TOWN OF ELIOT BOARD OF APPEALS MEETING

September 16, 2010

PRESENT: Ed Cieleszko, Chairman; Peter Billipp, Vice-Chair; Bill Hamilton, Secretary; Jeff Cutting, and Philip Lytle and Alternate Ellen Lemire and John Marshall, Alternate

OTHERS PRESENT: Stephen Marshall, Stan Smith, Aaron Stevens, Barbara Boggiano, Recording Secretary and others

1. CALL TO ORDER/7:00 PM ROLL CALL

Chairman Cieleszko called the meeting to order at 7:00 pm and introduced the members of the Board. He announced there would be no Code Enforcement Officer tonight and that Kate Pelletier is acting temporary CEO.

Chairman Cieleszko asked if the parties were present. Mr. Marshall and Mr. Smith both indicated they were. Chairman Cieleszko stated for the record that if they got to the last public hearing at 10 o'clock, and, if everyone was in agreement, they would postpone or reschedule that hearing to the next regularly scheduled meeting.

Chairman Cieleszko outlined the proceedings of the meeting. He said for the first case, the voting members would be Phil Lytle, Bill Hamilton, Peter Billipp and Jeff Cutting and he would vote in case of a tie. He asked if anyone had a conflict of interest. Mr. Marshall said he knew the applicant for the first case and recused himself from the hearing.

2. PUBLIC HEARINGS:

A. Variance Request by Stephen P. Marshall, 38 Marshall Farm Lane, Eliot, Tax Map 58, Lot 1-2, to create a separate house lot of ½-acre for an existing dwelling. Article VIII, Sec. 45-405 with 2 ½ acres remaining on the original parcel.

Chairman Cieleszko summarized the first case, and thought the Board might have some questions because he is not quite sure what the lot size is from the information on Mr. Marshall's application. He turned the floor over to Mr. Marshall and said he would like to understand how the applicant plans to meet the 4 hardship criteria for a variance and any details.

Stephen Marshall said he has 13 acres, and has an old house on 3 acres that is a separate lot. He said right now his daughter is living in the old house and he would like to deed it over to her, with 10 acres remaining, since she is just starting out in life. He said he would like to give the house to her at a very reasonable cost. He said he plans to use the remaining land for haying and pasturing his animals. Mr. Marshall said he would also like to put 2 ½ acres in preservation and keep ownership for himself. He said if his daughter needed to sell, it would not turn her life upside down and would help him keep his part of the land for farming. He said it really is not a hardship, but more of a need to preserve farm land. He did not know if he had more to add to that.

Chairman Cieleszko said he wanted to be clear on the map that was in the application packet and asked if the applicant could speak about the rectangle on the 3-acre lot. Mr. Marshall replied it was his house that was on the lot. He got up and showed Chairman Cieleszko on the map.

Mr. Marshall said they have a special deed on that three-acres of land, and he would like to deed over the ½-acre to his daughter and 2 ½ acres would be put in preservation, but he would retain ownership of the 2 ½ acres himself.

Chairman Cieleszko asked if Mr. Marshall had a 10-acre lot. Mr. Marshall replied there were 13 acres total, a ten acre parcel and a three-acre parcel where his house is located.

Chairman Cieleszko said that Mr. Marshall wants to cut off a ½-acre and take another section and conserve part of that lot, but it is irrelevant. Mr. Marshall said it is all a field he presently uses.

Mr. Cutting wanted to know if it was a trailer the Board was reviewing. Mr. Marshall said that is where is daughter is living, which was his old house.

Mr. Lytle wanted to know who owns the parcel. Mr. Marshall replied he did, and Mr. Lytle asked if this included the house. Mr. Marshall replied he did, on a 10-acre lot.

Mr. Lytle asked if it were possible when he sold could he make an easement to continue to farm.

Mr. Marshall responded he could, but if his daughter sold the house, things like that would not hold up. He cited an example of a 99-year lease on his camp, and one day it seemed to disappear and he had to buy the lot. He said that is something he thought over.

Mr. Lytle said that basically, he was sitting there, trying to wrack his brain on how the Board can make a small lot in a three-acre zone.

Mr. Marshall said he would retain ownership and that the other land would be continuous with it and would be part of the lot.

Mr. Lytle said if something happened, the Board has created a smaller lot and this concerned him.

Mr. Hamilton said that Mr. Marshall had mentioned putting that 2 ½ acres in preservation and wanted to know how he was going to do that. Mr. Hamilton wanted to know if it would be a legal entity.

Mr. Marshall replied he would have a lawyer draw up a deed, and asked if it would be the town. Mr. Hamilton responded that he did not believe the town would be in that position.

Mr. Marshall asked how he could have a restriction on his own deed. Mr. Hamilton said the town would not have anything to do with that. He said in the deed's description, Mr. Marshall would have to state, in the metes and bounds, that he has a 3-acre lot to build on.

Mr. Hamilton said, referring to what Mr. Marshall had just mentioned, that there was a 99-year lease on Mr. Marshall's camp, so if they wanted to sell it, they could do that.

Mr. Marshall said he would have that put the easement in his deed.

Mr. Hamilton said that the easement would go to the next owner, and on and on in perpetuity, so it will not protect the 2 ½-acre parcel. He suggested Mr. Marshall could go through a land trust, but most are not willing to take an easement on such a property, unless there is some real benefit for the public in conserving the land.

Mr. Hamilton said if Mr. Marshall decides to sell, and the next owner decides to put a barn on the land, no one would be able to enforce the easement unless it is held by a legally empowered third party. Mr. Hamilton said that is one part of the issue, and the other part is breaking off a ½-acre in a three-acre zone.

Chairman Cieleszko told Mr. Marshall that he had to show extreme hardship to entertain a motion to approve this request.

Mr. Billipp said he looked at the house identified on Mr. Marshall's application and he understands what Mr. Marshall would like to do, but felt all this discussion on land preservation is moot in his mind.

Mr. Billipp said it is doubtful Mr. Marshall can satisfy the variance requirements for a hardship because he has enough land.

Mr. Cutting wanted to know how was it that Mr. Marshall is appearing before the Board tonight and wanted to know if he had spoken with Kate Pelletier.

Mr. Marshall said he spoke with the Acting Code Enforcement Officer and she said she did not have the power to do anything.

Mr. Cutting asked if Mr. Marshall had been advised of no other options from Ms. Pelletier other than a variance and he replied yes.

Chairman Cieleszko asked if there were any abutters who wished to speak. No abutters were present.

Chairman Cieleszko asked Mr. Marshall if he could go through his responses to the four hardship criteria. Mr. Cieleszko said in referring to #1, unless a variance is granted the property can not yield a reasonable return does not necessarily mean financial. He said it could be losing its use. He said in most cases, it is financial, the land becomes worthless.

Chairman Cieleszko asked Mr. Marshall why he could not put the land protection on a 3-acre lot and give that to his daughter and let her own it. Mr. Marshall said he guessed he could do that.

Chairman Cieleszko said he was trying to think up an alternative. Mr. Marshall said this [variance] would give her the freedom to sell it, but he did not know if the same restrictions would apply.

Chairman Cieleszko explained that the restriction would have the same relevance on the 2 ½ acres as if Mr. Marshall sold it and his daughter was left. He said Mr. Marshall still has to pass the test to get a variance, and the only problem is #4, the hardship is a result of action taken by the owner.

Chairman Cieleszo said the lot Mr. Marshall showed the Board is part of the Stephen Marshall Plan in the town's file, which had been presented to the town in the past.

Mr. Marshall replied it was 30 years ago and that he used to live in the trailer, and then he built his new house, but his daughter is living in the trailer. He said he would like to deed it over to her, yet he does not want to lose his farmland.

Chairman Cieleszko asked if John Marshall would like to offer any input into the discussion.

John Marshall said his own personal feeling is that the property was purchased years ago, before there was zoning, with the idea they could live in the middle of the land and would not bother the neighbors. He said back then, they could do what they wanted, but now they can not any more and things have changed. John Marshall said that whether it is for the good is extremely debatable.

Chairman Cieleszko asked John if he could offer any help to the Board in trying to reason this out.

John Marshall replied he has no solution at this point and thought that the hardship case is almost an impossible situation and believes it was designed that way – to be impossible to prove.

Mr. Lytle asked Steve Marshall if he was planning on selling this [trailer and land] to his daughter. Mr. Marshall replied he was going to give it to her.

Mr. Lytle asked why not give it to her and keep the deed.

John Marshall responded that if his daughter does not have a deed, they can not hold equity and can not do anything with it.

Mr. Lytle said that is why he asked him.

John Marshall said if he wants to transfer land to them is the question…he would like to give them a clear deed so it is their financial instrument and not his. Mr. Marshall (John) continued that if they want to sell it or get a loan and modify it, they can not get a loan from the bank if they do not have a deed. He said that is the legitimate hardship issue. He said whether it is one-half acre or three acres is another issue.

Mr. Cutting asked if there was a completely dry, buildable 3-acre lot somewhere on the property.

Stephen Marshall replied that at the bottom part of the property there are three-acres that are wet and he did not think anything would be approved.

Mr. Cutting asked him why not create the three-acre lot and keep the property the way it is.

Mr. Marshall said when you are farming, it is nice to own one piece of the land that you can work the next 10 years.

Ellen Lemire asked if Mr. Marshall had a working farm. Mr. Marshall replied it is a part-time working farm.

Ms. Lemire asked if he owned the only part-time farm in the neighborhood.

Mr. Marshall replied there is another farm next to his property. John Marshall said there are several part-time farms in the neighborhood and only a few complete income farms left in the town.

Chairman Cieleszko asked if there were any more questions of the appellant from the Board. There were none.

Chairman Cieleszko asked the applicant if he wanted to add anything else to his testimony.

Mr. Marshall said it would be 2 ½ acres next to a ½-acre lot and if it follows the intent of the lot, or there are 3 acres for the house, it amounts to the same thing - he wanted 2 ½ to be preserved. Chairman Cieleszko said the problem is if Mr. Marshall's daughter decided to sell, it would be a free-standing half-acre lot.

Mr. Marshall said there would still be the 2 ½ acres preserved. Chairman Cieleszko replied until you sold the half acre lot.

Chairman Cieleszko said if there was a reason why it could not be 3 acres for your daughter, and let her put it in conservation, but they have seen occasions where someone does not own their own lot and it gets very complicated.

Chairman Cieleszko asked if there were any other parties who wished to speak, and hearing none, closed the public hearing at 7:35 p.m. He stated the finding of fact:

- The owners of the property are Stephen P. and Deborah J. Marshall;
- The ownership is proved by deed, recorded in the York County Registry of Deeds on March 1, 1990 as Book 5334, Page 029;
- The property is identified as Tax Map 58, Lot 1-2, containing 13.16 acres in the Rural District;
- The application was dated August 19, 2010, but received by the town August 27, 2010;
- The applicant is Stephen P. Marshall;
- A public hearing was held on September 16, 2010;
- The relevant sections of the ordinance are: Article VIII, Sec. 45-405, minimum lot size and Article II, Sec. 45-49(b), Variance appeals

Chairman Cieleszko asked if any Board member wanted to add another finding of fact.

Chairman Cieleszko noted the applicant wants to create a ½-acre lot with 2 ½ acres as a conservation easement on land accompanying the ½-acre lot to maintain the farm land. Mr. Hamilton said that a "conservation easement" implies a legally binding contract and it should read that the land be "in preservation" as Mr. Marshall stated.

Chairman Cieleszko corrected that finding to be 2 ½ acres would be "in preservation." There was no other discussion.

Peter Billipp moved that the Board deny the variance request by Stephen Marshall to create a separate house lot of ½-acre for an existing dwelling because he did not meet Criteria #1, 2 and 4 to prove hardship, and possibly #3. Bill Hamilton seconded the motion, because the applicant did not meet Criteria 1-4.

Discussion:

Mr. Billipp said that logically, the applicant does not meet Criterion #1, the land in question can not yield a reasonable return, because of the simple fact that Mr. Marshall wants to create a ½-acre lot in a three-acre zone and there is enough land.

Mr. Billipp stated it is a cut and dry case in his mind that the applicant did not meet any of the criteria and all this discussion about preservation is not relevant to the case. He said it does not matter what happens to the other 2 ½ acres.

Mr. Billipp said there is nothing unique about the circumstances or the property preventing Mr. Marshall from creating a 3-acre lot when he has 10 acres.

Regarding #3, Mr. Billipp said the character of the locality would not be altered and he was not sure why Mr. Marshall wants a ½-acre lot when he has 10 acres, and the property is large enough.

Mr. Billipp said, #4 – the hardship is not the result of action taken by the applicant – Mr. Marshall is the one who would be creating the hardship.

Chairman Cieleszko asked Mr. Hamilton if he had anything to add. Mr. Hamilton responded no, that Mr. Billipp had covered it.

Mr. Lytle said that he was going to say pretty much the same thing, using the four criteria. He said the Board of Appeals is not authorized to change the ordinance to create a ½-acre lot.

Mr. Cutting said he felt the same way. Ms. Lemire had nothing to add.

Chairman Cieleszko said there is a motion on the floor to deny the request for a variance to make a ½- acre lot in the Rural zone, and asked for a vote.

Vote was taken by a show of hands and motion passed 4-0. The chair concurs.

Chairman Cieleszko said that he would issue a Notice of Decision letter and that Mr. Marshall would receive it within seven days. He informed the applicant that Mr. Marshall had 45 days to appeal the Board's decision to Superior Court.

At 7:45 p.m., John Marshall joined the Board on the dais.

B. Waiver request by Stan Smith for property located at 119 Pleasant Street (Tax Map 1, Lot 132) for a reduction to the front setback of 7 feet from 22 feet to 15 feet.

Chairman Cieleszko said that the waiver request by Stan Smith is in conjunction with a request for a variance on a non-conforming lot. He said Sec. 194 gives the Board jurisdiction to grant a waiver to lower the front set back to 15 ft. He said Mr. Smith already was granted a waiver to drop the requirement to 22 ft.

Chairman Cieleszko said the voting members for this hearing are the same: Peter Billipp, Jeff Cutting, Phil Lytle and Bill Hamilton and there is no Code Enforcement Officer. He asked Mr. Smith to present his case.

Mr. Smith said that four years ago, his daughter and son-in-law bought a carriage house condo, and they found out they did not care for that type of living, and they found a foreclosed property, 119 Pleasant Street. He said because they have a mortgage already, they could not take out another mortgage to buy the property, so he used his line of credit to purchase the house for them.

Mr. Smith said they went through the title search, and it was clear, so he purchased the house. He said his daughter and son-in-law were able to sell the condo, and paid his mortgage.

Mr. Smith said their home is little and they wanted to turn the garage into a living room, so they went to the town and got a building permit from the CEO to do that, three years ago.

Mr. Smith said that they found another foreclosed property on State Road and agreed to buy the house together with his daughter and son-in-law. He said they needed $4500 to clear up the equity line so they could get the mortgage to purchase the State Road property.

Mr. Smith said two days later, the title search was done again and the lawyer found a discrepancy in the set back – that it is 14 feet, which threw them a curve ball. He said they could not get the money back. He said it had been appraised for more than it needed to be, and he had to borrow money from his parents. He said they came up with enough money to purchase the property, but they still need the mortgage on their home so he can free up his home equity line of credit.

Mr. Smith said his daughter and son-in-law can sell their house, but they can not because it does not fall within the setback requirements. He asked if the Board was clear on what he has presented.

Chairman Cieleszko said it is his understanding that financially and economically, the applicant's testimony might be relevant to the case. Ms. Lemire said that it helps.

Mr. Marshall wanted to know what Mr. Smith meant by the note on the bottom of the page accompanying his application "*I just ran out to measure and the garage is exactly 22 feet from the road.*"

Mr. Smith said that he went out and measured from the edge of the hot top and it is exactly 22 feet, which could be why the prior owner made the mistake when he built the house.

Mr. Marshall said it is in the Village district. He asked when was the garage built.

Chairman Cieleszko replied 2004.

Mr. Marshall said it was a garage before and asked if Mr. Smith had put it on initially.

Mr. Smith responded in 2004, and it was attached to the house.

Mr. Marshall asked when it was changed to a living room. Mr. Smith replied in 2007.

Mr. Lytle asked if anyone ever told him how wide the road is. Mr. Smith replied no.

Mr. Lytle said he spoke with the Road Commissioner and he told him it could be anywhere from 29 feet to 50 feet. He said he did not know what Mr. Smith was using for a guideline, other than the edge of the road. He said he was taking a look at the light pole, which is usually in the right-of-way.

Mr. Smith replied it is on the opposite side of the road.

Mr. Hamilton said he was a bit confused and said they must have determined where they were measuring it from and clearly it has to be 8 ft. closer to the house.

Mr. Hamilton said that instead of 22 ft. Mr. Smith is requesting a 14 ft. set back.
Mr. Smith said that he should not have written that down.

Mr. Billipp said this is a "Class D" survey, not a boundary survey and it clearly states that, on the bottom. He said this means they did not do all the work that usually is done when a piece of property is going to change hands. He said they may have measured to the edge of the pavement.

Mr. Billipp said that the survey does not show where the right of the way was, so it could be wider than the pavement, and would be a smaller measurement than 14 ft.

Chairman Cieleszko said they are talking about the right-of-way, not the tar. Mr. Billipp wanted to know where does it say that.

Chairman Cieleszko said they measured to the road from the edge of the right-of-way and the survey does not show the right-of-way so the Board should not be spending a lot of time discussing that.

Mr. Billipp said that the applicant already has a waiver from 30 ft. to 22 ft., or is it 30 ft. Chairman Cieleszko said it is 30 ft.

Bill Hamilton disagreed, saying the applicant had been granted a waiver and they determined it was 8 ft. not 16 ft.

Chairman Cieleszko said he asked Kate Pelletier and Dan Blanchette and they went by 30 ft. He said someone can ask for 10 ft. each year.

Ms. Lemire said that this replaces the prior waiver.

Mr. Billipp said it is a waiver and a variance to get 14 feet. Chairman Cieleszko said that is correct.

Mr. Billipp said to get the waiver, the applicant has to meet five criteria and maybe if he can not get it, he can go with a consent agreement.

Chairman Cieleszko said the Board should work with what they have before them.

Mr. Hamilton said that Mr. Smith did not have to meet the five criteria, unlike the variance request-the five criteria are only guidelines.

Mr. Cutting wanted to know if, at this time, there had been any legal survey done on the property.
Mr. Smith replied no.

Mr. Cutting said he would be concerned granting anything else since the prior owner did what Mr. Smith did; namely, he measured from the side of the road, so he does not know if the 14 feet is accurate. He said the applicant would be better off to get an exact footage for what he needs for a waiver, because if someone goes to sell it, they would be in a real mess.

Mr. Cutting said the Board does not know how much of a waiver, in terms of feet, they would be granting Mr. Smith.

Chairman Cieleszko said Mr. Smith is asking for 15 ft.

Mr. Cutting asked if originally, when the applicant bought the house, did he pay cash and wanted to know how did he get to this point.

Mr. Smith replied this was done by a Title Search lawyer and did not know why it was missed.
Mr. Hamilton said it seemed curious to him how a banker would hire someone to do only a class "D" survey and should have refused to loan money, not knowing what the boundary was.

Chairman Cieleszko asked Ellen Lemire if she had any questions and she replied no.

Chairman Cieleszko wanted to address the five "guidelines" the Board uses in granting the waiver request and Mr. Smith's responses:

1. Is the need for the waiver due to the unique circumstances of the property and not to the general conditions of the neighborhood? Mr. Smith's response: yes.

Mr. Smith had nothing to add and there were no questions of the Board.

2. Will granting of a waiver alter the essential character of the locality? Mr. Smith's response: no.
3. Is the hardship the result of action taken by the applicant or a prior owner? Mr. Smith's response: prior owner.

Chairman Cieleszko said they assume it is the prior owner, but he may have had some help from the former Board of Appeals and the Code Enforcement Officer. He said they both looked at it and never brought it up and asked if Mr. Smith agreed. Mr. Smith replied that he did.

Chairman Cieleszko said that the applicant has a building and he is looking for a remedy, and asked the applicant if he had to tear it down, would he live in what is left of his house.

Mr. Smith replied no.

4. Will granting of the waiver substantially reduce or impair the use of abutting property?

Chairman Cieleszko said that he had questions on that and had the original minutes from the meeting. He said at the time, no abutters had a problem with the garage, so it was built. He asked if there were any abutters present this evening that wanted to speak to Mr. Smith's case.{Note: no one spoke}.

Ms. Lemire asked when is the deadline for Mr. Smith to get back his $4500? Mr. Smith replied it has come and gone.

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

Mr. Marshall wanted to say that the garage was built in 2004 and he presumed the applicant had to go before the Planning Board and/or Board of Appeals and had the CEO inspect the work at the time, before Mr. Smith poured the footing. He said it would appear that the town is at fault and it is more of a statement as to where the responsibility is. Mr. Smith felt the Board should give him a remedy.

Chairman Cieleszko asked if the applicant had any further testimony to present and Mr. Smith responded no.

Chairman Cieleszko closed the public hearing at 8:10 p.m. and stated the findings of fact:

- The owner of the property is Stan Smith, who has proven ownership by deed, recorded in the York County Registry of Deeds as Book 15210, page 740.
- The property is identified as Tax Map 1, Lot 132 and contains about .13-acres;
- The property is located at 119 Pleasant Street in the Village District;
- The application was submitted on August 31st 2010 by the applicant, Stan Smith;
- The public hearing was held on September 16, 2010;
- Relevant sections of the ordinance are: Article VIII, Section 45-405 front line setback and Article V, Sec. 45-194(b)(2), non-conforming lots of record and 45-195, non-conforming structures;
- In the Village district, there is a one acre minimum and the setback is 30 ft. beyond the structure, which makes it non-conforming;
- On December 16, 2004, the Board of Appeals granted a waiver on the property, reducing it from 30 ft. to 22 ft. on the front setback and a waiver from 20 ft. to 10 ft. on the right side setback;
- A Class "D" survey was done by Middle Branch LLC, which shows an existing 14 ft. to the setback, and which is a survey for financing purposes only.

Chairman Cieleszko asked if there were any other findings of fact the Board wanted to add.

Mr. Marshall said that when you look at the minutes from 2004, they discussed the front setback to the house, but what about to the porch. Chairman Cieleszko said he did not know if the porch was there. Mr. Marshall said the garage setback of one foot brought it to 20 ft. Chairman Cieleszko said it was 18 ft. t o the porch. Mr. Marshall said he could not tell and asked the applicant what is the setback from the corner of the existing house to the garage. Mr. Smith replied about 2 feet.

Mr. Marshall asked who knows where the dimensions are derived from. Chairman Cieleszko asked him if he wanted to include that the previous CEO and Board of Appeals considered the road edge when measuring the setback. Mr. Marshall responded he did not know if he could present that, but he knew that some people messed up and missed out and only a few spots come near to being legal rights-of-way. Mr. Marshall said he did not think they could rule to make things worse for the applicant.

Mr. Marshall said the original applicant did appeal to their knowledge and the CEO looked at it. He said he assumed he did everything in good faith.

Chairman Cieleszko said the former Board of Appeals members used the edge of the road as the setback when discussing that.

Mr. Billipp said the Board did not know that.

Mr. Marshall said the road may have been widened by the town when they were re-paving it.

Chairman Cieleszko said this applicant has to show that it is the prior owner who is responsible and we have to show the same reasoning throughout the findings of fact.

Mr. Cutting said trying to figure out that is not something the Board should be talking about.

Chairman Cieleszko said it is in the minutes that it was an 18 ft. setback. Ms. Lemire said that Bruce {Trott} said the garage would have a 20 ft. setback.

Mr. Cutting said we do not know that.

Mr. Marshall said he is talking about the CEO, who has the responsibility to inspect that.

Chairman Cieleszko said he checked that out before he went to the Board of Appeals.

Mr. Cutting wanted to know how could the applicant measure without markers since he could not see the edge of the road.

Chairman Cieleszko said a lot of people dropped the ball on this.

Mr. Billipp said let us respond to what the applicant asked for on this application.

Chairman Cieleszko asked who is at fault. He said they could blame the prior owner.

Mr. Billipp said the Board should hear a motion and clarify.

Peter Billipp moved that the Board approve the request for a waiver by Stan Smith for property at 119 Pleasant Street for a reduction to the front set back from 22 ft. to 15 ft., seconded by Phil Lytle.

Discussion:
Mr. Billipp thought that, when the Board goes through the suggested criteria, the applicant meets #1, the waiver is due to the unique circumstances of the property, created through no fault of Mr. Smith.

Mr. Billipp said, referring to #2, granting the waiver will not alter the essential character of the locality. He said with #3, there perhaps is some discussion. He said that John (Marshall) feels the town is partly responsible, but Mr. Smith has indicated "prior owner." He said perhaps it could be the result of action taken by the town and perhaps the prior owner, but the hardship is not a result of action taken by the applicant.

Mr. Billipp said granting the waiver will not reduce or impair the use of an abutting property and therefore, the applicant meets #4, and the applicant has shown there is no other alternative and he has proven the waiver is based on a demonstrated need. He said he is not doing this because he feels like it, but he has to put finances on the house, so Mr. Billipp agrees that Mr. Smith meets all five.

Mr. Lytle said he agreed with Peter Billipp, but he does not know where the boundary line is and maybe Mr. Smith needs 16 feet. Mr. Lytle asked if the Board is wrong, because we do not know what we are doing {in terms of feet}.

Mr. Billipp responded if it is a problem, the applicant can get a survey done or come back to us again. He said neither the Board, nor the applicant can react to what is happening in the future.

Mr. Lytle said if someone comes in without a survey, he is concerned that the Board acts even if they do not know if it is right {in terms of feet}.

Chairman Cieleszko said the Board has to assume that this is the correct figure and the Board can only grant what the applicant is asking for, even if the footage is not correct.

Mr. Cutting asked wouldn't he rather do it right the first time? Chairman Cieleszko replied the applicant has answered that and he has not withdrawn his request.

Mr. Billipp thought that Chairman Cieleszko had made a good point because he did not see the applicant withdrawing his request.

Mr. Smith said without getting into the details, he needs the bank note to free up his line of credit and if he delays, the hardship would be on his character.

Chairman Cieleszko said the Board of Appeals has always run the hearing like this and they do not require a full survey.

Mr. Lytle said the problem is the applicant says he needs 14 ft. and we do not know how he got 14 feet. Chairman Cieleszko said it is on the survey. Mr. Lytle asked what survey.

Chairman Cieleszko said the one who deeded that land, and he assumed he used markers. He said they have to accept both the variance and waiver application.

Mr. Lytle said he had a survey done two weeks ago and he used markers.

Mr. Marshall said anything can be contested, that is why we have lawyers.

Chairman Cieleszko said it is costly to have a survey done and the Board does not require it.

Mr. Hamilton said he had nothing to add and that he concurred with Peter's assessment of the criteria and the situation.

Mr. Marshall said the Board needs to create a remedy for this applicant post haste.

Ms. Lemire said she concurred with the other Board members.

Vote taken by a show of hands and motion passed 4-0 to approve the waiver request by Stan Smith for 119 Pleasant Street to reduce the front setback to 15 ft. The Chair concurs.

C. Variance Request by Stan Smith for property located at 119 Pleasant Street, Eliot, Tax Map 1, Lot 132 to the front setback of 1 foot, from 15 feet to 14 feet.

Chairman Cieleszko said the voting members would be the same for this variance request. He said the requirements are the same, but the criteria are more stringent. He said the applicant wants to shorten the front line setback to 14 ft., a reduction of 1 foot. He asked if Mr. Smith wanted to speak.

Mr. Smith replied he really did not know what else he could add to his previous testimony.

Chairman Cieleszko asked the Board if the waiver request could be presented concurrently with the variance request.

Mr. Marshall thought the Board would still need to go through the Findings of Fact. Mr. Billipp said the only difference is there are four criteria with a variance, not five.

Chairman Cieleszko asked if the Board could accept the findings of fact from the beginning of the waiver request for the variance request and add others.

Mr. Marshall said he did not think they needed to discuss the case any further.

Mr. Billipp said there is a limit under the waiver provision to go to 50% which is why we are hearing Mr. Smith's request for a variance.

Mr. Marshall said this is a unique case in that #1 he can not even sell the property, so the applicant meets #1, there is no reasonable return.

Chairman Cieleszko asked Mr. Marshall if he had any questions of the applicant.

Mr. Marshall said that Mr. Smith has already addressed these criteria completely and he thought that he has met all of them.

Mr. Lytle, Mr. Hamilton, Mr. Cutting and Ms. Lemire all agreed that the applicant has met all four hardship criteria for a variance.

Chairman Cieleszko asked if there were any other comments. Hearing none he closed the public hearing at 8:40 p.m. and stated the findings of fact:

- The owner of the property is Stan Smith, who has proven ownership by deed, recorded in the York County Registry of Deeds as Book 15210, page 740.
- The property is identified as Tax Map 1, Lot 132 and contains about .13-acres;
- The property is located at 119 Pleasant Street in the Village District;
- The application was submitted on August 31st 2010 by the applicant, Stan Smith;
- The public hearing was held on September 16, 2010;
- Relevant sections of the ordinance are: Article VIII, Section 45-405 front line setback and Article V, Sec. 45-194(b)(2), non-conforming lots of record and 45-195, non-conforming structures;
- In the Village district, there is a one acre minimum and the setback is 30 ft. beyond the structure and the lot, which makes it non-conforming;

Chairman Cieleszko asked if any Board members had anything else to add as a finding of fact.
Ms. Lemire said in the previous hearing, a finding of fact was that the property could not be sold and she thought they needed to add that. Chairman Cieleszko said to add "*the property is not saleable in its present state.*"

Mr. Hamilton said it is the property's uniqueness that is the hardship and he agrees with the other Board members that the applicant meets all four criteria.

Bill Hamilton moved that the Board approve the request by Stan Smith for a variance, based on the fact that the applicant has met all four criteria, to grant the variance from 15 to 14 feet on property at 119 Pleasant Street, seconded by Phil Lytle.

There was no discussion.

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

Chairman Cieleszko informed the applicant that his request for a variance had been approved and that Mr. Smith would be notified within seven days of the Board's decision. Chairman Cieleszko also informed Mr. Smith that both the waiver and the variance request have to be recorded in the York County Registry of Deeds and brought to the CEO within 90 days.

Mr. Smith asked when the Notice of Decision letters would be ready and he will pick them up.

Chairman Cieleszko said they will not be ready until probably Tuesday, but that Barbara Thain, Administrative Secretary will call him and let him know when he can pick up the letters.

3. REVIEW AND APPROVE MINUTES AS NEEDED

Chairman Cieleszko said the Board has the minutes of July 15th, 2010 before them and asked if there were any corrections, additions or deletions to those minutes. None were noted.

Mr. Lytle moved that the Board accept the minutes of July 15, 2010 as presented, seconded by Ellen Lemire. Vote was taken by a show of hands and the motion passed unanimously.

4. OTHER BUSINESS AS NEEDED:

Chairman Cieleszko said it is budget request time and he will put in a flat request like last year of $4,000. He said he will check that figure and put in the same amount, as they have done in the past.

Ms. Lemire wanted to know if that figure is fairly close to what the Board spends. Chairman Cieleszko replied that he did not know, but the Board of Appeals has to have a meeting and the town has to spend the money, even if their line item is short.

Mr. Lytle checked the annual report and said the figure was $3500 last year the Board of Selectmen recommended. Chairman Cieleszko said that is FY '09 and that he would check with the treasurer.

Chairman Cieleszko announced a few upcoming workshops. He said that he and Ellen are going to one on October 13th at the Ogunquit Town Hall, which looks like a good one.

Mr. Billipp asked if there was any charge. Chairman Cieleszko replied no, and that if anyone was interested in going to let Barbara know as soon as possible so she can make the arrangements.

Chairman Cieleszko said there was no other correspondence.

5. ADJOURN

Peter Billipp moved to adjourn the meeting at 8:52 pm, seconded by Jeff Cutting. All were in favor by a voice vote.

Respectfully submitted,

Barbara Boggiano

Approved by: _____
Ed Cieleskzo, Chairman, BOA

Date Approved: 11-18-10