

**TOWN OF ELIOT – BOARD OF APPEALS  
REGULAR MEETING**

**May 20, 2010**

Present: Ed Cieleuszko, Chairman; Peter Billipp, Vice-Chairman; Jeffrey Cutting, Philip Lytle, William Hamilton, Secretary; Ellen Lemire and John Marshall, Alternates

Also present: Paul White, CEO, Barbara Boggiano, Recording Secretary and Mark Spezia, appellant

**1. CALL TO ORDER/ ROLL CALL**

Chairman Cieleuszko called the meeting to order at 7 o'clock and introduced the members of the Board. He asked if the appellant was present, which he was. Chairman Cieleuszko outlined the proceedings and asked if there were any abutters present. Mr. Spezia replied he had letters from two of his abutters, and spoke with the third. Chairman Cieleuszko determined that a quorum was present and that the Board of Appeals does have jurisdiction. He said the applicant has standing by deed. He said the voting members for tonight would be Bill Hamilton, Phil Lytle, Peter Billipp and Jeff Cutting and that he would vote in case of a tie.

**2. PUBLIC HEARINGS:**

Chairman Cieleuszko read the first hearing, which is:

**A. Request by Mark Spezia, 15 Bayberry Drive, Eliot, Maine (Map 19, Lot 41) for a waiver to construct an accessory building, 12 ft. from an abutter's property line. This is a non-conforming lot.**

Chairman Cieleuszko said this is a request for a waiver to build a 30 x 38 accessory building to be added onto an existing 12 x 20 ft. accessory building, which will be larger, and to meet the 20 ft. setback on the side and 30 ft. rear setback, he is asking for an 8 foot waiver from the side setback. He turned the floor over to Mr. Spezia to present his case.

Mark Spezia said he has provided the information in his packet for his case. He said he wants to build an accessory building. His application states that the existing accessory building is 12 ft. from the side lot line, which exceeded the side yard setback requirement then in effect, which was 10 ft.

Mr. Spezia said at the time he built the original structure, he had no intention of adding on. He said he had 2 children and now has four children, and over the course of time, his need for additional storage space increased and that is why he wants to build another accessory building.

Chairman Cieleuszko said that having a waiver is not necessarily a waiver to general guidelines, which should be met and that if Mr. Spezia felt that this is enough information, the Board could go to the questions and asked if John Marshall had any questions for Mr. Spezia.

Mr. Marshall did not have any questions.

Bill Hamilton asked if this accessory building was going to be a garage.

Mr. Spezia replied yes. Mr. Hamilton asked if it would have two stories. Mr. Spezia answered it is a 2 bay, carriage house style, with attic space.

Phil Lytle asked if this site was the only place the building can go and wanted to know if it could be moved over. Mr. Spezia replied yes, it can, and that the existing accessory building is 13 feet from the boundary line in the back and 12 feet from the side property line. Mr. Lytle wanted to know if it is in conformance (with the ordinance). Mr. Spezia replied the only setback requirements for that size building is 10 ft. and 10 ft. for the new building.

Mr. Spezia said he hopes to build the new building in one continuous wall so as to look attractive to the abutters, so it would not jut out to the side.

Mr. Lytle asked what is the foundation of the existing accessory building? Mr. Spezia replied that it is a 24 inch footing and a four inch concrete slab and that is shown on the pictures.

Mr. Billipp said the new building is a two car garage and wanted to know if there would be any living space on the second floor. Mr. Spezia replied no, only storage, such as excess household tools.

Mr. Billipp asked if there would be a kitchen. Mr. Spezia answered he would like to make provisions for a water supply, just for shop and garage use, but no living quarters.

Mr. Billipp wanted to know if Mr. Spezia put the accessory buildings together, how would he gain access from the back. Mr. Spezia replied, if allowed he would take down part of the back wall, and the roof would have to be changed to be a continuous slope and re-configure the roof, but it would tie in and blend together.

Mr. Billipp said, according to #5, the condition for granting a waiver is based on a demonstrated need and not convenience, and Mr. Spezia just testified that it could be moved to the left to bring it into conformance with the side setback.

Mr. Spezia said there is a detrimental aspect – and he hoped that came out in the explanation - the contour of the land and it would be expensive for him to cut down some mature oaks. Also, Mr. Spezia stated that as a garage, it would be difficult to maneuver the vehicles into the carriage house, coming in from that angle. The antique truck is 27 ft. long.

Mr. Spezia added that he has an antique truck. Mr. Billipp said he noticed that when he went to see Mr. Spezia's property today.

Mr. Billipp asked if Mr. Spezia would be paving back to the building. Mr. Spezia replied yes.

Mr. Cutting asked if the original building was to store items and vehicles. Mr. Spezia replied that this is a carriage house. He said he has a garage for vehicles, but he also has a boat and an antique tractor. He said this building is necessary for the storage of vehicles and yard tools.

Mr. Cutting asked if Mr. Spezia needed an additional accessory building that large and wanted to know if it could be smaller. Mr. Spezia said his boat is 30 ft long, which is in storage now.

Ms. Lemire asked Mr. Spezia if he will continue to use the garage he has for personal vehicles. Mr. Spezia replied yes, because he has two teenagers with vehicles, which are in the driveway.

Mr. Billipp asked Mr. Spezia to explain #1, the need for the waiver is due to the unique circumstances of the property, and not the general condition of the neighborhood. However, he said,

the neighborhood is full of non-conforming lots that are just under one-half an acre. Mr. Billipp said he is having a hard time understanding why the property is unique when every lot seems to have the same uniqueness.

Mr. Spezia replied that this is a new process for him, but his lot is a non-conforming lot and the way he is reading the ordinance is that he has to be held to the same requirements and restrictions as someone who has a standard size lot of two acres. He said his lot is .46 acres and the rules for a return apply, for a two-acre lot and a non-conforming lot. He said he is required to be in conformance with the ordinance and the rules {for a waiver}.

Mr. Spezia said he does not have play space in the back yard for his children. He said even though the lot is not unique to that neighborhood, it is different from most of the larger lots in the community.

Mr. Cutting asked why does the building have to be in that location. He said that Mr. Spezia mentioned something about the topography and asked where does the land slope in that area. Mr. Spezia said that he put photos in the Board's packet. Chairman Cielezko said that the photos do not do the land justice. Mr. Spezia replied the terrain slopes left to right, so the only practical way to go through is on the right side.

Mr. Cutting wanted to know why the building can't be brought closer to the house and felt it would make it easier for everyone. Mr. Spezia replied that normally the pool is on that side of the yard and even though there are a number of combinations, the ideal location for the building is where he indicated on the plan.

Mr. Spezia said that by putting it toward the back of the lot, it will keep it away from the principal residence and the abutters are not impacted by the accessory building there now. He said the abutters on the left and right aren't affected by the proposal and that location would be ideal for them, in case they have building to do.

Mr. Spezia said his neighbor has a split level garage, and in case he wanted to build a garage, the impact would be minimized and the ideal location would be in the back.

Mr. Lytle asked Mr. Spezia if the abutters would object if he put the building up front. Mr. Spezia replied he had not asked them yet. He said he gave them the same plans as he gave to the Board of Appeals. Mr. Spezia replied the building would have impacted Mr. and Mrs. Pollard and they are in favor of what he has proposed.

Chairman Cielezko said he has some concerns with the waiver requirements in that Mr. Spezia testified that the lot is not unique to the neighborhood. He said he can imagine as Mr. Spezia looks around, with regard to the acreage needed for lots, there are plenty of tiny lots. Chairman Cielezko said that Requirement #1 is a neighborhood requirement and he thought that Mr. Spezia had answered his question in regard to that.

Chairman Cielezko asked Mr. Spezia if he thought the size he envisioned of the structure is near anything in the neighborhood now. Mr. Spezia replied that one other person has a garage 24 ft. x 43 ft. on North Crescent. Chairman Cielezko asked him if that was on Mr. Spezia's street and is this house part of your development. Mr. Spezia replied yes, it is several houses down.

Chairman Cieleuszko said, referring to #3, the hardship is not a result of action taken by the applicant, that it is his understanding Mr. Spezia is blaming the thin, small lot for not getting the garage where he wants it. He asked Mr. Spezia if he cared to add anything else to that.

Mr. Spezia said he had nothing else, other than addressing the drainage and erosion control issues, that by moving the building forward will adversely impact his neighbors and to the left he would have to take down the oaks and he wanted to make the building look attractive.

Chairman Cieleuszko asked if there were any other questions by the Board.

Mr. Spezia said under definitions, General Provisions, 1-2, rules of construction, there are three that come into play. He read: "Principal structure (building) means the structure in which the primary use of the lot is conducted; 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" and "Structure (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." Mr. Spezia said this includes decks.

Mr. Spezia said that 1620 sq. ft. is for his principal structure, and note "C" regarding an accessory building requires a 10 ft. setback in the Suburban District. Mr. Spezia read that "...no less than 30 feet from any principal building on the adjacent property." Chairman Cieleuszko said that nowhere in Part C is "principal structure" mentioned other than in adjoining lots, only in references. He said that Mr. Spezia would have to have anything in adjoining lot, decks, garage, and would have to meet the 30 ft. – from his structure to an adjoining lot.

Mr. Spezia said that his concern defines "structure" which includes anything for persons, animals, goods or property. Chairman Cieleuszko said that it {the Eliot Code} doesn't call for the principal structure intended to be principal use and that the Board is here tonight to address Mr. Spezia's request for a waiver and a variance. He said if Mr. Spezia decides he does not want to accept what the CEO has determined for him, he would have to apply for an Administrative Appeal of Mr. White's decision. Chairman Cieleuszko said it is open to conjecture. Discussion continued.

Mr. Billipp wanted to know what the discussion was about. Chairman Cieleuszko replied if there is a misinterpretation of the building as an accessory building and all it needs is a 10 ft. setback in the Suburban zone, but Mr. Spezia has to meet the principal set back requirements.

Mr. Billipp said when he read the definition for principal structure, he thought it included decks, which adds 16 feet, giving him 1620 which the applicant has on his plan.

Chairman Cieleuszko said that it does not say principal structure in Sec. 405 note "C" for principal use. Discussion ensued on Principal use.

Chairman Cieleuszko said the Board can hear from the Code Enforcement Officer, and asked Mr. Spezia if he was set with his testimony. He replied yes.

Chairman Cieleuszko said there are no abutters. Mr. Spezia presented Chairman Cieleuszko with two letters, which were read into the record. The first is from Mark Grasser, which is undated.

Mr. Spezia replied that Mark was going to come with him tonight, but had to take a relative to the hospital, so he quickly typed the letter and gave it to him.

Chairman Cieleuszko read:

*“Eliot Review Board, I have reviewed Mark Spezia’s request for Waiver. The Spezia’s are our neighbors to the south. I have no problem with the waiver request as written and submitted to the township. Mark is very thorough about the upkeep of his property and there is never anything out of sorts or unsightly. I am sure this addition will be an asset to the value of the homes in our community. Sincerely, Mark Grasser, 13 Bayberry Drive, Eliot, Maine.”*

Chairman Cieleuszko read the second letter, from Roger and Phyllis Pollard, dated May 20<sup>th</sup> to the Town of Eliot Board of Appeals:

*“We have reviewed the details of the Spezia family plan to build an accessory building in the southeast corner of their lot. We support their plan and encourage you to grant both the waiver and the variance that the Spezia family is requesting. Granting the variance will be especially helpful to us because it will maximize our options for later development on our own property.”*

Mr. Lytle said that they (the abutters) said they agree with the location, but if it changes, the Board does not know if they will agree. Chairman Cieleuszko said they agree with the location as presented on the plan.

Chairman Cieleuszko asked if Mr. White had anything to add to the Pollard’s letter. Mr. White replied no, but the abutters’ structures have to be 30 ft. from the building. Mr. Spezia said when he discussed that with them, they understood that. Mr. White said it has to be 58 ft. from the corner of the building, and here on the plan, it says they will have to be 30 ft. from it.

Chairman Cieleuszko asked Mr. Spezia if he spoke with his neighbors and mentioned the distance in feet. Mr. Spezia replied he could not be sure he mentioned “feet” specifically and that he would have to clarify that with them.

Mr. White said he had not been to the site and wanted to know if the topography seemed to be an issue. Mr. Billipp replied he did not notice. Mr. White said it looked flat.

Mr. White said that Mr. Spezia came in for a building permit. He said they talked about his options. Mr. White said he did tell Mr. Spezia he had a right to come to the Board of Appeals for an Administrative Appeal if he thought that Mr. White was wrong.

Mr. White said he added up the footage for the house and the garage and got 1156 sq. ft. and then what Mr. Spezia is asking for, and came up with 1380. He said why he is here is because the measurements are more than the principal use of the structure. He said it could have been worded better in the ordinance. Mr. White said the principal use is defined, currently, as residential.

Mr. White said that he gives everyone a chance in the office, when talking about structures, to appeal. He said the garage is bigger than the principal building where Mr. Spezia has his residence. He said Mark had spent quite a bit of time in the office and they discussed moving the building.

Mr. White said Mark needs a waiver from him and he is willing to do that, but he believes the structure will impact the neighbors.

Mr. Marshall said that they are talking about a whole community of non-conforming lots and asked what was the setback at the time.

Mr. White said there is no indication in the ordinance to carry forward (the setbacks). He said the applicant does not have the right to ignore all the setbacks.

Mr. Marshall said if you look around town, you will see that half his property is taken away. Mr. White said there is an allowance in the ordinance for a waiver.

Chairman Cielezsko said the accessory building will require 10 ft. on all sides so it cannot be in the front. Mr. Marshall said that is fuzzy too, and what it means is extremely subjective. Chairman Cielezsko said it is moot to the hearing.

Chairman Cielezsko asked if there were any more questions of the CEO.

Mr. Hamilton referred to the reconciliation of the tax card, which indicates his living sub area as 1372 sf. Mr. White replied assessing has nothing to do with zoning and that Mr. Hamilton is getting in the realm of an administrative appeal, which he discussed with Mr. Spezia.

Mr. White said if he is interested in understanding the Administrative Appeal, it is the principal use, and he has to deal with zoning issues. He said his understanding is that it is a small structure and Mr. Spezia thinks a two car garage will have little impact on his neighbors, but, in the back yard, and being two stories, it will impact his neighbors if someone puts in a 1999 sq. ft. accessory building that can be 10 ft. from the property line. He asked if that was the intent of the ordinance.

Mr. White said the issue is the setbacks and another town he had to associate with, Naples, did not have setbacks, but Eliot has setbacks and it is up to the Board, if you believe there is an argument, but it would be addressed as a part of an administrative appeal.

Mr. Hamilton asked the CEO, if, in his opinion, Mr. Spezia's request for a waiver should be denied because it is too big a size of the accessory building. No, Mr. White replied, but he is inclined to think that Mr. Spezia can move it over two feet. He said that Mr. Spezia has an existing foundation and he does not see how logistically Mr. Spezia will be able to do it, but he seems to have his heart set on moving it where he wants to.

Mr. White emphasized that it will impact the neighbors. He said people do not realize it is important to ask the neighbors.

Mr. Lytle said he is still having a problem with the primary use and the house is bigger than the garage. He said he is looking at the tax maps. Mr. White said the Board has a drawing. Mr. Lytle said he does not think that he figured in the second story. Mr. White said it is a second story. Mr. Lytle said he thought it was for storage.

Chairman Cielezsko asked what was Mr. White using for figures and wanted to know what is the area of the principal use to gauge what Mr. Spezia is planning. Mr. White said that it is difficult to determine, but the principal use is residential, and part of the structure, the garage and the house and that he used 1156.

Mr. Marshall said the Planning Board treats the garage as a principal structure once it is connected.

Chairman Cielezsko asked Mr. White what he used for square feet to tell Mr. Spezia to apply for a waiver. Mr. White replied he used the house and the garage.

Mr. Marshall said he used the basic footprint.

Mr. Billipp wanted to know if he used the second story. Mr. White replied just the basic footprint. He said his premise is does the building have an impact on the neighbors.

Mr. White asked if it was Mr. Spezia's intent to protect the neighbors or not. He said the principal use should have said principal structure and the principal use is residential, and he does not like the way the ordinance is worded.

Mr. Billipp said the square feet is 1380 for the proposed building. Chairman Cielezsko said if they add the second floor living area, it is 1372 plus the garage, so 1856. Mr. Spezia said that it is attic space.

Mr. Marshall said that it is not a full second floor. Mr. White said it is only a half floor. Discussion continued. Mr. White said the floor is the same as the garage floor.

Mr. Marshall thought the Board has heard testimony from the CEO and we have a subjective code, but we are using it against the applicant.

Chairman Cielezsko asked if Mr. Lytle's questions were answered. Mr. Lytle said that he did not think it is right in the way the ordinance was interpreted.

Mr. Cutting said the Board has to be careful sending the wrong signals to the Code Enforcement Officer. He said they have to be somewhat standardized in what they look at, and the floor footprint of the building and the Code and the way it is defined as "accessory."

Chairman Cielezsko asked if Mr. Cutting had a concern that the CEO interpreted the ordinance improperly. Mr. Cutting replied no.

Mr. White said they are talking about the principal use and he agreed it was subjective, but the reason for the public hearing is that it allows the neighbors to come in. He said he talked this over with Mr. Spezia.

Mr. Hamilton wanted to know if they were still in limbo regarding the deck and whether it could be part of the living area. Mr. White asked how about the patio. He said to look at the definition of "structure", it could be the driveway, and the definition of principal use.

Chairman Cielezsko said the problem he has is that the discussion is valid on general principles, but the Board has to look at the case being presented to them as a waiver. He said if the CEO is wrong and misinterpreted the ordinance, it cannot be decided without a proper public hearing.

Chairman Cielezsko asked if there would be any need for a variance or a waiver if Mr. Spezia only had to meet the 10 ft. setback. Mr. White replied that is not the question.

Mr. Marshall wanted to know if Mr. White was wrong, would the Board be here. Mr. White wanted to know how was he wrong. Chairman Cielezsko said if this does not fall under "C" in Sec. 405.

Mr. Marshall said if this was to fall under 10 x 10 then the Board would not be here. Mr. White said if the case could meet "C" in the definition, then no, we would not be here. He said the Administrative Appeal has to show that he is wrong.

Mr. Marshall asked Mr. White if they could have a public hearing and the abutters could come in and he would like to ask if there is any opposition to this. Mr. White replied in the ordinance the definition for “principal use” or “primary use” is to what is the main purpose which the premises exist. Mr. Marshall replied a family lives there. Mr. White said it is residential, and the deck and the garage are accessory. Discussion continued.

Mr. White said the building is larger than the principal use. Mr. Billipp asked if it becomes another principal use. Mr. White replied under the code, “accessory structures” have to be smaller than the principal use. He said the word they are talking about is “use.”

Mr. White said this will have a bigger impact on the neighbors than the smaller garage. He said if Mr. Spezia thinks he is wrong, then he has a right to appeal.

Mr. Cutting said the Board has sat here and asked what was Mr. Spezia thinking, and he thought Mr. White was right. He said the fact is, even though the neighbors signed off, it could affect them in the future and they may not know. Mr. Cutting said it seems bigger than what it is and he did not think the building fits in.

Chairman Cielezsko said that is actually part of the concluding discussion. He said the Code Enforcement Officer has determined that Mr. Spezia must come for a waiver and a variance. He said Mr. White used 1156 square feet for the principal use of the existing structure.

Chairman Cielezsko said it will become an administrative appeal unless the CEO grants Mr. Spezia 10 ft. but Mr. Spezia would have to come back and the Board of Appeals would have to advertise for an administrative appeal. He said the Board is discussing Mr. Spezia’s request for a waiver and he asked the Board does the applicant meet the requirements for a waiver.

Mr. Lytle asked what happens if Mr. Spezia does not want to go any further with the appeal. Chairman Cielezsko responded he has a right to go forward with an administrative appeal. Mr. Lytle asked what is the time clock.

Mr. Marshall asked if Mr. Spezia had time to apply. Chairman Cielezsko asked the CEO if Mr. Spezia dropped his requests for a waiver and variance and went with an administrative appeal, in Mr. White’s opinion, does he have a time constraint. Mr. White replied, no, because he has not put anything in writing.

Mr. Hamilton said that the CEO has to deny him. Chairman Cielezsko said Mr. Spezia would have 30 days to apply for an administrative appeal.

Chairman Cielezsko asked Mr. Spezia if he had anything he wanted to add to his testimony.

Mr. Spezia wanted to clarify the term “principal use” and asked if it is residential or commercial. He read from the definitions and said the principal use is residential and the principal structure includes the building, attached garage and deck. He said he does not know where the other “principal use” comes from as it is not spelled out anywhere.

Chairman Cielezsko asked Mr. Spezia if he had mentioned footage to his abutters.

Mr. Spezia said he can not say, but his neighbors are aware how his proposal will affect them. He said that if he got a waiver, it would lessen the impact on his abutters' plans. He said his neighbors know there is a setback requirement, but he did not tell them in terms of feet.

Chairman Cieleszko said that he does not quite follow how Mr. Spezia's neighbors will be better off with him building the accessory building in the back.

Mr. Cutting said there looks like 30 ft. between buildings. A discussion on set back requirements ensued.

Chairman Cieleszko asked if there were any more closing statements from the appellant or did the Board have any more questions of the applicant. Hearing none, he closed the public hearing at 8:26 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 proposing a waiver to the side setback requirements of Sec. 45-405 to allow for the construction of an accessory building 12 ft. from an abutter's property line.
- The Board is authorized to grant a waiver under State law and Sec. 45-194 (C ) of the Eliot Town Ordinance.
- The relevant sections of the ordinance are 45-405 as well as Sec. 45-194 (C ) (2). The minimum yard dimensions in the Suburban district are 20 ft. for the side setback and 30 ft. for the rear setback.
- Currently, the accessory building on the lot, drawn on the plan, is to be 13 ft. off the rear lot line, 12 ft. off the side lot line, currently within the ordinance. The applicant is asking for an 8 ft. reduction off the side setback requirement to make it 12 ft., matching the existing accessory structure.
- The Code Enforcement Officer testified that he used the figure 1,156 square feet comprising of the house and garage as the floor area and principal use of the lot;
- The proposed new structure will add up to 1380 square feet, including the current accessory building;
- The applicant testified he could locate the new structure on the lot in such a way that the waiver would not be necessary;
- The applicant testified that the new building needed to be 30 ft. x 38 ft. and it had to be installed on that side to minimize impact;
- The applicant testified that he was not sure the neighbors knew of the future impact on their properties;
- The Code Enforcement Officer testified the building size and height would impact the neighbors' properties and be detrimental to the neighborhood;
- The applicant testified the lot is not unique to the immediate neighborhood;
- The applicant testified he would like to add provisions for water and plumbing in the new structure.

**Peter Billipp moved to deny the request by Mark Spezia of 15 Bayberry Drive for a waiver to construct an accessory building 12 ft. from the abutter's property line, seconded by Phil Lytle.**

Discussion: Chairman Cielezsko said that after a lengthy testimony, the applicant did not meet at least two of the five criteria and the Board could not support granting his request for a waiver. Chairman Cielezsko said clearly there was testimony from Mr. Spezia he could move the building and be in compliance and he also testified the property was not unique to the neighborhood because the sub-division is full of roughly .46 acre lots. He asked if Mr. Marshall had anything to add.

Mr. Marshall thought that many of the terms have been strict, and subjective requirements and definitions and have been in Mr. Spezia's disfavor.

Mr. Billipp said there is ambiguity in the five criteria. Mr. Marshall said the applicant has to meet all five.

Chairman Cielezsko said it is recommended the applicant meets five, but it is not as stringent as a request for a variance; however, there is a degree to which they all have to be met. Mr. Marshall said he can't vote anyway.

Mr. Hamilton reviewed the recommendations for a waiver and said, #1, the property is not unique because it is among other properties of a similar nature; #2, will it alter the essential character of the locality, future abutters may feel differently. He said they can take testimony from current abutters, but the decision should not be based on whether they agree or disagree, and the Board of Appeals has to look at the future; #3, the size of the building the applicant proposes is creating the hardship, and #4, he thought this will probably impact future use of the abutting properties; #5 the applicant said there are other alternatives including sizes and locations.

Mr. Hamilton said he can not emphasize enough that even if current abutters agree to the proposal, it will determine the future and to look at the character of the neighborhood and how would the project impact future abutters.

Phil Lytle said he did not think the applicant meets #1, but #2 he has no problem with; #3 he has a concern with that if he did not have the first building, he may not have a problem with the second; #4 he can not agree with and #5, the building can be moved, so he does not agree with that one either.

Jeff Cutting said he did not think the applicant met #1, 3 or 5.

Ellen Lemire said she did not think the applicant met the five recommendations for the same reasons cited before.

Bill Hamilton read the definitions for accessory structure and use and said they are combined in this case. He said it means the use is intentional and subordinate to the principal structure. He said there is a lot of interpretation, but the principal use is residential and the accessory building is storage, which is over and above its residential function.

**Vote was taken by a show of hands and motion passed, 4-0 to deny the application for a waiver, requested by Mark Spezia, 15 Bayberry Drive. Chair concurs with majority.**

Chairman Cielezsko said that he would issue a Notice of Decision letter within seven days and that Mr. Spezia can appeal the Board's decision to Superior Court within 45 days.

Mr. Spezia said he could understand how the process is going and said basically his testimony would be no different (for the variance). He asked if there was a way to expedite. Chairman Cielezsko said there is no reason to expedite and the Board can go through the variance right now.

Mr. White said it is up to Mr. Spezia. Ms. Lemire said the public hearing has not been opened. After a brief discussion, Chairman Cielezsko opened up the next appeal at 8:48 pm by Mr. Spezia for a variance.

Chairman Cielezsko asked Mr. Spezia if he wanted to continue. Mr. Spezia said yes. Chairman Cielezsko asked if the information was the same. Mr. Spezia replied his testimony is as he presented on the application and that the Board should go through the process so he can appeal.

Mr. Cutting asked what is the purpose of going through the variance now. Mr. Spezia said he wants to go home and talk to his wife so he can appeal.

At 8:50 p.m. Chairman Cielezsko called a five minute recess at the request of Mr. Billipp.

At 8:55 pm, Chairman Cielezsko re-convened the meeting. He said the initial information is the same and the Board can go over that from the other case. He said what is different is Sec. 45-194 (c) (2) and he told Mr. Spezia that the four criteria for hardship must be met for the Board to grant him a variance. Mr. Hamilton said this is as opposed to a waiver request.

**B. Request by Mark Spezia, 15 Bayberry Drive, Eliot Maine (Map 19, Lot 41) for a Variance to Article VIII, Sec. 45, Subsection 405 to construct an accessory building 24 ft. from an abutter's property line. This is a non-conforming lot.**

Ms. Lemire asked if Mr. Spezia would consider NOT connecting the two structures together. Mr. Spezia said they discussed that and the difference would be only about five feet. He said it is all about making the building attractive to the neighbors, rather than taking a shortcut and making it look shabby.

Chairman Cielezsko said that he would go through the four criteria.

*1. The land in question cannot yield a reasonable return unless the variance is granted.*

Chairman Cielezsko said the property would still have value – it is a lot with buildings on it. He said that would be a tough call to say there is no value to the land.

Mr. Spezia felt there is no case that can meet all the criteria.

*2. The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood.*

Chairman Cielezsko said he would like to re-establish that, regarding #2, in Mr. Spezia's estimation, his lot is not unique to the neighborhood. Mr. Spezia said his lot is unique, compared to the abutter in back.

*3. The granting of a variance will not alter the essential character of the locality.*

Chairman Cielezsko asked if Mr. Spezia agreed that granting the variance would not alter the essential character of the neighborhood. Mr. Spezia said yes.

*4. The hardship is not the result of action taken by the appellant or a prior owner.*

Chairman Cielezsko asked Mr. Spezia, regarding #4, whose fault is it that he can not build this in the place that he wants. Mr. Spezia replied the location is critical to the proposed use and the existing configuration, which includes taking down the mature trees and the nature of the lot itself (being a non-conforming lot of record).

Chairman Cielezsko asked the CEO if he used the house and floor area to meet the minimum setback requirement in the Suburban zone. Mr. White replied he determined this building is larger than the principal use.

Chairman Cielezsko asked if he used square feet for the number. Mr. White said he used the number he had given the Board, which is the main house and garage floor area.

Mr. Lytle asked Mr. Spezia who owns the old accessory building. Mr. Spezia replied he does.

Chairman Cielezsko said he is introducing the letters from the abutters in this case and has read Mr. Grasser's and Mr. and Mrs. Pollard's letter into the record already.

Mr. Billipp noted that this one specifically refers to the request for a waiver (Mark Grasser's) and the other one refers to both the variance and the waiver. Chairman Cielezsko said that the letters carry less weight now than in the case for the waiver.

Chairman Cielezsko asked if there were any more questions or comments, and hearing none, closed the public hearing at 9:10 p.m. He stated the findings of fact:

- The owners of the property are Mark and Mary Kathleen Spezia.
- Ownership proven by: Deed - Book #6855, page 171 and received by the York County Registry of Deeds on December 14, 1993.
- The property is located at 15 Bayberry Drive in the Suburban Zoning District, and is identified as Assessor's Map 19, Lot 41, containing .46 acres;
- The applicant is Mark Spezia, who has demonstrated a legal interest in the property by deed;
- The lot is a non-conforming lot because of the minimum district lot size.
- The applicant requests a variance to the rear setback requirements of Article 45, Section 405 to allow for the construction of an accessory building 13 ft. from an abutter's property line.
- The Board of Appeals is authorized to grant a variance under Sec. 45-49(b) and State law;
- The relevant sections of the ordinance are Sections 45-405, 45-194(c ) (2) and 45-49(b).
- The minimum yard requirement is 30 ft. for the rear setback in the Suburban District;
- The proposed structure will be a total of 1380 sq. ft., including the current accessory building;
- The current accessory building, drawn on the plan, is 13 ft. off the rear setback and 12 ft. off the side setback;
- The variance request is for a reduction of 17 ft. on the rear setback to make the rear setback 13 feet
- The Code Enforcement Officer used a figure of 1156 square feet to determine the principal use;

- The applicant testified that the building could be built to meet current setbacks, if it was not attached to the accessory building;
- It was testified by the applicant that the setback requirement could be fulfilled, but he did not choose to do that because it would not be aesthetically pleasing to the neighbors;
- Also, by detaching the building from the existing accessory building, it is surmised the new accessory building of 1140 square feet, could be smaller than the principal use that was 1156 square feet.

**Phil Lytle moved to deny the request for a variance by Mark Spezia to construct an accessory building on the rear setback from 30 ft. to 13 feet, seconded by Peter Billipp.**

After a brief discussion, a poll of the Board of Appeals members was conducted by the Chair on whether or not the applicant met all four criteria to prove undue hardship, with the results as follows:

1. The land in question cannot yield a reasonable return unless a variance is granted: Peter Billipp - no; Bill Hamilton – no; Phil Lytle, no; Jeff Cutting - no. Chair concurs with the minority.
2. The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood: Peter Billipp - no; Bill Hamilton – no; Phil Lytle – no; Jeff Cutting – no. Chair concurs with the majority.
3. The granting of the variance will not alter the essential character of the neighborhood: Peter Billipp – no; Bill Hamilton – no; Phil Lytle, yes; Jeff Cutting – yes and Chair, no.
4. The hardship is not the result of action taken by the applicant or a prior owner: Peter Billipp – no; Bill Hamilton – no; Phil Lytle – no; Jeff Cutting - yes. Chair concurs with the majority.

Chairman Cielezsko said it is the unanimous decision by the Board that the applicant does not meet Criteria 1 and 2 and there was a split on #3.

**Vote was taken by a show of hands to deny Mr. Spezia’s request for a variance and the motion passed 4-0. Chair concurs with majority.**

Chairman Cielezsko said that he would issue a Notice of Decision letter within 7 days and that Mr. Spezia had 45 days to appeal the Board’s decision to Superior Court.

Mr. Spezia asked Chairman Cielezsko if he had to go to the town office to file an administrative appeal. Chairman Cielezsko informed him that he had to talk with the Code Enforcement Officer.

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

Chairman Cielezsko said the Board has the minutes of February 18, 2010 workshop before them and asked for any corrections, additions or deletions. One correction was noted.

**Phil Lytle moved to accept the minutes of February 18, 2010 as amended, seconded by Ellen Lemire. Vote was taken by a show of hands and motion passed, with two abstentions (Jeff Cutting and Peter Billipp).**

**4. OTHER BUSINESS AS NEEDED**

Chairman Cielezsko said there should be a flyer in everyone's folder on MMA workshops. He said the next one is November 18<sup>th</sup> in Saco, which will give an overview of the rules.

Ellen Lemire had a different flyer from SMRPC about a workshop in Sanford, on Wednesday May 26<sup>th</sup> from 7-9 pm at the Town Hall regarding "Proper Procedures for Appeals Boards" and "Legal Defense Decision Making" which is being put on by Jensen Baird Gardner and Henry in Portland. Phil Lytle said the Board should call Barbara Thain if they want to go because it is next Wednesday. Chairman Cielezsko suggested carpooling.

Chairman Cielezsko said on April 1<sup>st</sup>, Betsey O'Donohue, Selectman, gave him a letter and the Board of Selectmen would like to meet with the Board of Appeals on consent agreements. He said he spoke with her and Roland Fernald, of the Board of Selectmen, because he had reservations about the Board of Appeals meeting with them. He said he would have to take the matter up at the next meeting, and he respectfully submitted the letter in writing.

Chairman Cielezsko said Ms. O'Donohue's issue was not with questions about the recommendations, but that we not fulfill our duties properly and if we misunderstood what they are doing with the consent agreements. He said he assured her that the Board of Appeals will do their job no matter what we think about the consent agreements and if anyone feels they have an issue with the Board of Selectmen, they can step down. Chairman Cielezsko said Ms. O'Donohue seemed to be acceptable of that, so there is no need for the Board of Appeals to meet with the Board of Selectmen on this matter.

There was no other business to discuss.

## 5. ADJOURN

**Peter Billipp moved to adjourn the meeting at 9:38 p.m., seconded by Ellen Lemire. All were in favor by a unanimous voice vote.**

Respectfully submitted,

Barbara Boggiano  
Recording Secretary

Approved by: \_\_\_\_\_  
Ed Cielezsko, Chairman, Eliot Board of Appeals

Date Approved: July 15, 2010