

**STATE OF MAINE
COUNTY OF CUMBERLAND, SS:**

**DISTRICT COURT
LOCATION: PORTLAND
CIVIL ACTION
Docket No. RE-16-_____**

TOWN OF CAPE ELIZABETH,

Plaintiff,

v.

SCOTT and CHERYL JOYS,

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 Scott Joys and Cheryl Joys (“Joyses”) are individuals who own and reside at real property situated at 10 Star Road in Cape Elizabeth (“Premises”).
3. In 2003, the Joyses constructed an addition to the Premises that violates the Town’s ordinance requirement on front setback.
4. The Joyses obtained a building permit from the Code Enforcement Officer for their addition.
5. The violation was revealed by a survey that was conducted as part of a proposed real estate transaction.
6. Although the Joyses had intended to comply with the existing requirements for front setback, it appears that their measurements were taken from an incorrect demarcation of the property’s front boundary line.

7. The Premises are located in the Residence C (“RC”) District of Cape Elizabeth on a local street.

8. The front setback for a structure on a lot on a local street in the RC District is twenty feet (20’). See Town of Cape Elizabeth Ordinance § 19-6-3(E)(2).

9. The addition is 15 feet, five inches (15’ 5”) from the property’s front line.

10. The Joyses hereby agree to pay a fine in the amount of five thousand dollars (\$5,000.00) for the violation of the Town’s Ordinance.

11. The Joyses hereby agree to pay the costs of this action; in addition, the Joyses also agree to pay reasonable attorney’s fees incurred by the Town to bring this action, in an amount not to exceed two thousand dollars (\$2,000.00).

12. Based on the Joyses’ unintentional violation of the zoning setback and their agreement to pay the above-referenced fine, the Town hereby further waives any right of enforcement which might arise from the location of the addition.

STIPULATED ORDER

The parties hereby stipulate that the Court ORDER as follows:

1. The Joyses’ addition is in violation of the Town’s Ordinance.
2. The Joyses shall pay the Town the sum of five thousand dollars (\$5,000.00) as a fine for the violation of the Town’s Ordinance.
3. The Joyses shall pay the costs associated with this action.
4. The Joyses shall pay reasonable attorney’s fees incurred by the Town to bring this action, in an amount not to exceed two thousand dollars (\$2,000.00).
5. The Town has waived any right of enforcement which might arise from the location of the addition referenced above as it relates to existing setbacks.

6. Upon payment of the above-referenced fine and reimbursement by the Joyses of the costs and attorney's fees ordered above, 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 Joyses' source deed, namely, a deed recorded in said registry in Book _____, Page _____.
7. The Order shall be incorporated by reference on the civil docket.

SEEN AND AGREED

TOWN OF CAPE ELIZABETH

Date: _____

By: Michael McGovern
Its: Town Manager

Date: _____

Scott Joys

Cheryl Joys

SO ORDERED

Date: _____

Judge, Maine District Court