TOWN OF ELIOT – BOARD OF APPEALS MEETING

June 17, 2010

PRESENT: Ed Cieleszko, Chairman; Phil Lytle; Bill Hamilton and Alternates Ellen Lemire and John Marshall

ABSENT: Jeff Cutting and Peter Billipp

ALSO PRESENT: Paul White, CEO; Steve Beckert, Planning Board Chair; Dana and Karen Norton, Mr. and Mrs. McKinney, Mark Spezia and Scott Taylor, Cabot Trott, Atty. David Bubrow, Barbara Boggiano, Recording Secretary and others.

1. **7:00 p.m. ROLL CALL**

Chairman Cieleszko called the meeting to order at 7:00 p.m. and introduced the members. He stated that all would be voting members for the three hearings and that he would vote in case of a tie.. He asked if any member felt they had a conflict of interest with any of the hearings and none was noted.

Chairman Cieleszko asked if the appellants were all present and they indicated that they were. Atty. David Bubrow said he would speak on Mr. Spezia's behalf.

Chairman Cieleszko outlined the proceedings for those present.

2. **PUBLIC HEARINGS:**

A. **Request for an Administrative Appeal by Dana L. Norton, 455 Main Street, Eliot, Maine, (Tax Map 4, Lot 21) of the Planning Board's decision on April 20, 2010 regarding parking as stated in Planning Board Notice of Decision Letter.**

Chairman Cieleszko summarized Mr. Norton's request for an administrative appeal of the decision taken by the Planning Board on April 20th and said interested parties are the Planning Board, Dana Norton and any abutters. He stated the Board of Appeals has jurisdiction to hear this appeal, found in Sec. 45-49 (a). He said that Dana Norton has standing, but there is a problem with the timeliness of the action.

Chairman Cieleszko said that the Planning Board met on April 20th, and Mr. Norton had 30 days to file an appeal of their decision, which ended up being received by the town on June 2nd 2010.

Chairman Cieleszko asked Mr. Norton, without getting into the case, how he believed his request fell under the 30-day requirement for filing an appeal.

Mr. Norton replied he was asked by the Board of Selectmen to go to the Planning Board and the Planning Board denied his request, but he did not remember being informed he had 30 days to appeal. He said he was supposed to get back to the Board of Selectmen, but he was unable to attend their meeting. He said he went to the next Board of Selectmen meeting.

Mr. Norton said he asked Mr. White when the limitations were up and Mr. White said that Mr. Norton had 4-5 days after the Board of Selectmen Meeting, and so he went to the Board of Appeals. He said Mr. White made an error and the 30 days were actually up, but the Board of Selectmen instructed him to come to the Board of Appeals, so he is here.

Chairman Cieleszko wanted to verify that the Planning Board minutes that were supplied in the Board of Appeals' packets were approved and asked Chair Beckert who was present if they were. He responded yes, they were approved and not draft minutes.

Chairman Cieleszko wanted to call to the BOA members' attention that in those minutes, which are in their packets, in the last part of Dana Norton's case, Chair Beckert explained to Mr. Norton the 30-day procedure for an appeal.

Chairman Cieleszko said also in the Board's packets is a copy of Dana Norton's Notice of Decision letter from the Planning Board, dated May 4, 2010, which also refers to the 30 day opportunity to appeal his case of the Planning Board's decision of April 20, 2010.

Chairman Cieleszko said that there is a concept of law that if a town official tells someone something, sometimes there is an option to re-dress, but if someone was told before, during and after, that re-dress is not available, unless the Court decides differently. He said it is not for the Board of Appeals to decide.

Chairman Cieleszko said that in the Board of Appeals manual, there is a discussion on how to approach this issue and the BOA has no authority to change it and read that excerpt.

John Marshall asked if he was reading from the Code or was that Maine Municipal Association's opinion. Chairman Cieleszko responded it is not in the ordinance, it is in the Board's manual.

Mr. Marshall said it is supplied by MMA. Ms. Lemire confirmed that it is from MMA.

Chairman Cieleszko asked at this juncture, are there any questions about the timeliness of the appeal that needed to be addressed. Hearing no one, Chairman Cieleszko said it is the Board of Appeals' duty to deny the request if the Board feels the appeal was submitted after the 30-day deadline.

Bill Hamilton moved to deny the request by Dana Norton for an administrative appeal of the Planning Board's decision on April 20th, 2010 because the application was not received within the 30-day time period required by town Code. Seconded by Ellen Lemire. No discussion.

Chairman Cieleszko said the motion is to deny because it was not received within the 30-day period.

Vote taken by a show of hands and the motion passed, 4-0. Chair concurs with the majority.

Chairman Cieleszko said he would issue Mr. Norton a notice of decision letter within seven days and that Mr. Norton had 45 days to appeal the Board's decision to Superior Court.

Karen Norton said the Board of Selectmen gave them special circumstances to do this and she did not understand. Chairman Cieleszko said he had no idea but the Board of Selectmen has no bearing on the Board of Appeals and this case.

B. Request for an Administrative Appeal by Mark L. Spezia, 15 Bayberry Drive, Eliot (Tax Map 19, Lot 41) of the Code Enforcement Officer's decision to deny a permit based on his interpretation of the ordinance.

Chairman Cieleszko said that Mark Spezia was at the last meeting, and he was denied his requests for a waiver and a variance to construct an additional accessory building 10 ft. from the property line.

Chairman Cieleszko said the Board has jurisdiction to hear Mr. Spezia's appeal under 45-49(a), but again, he questioned the timeliness.

Chairman Cieleszko said the Board has a copy of Mr. White's letter to Mr. Spezia, but it is dated September 29, 2009 and asked Mr. White when was the letter written.

Mr. White replied it looks like he has the wrong date on the letter and that he wrote it within a few days after the last Board of Appeals meeting (May 20). He said what he does is use another letter and transfers the information, but apparently, he forgot to change the date. He said that Mr. Spezia did submit his application in a timely manner.

Mr. Spezia said it was about two weeks ago that he received Mr. White's letter. Mr. White said he would check his computer to see what date he was working on the document.

While Mr. White was checking his computer, Mr. Spezia's lawyer, Atty. Bubrow distributed copies of information to the Board members.

Mr. White returned and said that he wrote the letter to Mr. Spezia on May 27, 2010. Atty. Bubrow said he had received a copy in his office two weeks ago.

Mr. Hamilton asked Mr. White, through the chair, if Mr. White had not updated the letter. Mr. White said he has other letters with detailed information, so the information was updated, but he did not change the date.

Mr. Hamilton asked Mr. White if he had not noticed this until recently. Mr. White responded yes.

At that time, Mr. Spezia said he would defer to his lawyer, David Bubrow.

Atty. Bubrow said that he was here, representing Mark Spezia to appeal the letter denying Mr. Spezia's building permit application for an attachment to an accessory building located on his property. He said that Mr. Spezia is seeking to add an attachment to an already existing accessory building.

Atty. Bubrow said if the Board looks at the diagram submitted, there should be no argument that the accessory building is intended to be subordinate to the principal structure, but that is why Mr. Spezia's request was denied because the CEO determined that the principal building has less square footage than the accessory building.

Atty. Bubrow said that Mr. White referenced Sec. 45-405, which allows accessory buildings to meet a lesser setback of 10 ft. from the side and rear only, but note "c" allows the lesser setback provided that the accessory building is smaller in size than the principal use. Atty. Bubrow said we believe Mr. White made an error because he did not include the deck, which is attached to the principal structure. He said Mr. White considered the garage to be part of the principal structure, but the same argument can be made for the deck, it is part of the principal structure, which is greater than the square footage of the accessory building.

Atty. Bubrow referred to *General Provisions* CD 1-2, and read the definition for "accessory structure" or "use" which "means a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure."

Atty. Bubrow said the deck and garage are an integral part of the principal structure. He asked the Board to look at the case of *Union vs. Mike Strong* and on page 3, the issue was the deck was considered accessory or part of the principal structure. He said generally "accessory structures" must be on the same lot, but not attached to the principal structure. He said in this (Mark Spezia's) case it is reversed.

Atty. Bubrow said when [Mr. Spezia's] deck became joined, it became an integral part of the structure and must comply to the setback requirements, but both apply to "principal structure." He said that the denial was based on the accessory structure and he concluded that Mr. White erred because he stated the deck is being used for accessory purposes and not part of the principal structure.

Atty. Bubrow said the deck is being used as a unit which is part of the principal structure, where they can eat and socialize. He said the same goes for the garage, which Mr. White originally agreed to.

Atty. Bubrow said based on that, it is his opinion that Mr. White's analysis was wrong when he interpreted the Code and Maine law. He said in §1-2, it defines a deck, or similar extension, attached by a roof, is part of the principal structure, which would allow greater square footage, and would allow Mr. Spezia to have the accessory building.

Chairman Cieleszko asked if there were any questions by the Board of the appellant.

Mr. Marshall asked if the second floor figure was part of the configuration, because the law court's decision was based on the second floor and he wanted to know if it was figured in the square footage.

Atty. Bubrow replied he did not believe that is what they are addressing.

Mr. Marshall said he is talking about a two story house, and wanted to know if he was referring to just the footprint.

Atty. Bubrow responded the second floor square footage would be part of the number.

Mr. Marshall said that he was using the square footage of the footprint of the building.

Chairman Cieleszko asked how are they reconciling the principal use with principal structure. Atty. Bubrow said that they are addressing that by definition in that if it is an integral part of the structure, technically it is considered "use."

Chairman Cieleszko said if there is a definition, he is not sure what they are addressing is essentially applicable to anything in "principal structure" incorporating "use" and referred to note (c) of Sec. 45-405.

Mr. Spezia read "use" meaning the "primary use to which the premises are devoted and the main purpose to which the premises exist. He said it can not be established until you build and conduct an activity on a fixed lot. He said it is determined as principal structure and the terms are interchangeable and does not specify size, only functions for which the principal use serves. He said it was clear it means one and the same and he did not understand why he was at the meeting.

Chairman Cieleszko again referred to note (c). The attorney asked if there is a difference between principal use and principal building and is there a distinction based on what the Board understands.

Mr. Lytle asked Atty. Bubrow if he had read the definition because he was not sure what the attorney was asking.

Mr. Lytle said the "primary use" of the lot means "the main purpose for which the premises exist" and "there may be more than one principal use on the lot." Mr. Lytle said from what he read, he can summarize that the principal structure refers to a structure containing the principal use and it seemed kind of obvious to him.

Chairman Cieleszko said there can be more than one use.

Mr. Marshall asked if that is what the Board had in this case.

Chairman Cieleszko said just because there are multiple uses does not negate the primary use of the structure.

Mr. Marshall asked if he could quantify that and asked if it would include more of the property. He said that is what is in the code.

Chairman Cieleszko asked Paul White for his input into the proceedings.

Mr. White said he has to consider if the building will have a lesser impact on the neighborhood, and when you have an accessory building, which is what they are talking about, the owner is allowed to have a lesser set back, which in this case is 10 ft.

Mr. White said you have to break it apart, and the way it is written allows the lesser setback for the smaller building. He said there are two issues in the ordinance which needs to be dealt with, Sec. 45-405, Dimensional Standards and accessory buildings – which can be built within 10 ft. from the side and rear setbacks only.

Mr. White said he referred to note (c) and went to the definitions of what is the "primary use" for which the premises are devoted, and the main purpose for which the premises exist." He said he read it to mean what is the main purpose, and while he understands Mr. Spezia's argument that the deck and the garage are attached, he said the main purpose for which the premises exist are for actual living quarters and the primary use is residential.

Mr. White said we all know it {the deck}is attached and is part of the principal structure, but when he looked at it, and the setbacks, and if he added it to the building and it became part of the principal structure, he would have to apply the setbacks of 20 ft. and 30 ft.{respectively}.

Mr. White said the Board has to determine if his opinion of the main purpose of the building being living quarters is wrong. He said if they think the garage is the main purpose of the house and not subordinate to it, then consider the garage – but not without a kitchen, a bedroom, a roof, and he would like the Board to focus on that.

Mr. Hamilton asked Mr. White, from his previous decision, in his computation of principal structure meaning the main use, was Mr. White considering the garage. Mr. White replied no.

Mr. Hamilton asked Mr. White if he had considered the garage at one point.

Mr. White replied that at the last meeting, when Mr. Spezia asked for a waiver and variance request, he said at the time the garage should be added. He said when he read the ordinances and made that statement, he was fully aware of what he had said.

Mr. Hamilton said that 672 sq. ft. is the number that Mr. White used to determine principal use and structure, plus the accessory building, which totals 1140 s.f. plus an additional 240 square ft. for the other accessory building for a total of 1,380 ft., so, in Mr. White's opinion, the accessory building is double the size of the principal structure.

Mr. White said they are not talking about the principal structure here. He said the principal structure includes decks and garages, and that is what we are saying here. He said the language refers to the principal use, and this is smaller than the principal use.

Mr. Hamilton said that answered his question.

Mr. Lytle said that Mr. White is looking at how the building will affect the neighbors, and asked if Mr. White had a feeling of "first come, first served." He said another problem is the deck and garage are attached and the definition for primary use.

Mr. White said that he has to consider the deck and garage but that is not the intention of allowing someone to have a lesser setback, 10 feet from the rear.

Chairman Cieleszko said in looking at the definitions for principal use and primary use to what the premises are devoted and the main purpose for which the premises exist, it is based on "premises" and that definition does not say it is part of the building. He said it says any building as part of the definition of premises, it says lot, land, or portion of land, and asked if Mr. White's conclusion was that structure and use was the same.

Mr. White replied that if it is not divided, it is the same.

Chairman Cieleszko asked if Mr. White could explain in the definition if it's the building and was Mr. White considering the deck and garage not part of it.

Mr. White replied yes, they are all part of it, but it's not part of the principal use.

Chairman Cieleszko asked Mr. White what if Mr. Spezia had no deck or garage on the same lot and he wanted to put up an accessory structure in the same spot, is it allowed.

Mr. White replied yes, as long as it is smaller than the principal use.

Mr. Hamilton asked a hypothetical question: suppose Mr. Spezia had an attached pool, 40 x 60 x 10 and a deck and garage would Mr. White only consider the house as a principal use. He said the main purpose is not sitting out on the deck, but sitting in front of the television. He said there was no simple "main purpose."

Mr. White replied it is fine if Mr. Hamilton disagreed with him.

Mr. Lytle wanted to know if he had a hot house, like a business, on the end of his house, is that considered part of the principal use.

Mr. White replied is a hot house like a greenhouse. He said there is more than one principal use on a lot.

Mr. Lytle asked if a business was considered a principal use. Mr. White responded yes, a greenhouse could be counted in as part of the principal use because the definition allows for more than one.

Chairman Cieleszko asked the attorney if he had any questions for the Code Enforcement Officer, to be made through the Chair.

Atty. Bubrow asked Mr. White in this case in making the application did he look at it subjectively to determine what the principal use and structure represents. Mr. White said his determination between the two was how he read the definition for principal use and principal structure as it is defined in the ordinance.

Atty. Bubrow said that Bill Hamilton had asked this question, but suppose, based on that, as a family unit, they never use the dining room and living room and it is only used for storage, but they use the deck. He asked would Mr. White consider that to be the principal use.

Mr. White replied he did not know, but if the applicant testified before the Board that they ate every meal on the deck, it could be, but Mr. White did not hear that.

Chairman Cieleszko said it is a hypothetical question.

Mr. White said when he looked at the language at the ordinance he determined the building is smaller than the principal use.

Atty. Bubrow showed Mr. White the law court decisions.

Mr. White said he did not know what he had been handed and said they were talking about principal use, and he is not arguing that the deck and garage are part of the principal structure.

Mr. Spezia said that Mr. White had said only the house applies in this calculation.

Chairman Cieleszko said he was not sure that Mr. White had said that and asked Mr. Spezia if that was his question.

Mr. Spezia asked what is a dwelling unit. Mr. White asked if Chairman Cieleszko wanted him to read the definition. Chairman Cieleszko replied if it will satisfy Mr. Spezia's question.

Mr. White read "dwelling unit means a room, or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating. The term shall include mobile homes and apartments, but shall not include trailers, recreational vehicles, or accessory dwelling units. An accessory dwelling unit is not considered an apartment for purposes of this ordinance. The provisions of this definition relating to accessory dwelling units are retroactive to January 1. 2003."

Someone suggested asking Steve Beckert, but Chairman Cieleszko said he had already left.

Chairman Cieleszko asked if there were any interested parties, any abutters who cared to speak.

Mark Grasser, 13 Bayberry Drive said he was here tonight to back up Mark Spezia and he did not see an issue with lessening the setback. He said the setback Mark is asking for is in back and toward the river. He said it is up against wooded property, and in his mind, it's wooded.

Chairman Cieleszko asked the Board if they had any questions for Mr. Grasser. There were none.

Laura Getchell-Shontag (215 Old Road) said she owns the wooded property, since 1973, before the River View Estates were constructed. She said she has seen a considerable change in the water run off on her property and she is concerned that a big structure on the back of Mark {Spezia's} property will impact that more. She said there would be a lot of coverage of the ground and he will be taking down trees in the back of the property.

Ms. Getchell-Shontag said she is concerned about the mitigation of the water line. She said her property sits lower than Mr. Spezia's property, because when River View Estates was constructed, it was filled in.

Chairman Cieleszko told Ms. Getchell that if she had been present at the last meeting, when Mr. Spezia had applied for a variance and a waiver, her testimony would have carried more weight.

Ms. Getchell-Shontag said she never received any notification of that meeting.

Chairman Cieleszko said that her concerns are addressed somewhat by Mr. Spezia's plan, but he said she should have received notification.

Chairman Cieleszko asked Mr. White if he could verify that Mr. Spezia would still have to follow building codes.

Mr. White replied the issue of a building structure and sitting water on someone else's land is not the town's issue, but Mr. Spezia should consider how this accessory building will impact his neighbors' land.

Chairman Cieleszko told Ms. Getchell-Shontag that the Board is not sure if they can address her issue.

Mr. Spezia wanted to know if he could talk to Laura. Chairman Cieleszko replied through the Chair.

Mr. Spezia said, through Chairman Cieleszko, that his building would not affect her property, that he was only asking for a three-foot difference so he does not have to cut any trees.

Chairman Cieleszko asked if there were any other interested parties who cared to speak.

Cabot Trott, 1050 Main Street, said the Board is asking the CEO to verify determining a primary use of a structure why he made that decision. He said Mr. White said it was for residential living, but the Board is deciding to look at Paul White's reasoning. Mr. Trott said when it is a commercial building, they look at it as a life safety issue. He assured the Board that every other code is based on usage, and the primary usage is it living, or mercantile, and he said that is what sets the fire standards.

Chairman Cieleszko asked if Mr. Trott was saying if the fire standards were affected, but Mr. Trott said he was not saying that, just that everything affects what the neighbor's have. He said he is not taking sides.

As an example, Mr. Trott cited the Green Acres B'hai and the primary use of the house, according to the standards is as a dorm, not a restaurant.

Mr. Lytle asked Mr. Trott to say that again.

Mr. Trott replied a lot of other things could be affected by the Board's decision and he had a concern. He said all codes, fire included, go by primary use of a building, and he wanted the Board to keep that in mind.

Chairman Cieleszko said unless the CEO looked at fire standards, fire suppression would not enter into their discussion.

Mr. Trott said how they determine what goes into buildings, and is interest is only that, they use the definition of "primary use."

Chairman Cieleszko said that Atty. Bubrow referred to "principal structure" in *General Provisions*, which refers to a building meaning "the structure in which the primary use of the lot is conducted." He said the primary use and principal use are subservient to the structure, and the principal use is the main purpose for which the premises exist.

Chairman Cieleszko said this would be the time for any rebuttal or closing arguments.

Atty. Bubrow said the principal structure is defining the primary use, and what occurs in that building, which incorporates the deck and garage. He asked are we in the business of determining what a family can do in their own home? He said that is problematic.

Atty. Bubrow said the zoning ordinances are black and white, and the principal building is defined and deck is defined as part of the principal structure. He said the primary use is subservient to the principal structure and based on that, the Code Enforcement Officer's interpretation was not correct.

Mr. Spezia said the area use is the principal use of the dwelling unit under the Code and if is attached it does not matter, the code says it is part of the principal structure. Mr. Spezia said one cannot cherry pick the code to justify past decisions. He said a deck or similar extension of a principal structure or garage attached to the principal structure by a roof or common wall is considered part of the principal structure. He said he does not understand the spurious discussion that they are engaged in. Mr. Spezia concluded that only the living area applies to the principal structure.

Chairman Cieleszko asked if there were any further questions. Hearing none, he closed the public hearing at 8:15 p.m. and stated the findings of fact:

- The owners of the property are Mark and Mary Kathleen Spezia
- The property is located at 15 Bayberry Drive, Eliot, Maine
- Ownership proven by: Deed - Book 6855, Page 171, on December 14, 1993 and received in the York County Registry of Deeds.
- The property is located in the Suburban Zoning District, identified as Assessor's Map 19, Lot 41, and the size of the lot is .46 acres.
- The applicant is Mark Spezia, who has demonstrated a legal interest in the property.
- The lot is a non-conforming lot because of the minimum size needed for this district;
- The applicant is requesting an administrative appeal of the CEO's decision denying a building permit, found in a letter originally dated September 24, 2009, and corrected by the CEO at the hearing to May 27, 2010.
- A completed application was submitted on May 28, 2010**.**
- The Board is authorized to hear this appeal under Sec. 45-49 (a).
- Other relevant facts: a waiver and a variance were heard by the Board of Appeals on May 20th 2010, to the reduction of the side and rear set backs, which were denied.

Mr. Hamilton asked if that last finding was relevant. Chairman Cielesszko said that it came with the packet and he was giving a history, if it is appealed because of timeliness of the appeal and it could have relevance that it was discussed. He said the variance appeal could be used and the date of reference is mentioned as a timeline. Mr. Hamilton said okay.

Chairman Cieleszko continued with the findings of fact with other relevant sections being Sec. 1-2, definitions found in *General Provisions:*

- "Structure" on page CD-28 or "building" means anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks and satellite dishes.

- "Principal Use" means the primary use to which the premises are devoted and the main purpose for which the premises exist. There may be more than one principal use on a lot.

- "Principal Structure" or "building" means the structure in which the primary use of the lot is conducted.

- "Premises" was also brought up, which means any building, lot, parcel of land or portion of land, improved or unimproved, including adjacent sidewalks and parking strips located within the municipality from which is discharged into the storm drainage system and/or may be created, initiated, originated or maintained.

- "Dwelling unit" means a room, or group of rooms designed and equipped exclusively for use as living quarters for only one family, including provisions for living, sleeping, cooking and eating. The term shall include mobile homes and apartments, but shall not include trailers, recreational vehicles, or accessory dwelling units. An accessory dwelling unit is not considered an apartment for purposes of this ordinance. The provisions of this definition relating to accessory dwelling units are retroactive to January 1. 2003."

Chairman Cieleszko asked if any Board members had other additions to the findings of fact.

Bill Hamilton thought the Board needed to put in some numbers, and said it is a single family structure, a 672 s. f. house, with a 484 s.f. garage, and a 464 s.f. deck.

Chairman Cieleszko asked Mr. Hamilton if he was factoring in the accessory building into the additions. Mr. Hamilton replied the proposed accessory structure is shown as 1140 square feet, with an existing accessory building of 240 square feet.

Mr. Lytle wanted to add accessory structure or use. Chairman Cieleszko asked about the accessory dwelling unit.

Mr. Lytle said he wanted to add:

- "Accessory structure or use" means a use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure."

Chairman Cieleszko said "Accessory dwelling unit" means a separated living area which is part of an existing or new single family owner occupied residence, and which is clearly secondary to the existing single family use of the home and that meets the requirements of section 45-459.

Chairman Cieleszko read Sec. 45-49, regarding Administrative Appeals, the Board of Appeals shall hear and decide where an aggrieved person or party alleges error in any permit, order, requirement, determination or other action by the Planning Board or Code Enforcement Officer. The Board of Appeals may modify or reverse action of the Planning Board or CEO by a

concurring vote of at least three members only upon a finding that the decision of the Planning Board/CEO is clearly contrary to the provisions of this Chapter. (page CD45:16)

Chairman Cieleszko said if the Board grants this appeal he believed they have to determine if Paul White was wrong and not just took the ordinance one way when he could have taken it another way, not a grievous defect, but a total mistake, upon reading the code.

Chairman Cieleszko said the second part of this the Board has to be careful, whether the Board agrees with Mr. Spezia or the CEO, and if they have doubts about the CEO, would have to clearly decide that Paul White was wrong.

Chairman Cieleszko said that is his determination of his duties. He said the second part is they do not have to re-write the ordinance, and they can clearly say without adding a definition or interpretation, which is open to conjecture.

Chairman Cieleszko said if the Board grants Mr. Spezia's appeal and not add on to the definition or leave it up to Mr. White to determine himself with all the fire codes. He said he did not want to see "structure" and "use' the same.

Chairman Cieleszko said in this case, Mark Spezia's structure is larger than the accessory structure, but that is as far as the Board needs to go. He said he awaits a motion.

Ellen Lemire said she was not comfortable with what the Chairman had said. She said a lot of the discussion was about principal use and principal structure and accessory building or accessory structure, and we are in agreement or deny the Administrative Appeal of the Code Enforcement Officer.

Bill Hamilton said he did not believe the Board of Appeals sets precedent in the decision making process and if they decide in favor of the applicant, it does not prevent the CEO from giving the same interpretation of a similar case.

Chairman Cieleszko said that is correct.

Phil Lytle said it is very confusing and he agreed somewhat with Ellen.

Ellen Lemire said if the Board agrees with the applicant, they are almost telling him how the CEO grants future ones, and how he determines and how he should react to future ones. Chairman Cieleszko said that every case is unique and there may be a hair's difference in the next case.

Mr. Marshall wanted to know if the motion has to include all the statements of fact, the whole rigamarole, or simply state agree or disagree. Chairman Cieleszko said it would seem to make sense if it is included, the square footage of the primary use had to come up with a number.

Ms. Lemire thought that Mr. White had misinterpreted the square footage of primary use. Chairman Cieleszko referred to "Note c".

Bill Hamilton moved that the Board of Appeals approve the request for an Administrative Appeal by Mark Spezia of the CEO's decision, and in so doing find the decision of the CEO

is contrary to the code, in defining the square footage of the principal use. Phil Lytle seconded the motion.

Mr. Hamilton said his sense is, it all comes down to the word to "attach". He said the code is specific on how attached structures should be handled and there is no grey area in his mind. He said if it is attached and part of the principal structure, then it is part of the principal use.

Chairman Cieleszko believed that was an accurate assessment of the situation.

Vote taken by a show of hands and motion passed, 4-0. The Chair concurred with the majority.

Chairman Cieleszko said he would issue a notice of decision letter to Mr. Spezia within seven days.

Mr. Spezia asked about whether the proposed building, the accessory structure, was eligible for the 10 ft. setback.

Chairman Cieleszko replied the Board had agreed that Mr. Spezia's calculation of square footage of the primary use as being larger than the structure, and nothing else.

Mr. Marshall said Mr. Spezia wanted clarification on the discussion from the last meeting on the 30 ft. rule to another structure on the abutting property and that is to a principal structure, not an accessory structure. He said Mr. Spezia's building would not limit a neighbor putting up a structure 10 ft. from Mr. Spezia's property.

Chairman Cieleszko cautioned Mr. Spezia, saying if he decided, down the road, to have an accessory dwelling unit in that accessory building, or a home business, he would be up against a good wall. Mr. Spezia said that was not his intent.

Chairman Cieleszko said that would apply to a future owner as well because this stipulation would carry through into the future. Mr. Spezia said he did not want to challenge the CEO and was only referring to the process.

Mr. Spezia noted that, according to the requirements of the code, all the abutters, including himself, had to be notified, and he never received a letter, nor did his abutters.

Mr. Lytle thanked him for calling that to their attention.

Chairman Cieleszko said that is why no abutters came.

Mr. Trott said all the abutters, by law have to be notified. Chairman Cieleszko said they are aware of that and he would check into it.

At 8:42 pm, Chairman Cieleszko called a five minute recess. At 8:50 p.m. Chairman Cieleszko re-convened the meeting to take up the third request.

C. Request by Scott Taylor 1063 Main St., Eliot for a Variance to rear setback, Art. VIII, Sec. 45-405 to construct a deck.

Chairman Cieleszko said that Mr. Taylor is requesting a variance to 45-405 for a rear set back and is he was not sure of the reduction of 23 ft. for set back.

Mr. Taylor said he wants to reduce the setback to make it 23 ft. Chairman Cieleszko said that he needs a 7 ft. reduction to the rear setback to make it 23 ft.

Mr. Taylor said that he was here with his cousin, Josh, who is a contractor and his friend Cindy Soffrein. He said he and his cousins would like to build a 12 x 16 ft structure, 18 inches off the ground.

Mr. Taylor said his house is non-conforming, it was built in the early 1800's and he said he wasn't sure the Board knew where it was, but it is the yellow house that is right after Mast Cove Rd. on Main Street, around the bend and it sits very close to the road. He worries someone will hit his house.

He said they want to build a deck off the side of the house, where they have a little landing, and basically that's it. He said nothing abuts the property except it is wooded and they can barely see the other house in the summer.

Chairman Cieleszko said for a variance, Mr. Taylor has to address the four criteria for hardship.

Mr. Taylor asked if the Board had the letter he wrote. Chairman Cieleszko replied yes.

Chairman Cieleszko said Mr. Taylor mentioned it is non-conforming, and asked Paul White if it is. Mr. White replied it is not non-conforming because Mr. Taylor has one acre.

Mr. Taylor replied he meant the house. Mr. White said the house is non-conforming because it is too close to the road.

Chairman Cieleszko asked Mr. White why Mr. Taylor could not apply for a waiver.

Mr. White replied because it is not a non-conforming lot, and if Mr. Taylor's property was less than an acre, he could apply.

Mr. Taylor addressed the first criteria: *The land in question cannot yield a reasonable return unless the variance is requested.*

Mr. Taylor said where they want to build the deck, the land slopes and, on the other side, there is nothing between the house and the garage, except a walkway, so they can't build it there.

Mr. Taylor said he is not looking at a reasonable return in monetary terms, but rather recreational terms as they want to enjoy their yard. He said right now they set up two lawn chairs in their driveway.

Mr. Taylor said, in regard to #2, *the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood* that the property is unique, because they have a non-conforming house which is within 30 ft. of the rear property line and the proposed deck will be no closer to the rear property line than the house currently is.

Mr. Taylor asked the Board if they had the photos he submitted. Chairman Cieleszko replied yes.

#3. That the granting of a variance will not alter the essential character of the locality.
Mr. Taylor said the deck will have a rustic design and will be no means alter the essential character.

#4 – the hardship is not the result of action taken by the applicant or a prior owner.
Mr. Taylor said the house is from the early 1800's and constructed before the zoning laws took effect.

Chairman Cieleszko asked if the Board had any questions of the applicant.

Mr. Marshall said his question was already answered.

Mr. Hamilton asked where the 23 ft. setback is. Mr. Taylor showed him on the diagram.

Mr. Hamilton wanted to know where the rear property line is. Mr. Taylor admitted that the diagram did not copy well and showed him.

Mr. Hamilton asked what is the setback to the right side, from the house. Mr. Taylor replied 22 ft. from the corner of the house to the road it is no more than 24 feet.

Mr. Hamilton asked how close is it to the driveway. Mr. Taylor responded 45 ft., so it is well within the 30 ft. setback of the road.

Ms. Lemire said she saw Mr. Taylor's house and lot.

Mr. Marshall asked if it could be the side boundary and which one gives the better effect. Mr. Taylor replied the side. Mr. Marshall asked why Mr. Taylor wouldn't call it the side and not the back boundary.

Ms. Lemire asked Mr. Marshall what he was talking about. Mr. Marshall replied Lot 14-1.

Josh said the house is situated at an angle.

Mr. Marshall and Ms. Lemire wanted to know looking at the house, what determines the front boundary line.

Mr. White said that the Board should check the definitions, but he would say the road.

Mr. Hamilton said this is a crummy drawing.

Mr. Taylor asked Mr. Hamilton if he would like to look at the lot map.

Mr. Hamilton replied yes, and mentioned to Mr. Taylor that, when the applicant reads the BOA variance application, it states a map must accompany the packet, which shows the dimensions, including a garage or the proposed building. He said a map is part of the requirement and he was having difficulty seeing the drawing and could not make a decision.

Mr. Taylor showed the Board his plot plan and where he wanted to construct the deck.

Mr. White said Mr. Taylor was here on a variance request, if the Board wanted to talk about it.

Mr. Marshall asked Mr. White if Mr. Taylor had a side setback of 20 ft. Mr. White said yes. Mr. Marshall said it is 22 ft. Mr. White looked at the map and said Mr. Taylor is looking for a two foot variance.

Mr. Marshall said he was looking at the map and he didn't think Mr. Taylor needed a variance. He said that Mr. White should give him the permit. He said Mr. Taylor should get his money back.

Mr. Hamilton said that is what he was asking, concerning the side property line.

Mr. Taylor said being a novice, he thought it was the rear property line, but he understood what the Board was saying.

Mr. Marshall asked Mr. White what he thought. Mr. White said OK and that he had looked at the map wrong.

Chairman Cieleszko asked if Mr. White was comfortable with the side setback.

Mr. White said he looked at the tax map.

Mr. Hamilton said he should not have had Mr. Taylor ask for a variance unless he needed one.

Mr. White said he did not know how he missed that.

Chairman Cieleszko asked Mr. White if he was comfortable with that. Mr. White said let him read the definition and again stated he did not know how he missed that.

Chairman Cieleszko asked Mr. Taylor to wait to get a determination by the Code Enforcement Officer.

The recorder asked for clarification on what the Board was discussing regarding the map.

Chairman Cieleszko replied that it was a Civil Consultants survey with the date of certification 1-29-07, which shows a change in identification of the lot line from the rear lot line to the side lot line, negating the need for a variance if everyone concurs, referring to the back lot line, and thinking it was the side lot line.

Mr. White said it was the side lot line, not the rear and Mr. Taylor did not need a variance.

Chairman Cieleszko said that Mr. Taylor did not need a variance, and in the past, the Board has had a variance request withdrawn. He thought that if Mr. Taylor agreed in principle, he could withdraw his request without any issue or without the Board possibly issuing a denial if they went through the case.

Chairman Cieleszko told Mr. Taylor that if the Board continues, Mr. Taylor could file an Administrative Appeal, and it would be re-advertised and brought up at next month's meeting.

Mr. Taylor said he would like to withdraw his request for a variance.

Chairman Cieleszko said concerning a refund of the fee, Mr. Taylor would have to go to the town because the Board of Appeals cannot address that issue and the public hearing was advertised. Mr. Taylor said that was okay, he was just glad that it worked out.

At 9:10 Chairman Cieleszko closed the hearing and apologized to Mr. Taylor. Mr. Taylor thanked the Board and left with Mr. White.

3. **REVIEW AND APPROVE MINUTES AS NEEDED**

Chairman Cieleszko asked for a consensus of the Board to table the May 20, 2010 minutes until the next regularly scheduled meeting due to the absence of Board members Peter Billipp and Jeff Cutting. The Board agreed.

4. **OTHER BUSINESS AS NEEDED - none**

5. **ADJOURN**

John Marshall moved to adjourn the meeting at 9:15 p.m., seconded by Ellen Lemire. All were in favor by a voice vote.

Respectfully submitted,

Barbara Boggiano,
Recording Secretary

Approved by: _____
Ed Cieleszko, Chairman, Board of Appeals

Date approved: July 15, 2010