be upgraded to a standard boundary survey quality.

### History of property line location errors

As stated above, it is very difficult to know how often building permits have been issued in reliance on faulty property boundary information. Errors are most commonly discovered when a property is for sale and the prospective buyer's lender identifies an encroachment as part of the appraisal.

The following summary is based on a review of the Zoning Board of Appeals records 2001-present, Town Council records, and anecdotal information. In cases where the seller elected to correct the problem without town involvement, there may be no record of the encroachment.

*U4-118, 21 Woodcrest Rd*

The Howes applied for a building permit in November, 1999 for a building addition valued at \$60,000, with a minimum setback of 10' from the property line. The lot is 7,980 sq. ft. with minimum side setback of 10'. Property boundary information was based on a mortgage inspection plan. A survey of the abutting property (17 Woodcrest) was conducted in 2011 in preparation for construction of an addition. This survey indicated that the property line was located 20" closer. Because 21 Woodcrest is for sale, the setback violation needs to be corrected. At the February 13, 2012 meeting, the Town Council agreed to enter into a Consent Agreement with Andrew and Gay Howe to not seek further enforcement of a setback violation. This includes an 80-B action and agreed consent judgment. Estimated cost to the Howes (\$3,000-\$4,000).

*U16-63, 7 Crescent View Ave*

The Millers applied for a building permit in September, 2001 for an addition valued at \$71,000, with a minimum front setback of 25'. The lot is 12,015 sq. ft. and the minimum side setback is 25'. The Millers applied for and received a variance from the Zoning Board of Appeals to reduce the side setback 2' to the required 25'. Property boundary information was based on a mortgage inspection plan. In 2006, the property owners discovered that the mortgage inspection plan was inaccurate. In October, 2006, the owners were granted a new variance from the Zoning Board for a 4.5' side setback variance. The new variance was also based on a mortgage inspection plan. Estimated cost to the Millers is unknown.

Other questions

In preparation for review of this amendment, a Planning Board member asked the following questions.

1. Is there a record of a demolition in order to correct a setback violation?

No, there is no record I have found of a demolition where a permit has been issued, the property line has been incorrectly identified and there is a setback violation. There are instances where demolition of a portion of a structure has occurred to cure setback violations, such as when a structure has not received a building permit or the structure was incorrectly located on the lot.

2. How egregious are the setback violations that have been discovered?

See examples above.

3. What are the cost implications of requiring a survey?

Attached are survey cost estimates obtained as part of the Ordinance Committee preparation of this amendment.

4. Does the Town Code Officer have discretionary power to require a survey?

Yes, he does right now. As a practice, he advises applicants that there is some risk and does not require a survey.

5. Has the Town Code Enforcement Officer expressed a desire for this amendment?

No.

### Next Steps

The Planning Board may table this to another workshop or move it to a regular meeting, when a public hearing can be scheduled.