

TOWN OF ELIOT – BOARD OF APPEALS MEETING

June 20, 2013

ROLL CALL

Present: Chairman Edward Cieleuszko, Secretary Bill Hamilton, Philip Lytle, Jeff Cutting and Associate Members Ellen Lemire and John Marshall

Absent: Vice-Chairman Peter Billipp

Others Present: Code Enforcement Officer Jim Marchese; Vicki Mills, appellant; Deborah Berthiaume, appellant; Kenneth Woods, Attar Engineering, representative for Ms. Berthiaume; Steven and Susan Wittrock, appellants; other interested parties.

CALL TO ORDER

Chairman Cieleuszko called the meeting to order at 7:00 PM. He asked for all electronic devices to be silenced, stated that the meeting was being video streamed and outlined the procedure for the meeting. He stated that there were three hearings and that the first hearing would not follow the same agenda as that for the other two hearings. The order for the second and third hearings would be:

- The meeting will be opened.
- Voting members will be determined
- The request will be summarized.
- The parties to the action will be determined.
- The jurisdiction, timeliness and standing of appellants will be determined.
- The appellant will present uninterrupted testimony.
- The Board will question the appellant.
- Other parties to the action, including abutters, will present testimony.
- The Board will question the parties.
- Other interested observers will have a chance to testify.
- All presenters will be given the opportunity for rebuttal.
- There will be further questions from the Board.
- The appellant will make the last statement and take any last questions from the Board.
- The public hearing will be closed.
- The Board will begin deliberations starting with the findings of fact. They will then, hopefully, come to a conclusion.

- If a decision is reached, the appellant will receive a Notice of Decision within seven days.
- Anything granted must be recorded with the York County Registry of Deeds and delivered within 90 days to the Code Enforcement Officer.
- Any decision can be appealed to the Superior Court within 45 days.

Chairman Cieloszko stated that for the first of three hearings, the voting members would be John Marshall, Philip Lytle, Bill Hamilton and Ellen Lemire.

Chairman Cieloszko stated that the hearing was for a request for reconsideration of the decision by the Board of Appeals allowing the dead-end Fernald Lane Extension to be 1160 feet, fulfilling the street frontage requirements for Tax Map 38, Lot 51. He stated that the reconsideration was presented by letter from Ms. Vicki Mills.

Chairman Cieloszko stated that the only Board members who could offer a motion to reconsider the BOA's decision would be the members who had voted in the majority of the opinion, which include John Marshall and Philip Lytle. He asked if either wanted to ask questions of Ms. Mills. Mr. Marshall stated that he had read through the presented material and did not need to ask further questions.

Mr. Lytle made a motion to deny reconsideration. Chairman Cieloszko stated that a motion was not necessary and that making no motion is addressing the issue. He asked if either Mr. Marshall or Mr. Lytle wanted to make a motion to reconsider and they both replied in the negative.

The public hearing was closed at 7:10 PM.

SECOND PUBLIC HEARING

Chairman Cieloszko opened the next public hearing at 7:12 PM. He stated that voting members for the hearing would be Philip Lytle, Bill Hamilton, Jeff Cutting and Ellen Lemire.

Chairman Cieloszko stated that the hearing was for a variance request by Deborah Berthiaume for a reduction in the required right-of-way width and an increase in the length of a dead-end road for property located on Odiorne Lane, Tax Map 83, Lot 2.

TESTIMONY FROM APPELLANT

Chairman Cieloszko noted that the Board had received a letter from Ms. Berthiaume authorizing Kenneth Wood to represent her family in the hearing.

Ms. Berthiaume stated that her parents bought their property in 1960 which had predated any zoning. She stated that her mother and father had seven children and thought that all of the children could live on the land. She added that the children all went their separate ways.

Ms. Berthiaume stated that she has one sister who currently lives at the other end of the road. She added that she purchased her parents' property so that they could go into retirement and that she lives at the other end of the road, on Goodwin Road. She stated that the property had been in the family since 1960. She stated that her parents have now both passed and that the family needs to settle the estate. She stated that the family needs to be able to sell the land so that Ms. Berthiaume's other siblings can receive their inheritance. Ms. Berthiaume stated that the family wants to divide the land into two parcels so that they can sell the property and settle the estate.

Kenneth Wood stated that Ms. Berthiaume would like to divide the 72-acre parcel into two separate parcels to settle the estate. He stated that one of the parcels would be about 62 acres and the other parcel would be about seven acres and that two or three acres would be deeded to Ms. Berthiaume's sister because their father had intended for that parcel to total about nine or 10 acres and that it is currently about seven acres.

Mr. Wood stated that there is a 33-foot-wide right-of-way coming into the property, although a portion of the right-of-way is only 20 feet wide. He stated that the packet presented to the Board contained measurements of the widths of the traveled surfaces and photos of those surfaces. He stated that currently Ordiorne Lane serves about 11 people, including the houses on Ordiorne and those on Tippy Lane. He stated that they were asking to create up to two more house lots and that they were not creating a subdivision.

Mr. Woods stated that there are adequate test pits on the two lots for waste water disposal and that he had provided the logs in the application for the variance.

Mr. Wood stated that the application included the measurements for the distance to the lot line from the legal right-of-way for both lots.

Mr. Wood stated that, as Ms. Berthiaume had said, Sam and Lillian Crowell purchased the property in 1960 before Eliot had zoning, right-of-way standards or a limit on a dead-end road of 1000 feet.

Mr. Wood stated that if the variance was not granted, the estate would be in hardship because the family could not do anything with their 72-area parcel which had been purchased for the purpose of dividing it. He stated that the variance, if approved by the Board, would be no different than other variances that the Board had approved before.

He noted that the Board had just approved a variance for the Barretts and also had approved one in 2009.

(Mary Fournier appeared to make a comment and was asked to refrain. She stated that she was only reacting to some pain in a wrist on which she recently had surgery.)

Mr. Woods stated that, in summary, the property in question is a 72-acre parcel and that the family really has to settle the estate. The zone is a three-acre zone with 200 feet of frontage required and that there is more than adequate frontage, more than adequate area and more than adequate test pits. He stated that they were seeking the approval of the variance so that the parcel can be divided, the lot can be sold, the estate can be settled and Deborah's sister can get her nine-acre parcel.

QUESTIONS FOR APPELLANT FROM THE BOARD

Mr. Marshall stated that the material presented answered any questions he might have.

Mr. Lytle asked for clarification about the location of the pictures in the packet in relation to the survey diagram. Mr. Wood stated that below the photos he had given the distances from Goodwin Road. Mr. Lytle noted that the first picture of Ordiorne Lane is noted as being 150 feet from Goodwin and the second pictures is noted as being 1050 feet from Goodwin Road with a travel surface of 15 feet width and the third picture is noted as 1500 feet from Goodwin with a travel surface of 16.5 feet in width.

Mr. Wood showed the location of the pictures of Ordiorne on the survey map and stated that the second picture is located in the 20-foot-wide right-of-way section. He added that the first picture is in the 33-foot-wide right-of-way section and the last picture is at the end of the 20-foot-wide right-of-way section. He stated that the travel widths are similar to those of a lot of small roads in Eliot. He stated that he lives off of River Road and that River Road is a highly-traveled road which measures about 19 feet of travel surface.

Mr. Hamilton asked if any other attempt to divide the property had been considered that did not require the extension of long dead-end roads. Mr. Woods replied that there really was no other way to divide the property because the right-of-way and access road was provided by deed over Ordiorne Lane. He stated that because the property is located far back (from Goodwin) and its current access is over Ordiorne Lane, he did not believe there was any other economical or technical way to provide access.

Mr. Hamilton asked if there were no other options or considerations. Mr. Woods stated that access from Bartlett Road would still require a variance. He stated that the current travel way to Ms. Berthiaume's sister's house is over Ordiorne and is used several times a day by the family. He stated that there is an orchard that Ms. Berthiaume wanted to

have stay in the family so the orchard would go to her sister, which is the reason that about three acres would be conveyed to her. He stated that the two lots would use Ordiorne Lane and a new travel way would be created to the left of a stone wall on the property.

Mr. Hamilton asked if there was any way to access the property from Bartlett Road. Mr. Wood replied that there would not be a way without major construction. He stated that Bartlett has about the same travel width as Ordiorne.

Ms. Berthiaume stated that the family had researched the lots and tried to find the best way into the land. She stated that they have no legal right to use Bartlett Lane and that it would require a court action with permission of everyone who lives on Bartlett Lane. She stated that even if they went through that process, the lay of the land at the end of Bartlett Lane is very steep and they would not be able to satisfy the road construction requirements without making radical changes to the topography of the land. She stated that the end of Bartlett Lane is very high and very steep and access from there really would not work. She added that Ordiorne is already in use and that they have a legal right-of-way to use it.

Mr. Hamilton asked for information about the last property on Ordiorne, which is the furthest distance from Goodwin. Mr. Woods replied that the property is owned by Connie Weeks. Mr. Hamilton asked for the distance of the property from Goodwin Road. Mr. Woods replied that the property is 1200 to 1400 feet from Goodwin Road.

Mr. Cutting asked how much of the back piece of the property would be buildable once the property is subdivided. Mr. Woods replied that quite a bit of the property would be buildable. He stated that he walked the whole property. He stated that Ms. Berthiaume and the heirs felt that they only wanted two lots. He added that one of the survey maps indicates wetlands.

Ms. Berthiaume stated that the property is like all land in Eliot with a mix of wet and dry land.

Mr. Woods stated that Mr. Cutting could assume that the upland areas are buildable but that there were no test pits done. Mr. Cutting wanted to know what percentage of the land was upland vs. wetland but Mr. Woods stated he could not answer that question because of the lack of test pits. He added that they only wanted to create two lots.

Chairman Cieleuszko asked if the application was for a 50-foot right-of-way. Mr. Woods replied that they were asking for a variance from the 50-foot right-of-way standards. Chairman Cieleuszko stated that if the variance was granted, Ordiorne would be a qualifying street.

Chairman Cieleuszko stated that if the variance was granted and the land met all other requirements for a buildable lot, it could be subdivided into a full subdivision. Mr. Woods replied that a subdivision implies three or more lots in five years. Chairman Cieleuszko asked if three or more lots could be created if the variance was granted.

Mr. Woods stated that he did not believe creating a subdivision would be possible because the variance would be for two lots and a permit for a third lot would not meet the road requirements. He stated that the variance would not create a 50-foot right-of-way but would instead give a variance from that standard. He stated that if he then wanted to create a subdivision, he would have to go to the Planning Board for approval and they would have the same issues and would have to either grant a waiver or send him back to the BOA. He stated that he was sure that if he requested another lot, he would have to come back to the Board of Appeals.

Chairman Cieleuszko stated that he wanted to be clear that Mr. Woods was saying that a variance granted to a lot is only good for the original lot and would become moot if the lot was divided. Mr. Woods stated that if the BOA granted a variance for two lots, he did not think he could change the condition of the variance and divide one of the lots to create a third lot.

Chairman Cieleuszko asked why the variance request was addressing the 50-foot-width standard instead of addressing the property as a back lot. Mr. Woods replied that he did not think the property met the back lot standards. Chairman Cieleuszko stated that it appeared that the variance request was trying for the most advantage. Mr. Woods stated that if he was trying for the greatest advantage he would approach the Planning Board with a 20-lot-subdivision plan and ask for waivers. He stated that he thought the Planning Board would grant the waivers, but the family has decided that they want to divide the property into two lots to allow the estate to be settled. He stated that Ms. Berthiaume and her sister live on the property and they don't want to be in close proximity to any more than two additional lots.

Chairman Cieleuszko stated that the property has been in the possession of the original owners since 1960. He stated that the family has lived through all of the ordinances changes. He stated that he was concerned about the four criteria the variance must meet and asked how it was not the fault of the owners (criteria #4) when they had known of the ordinances that had been issued since 1960.

Chairman Cieleuszko stated he also had a problem with the criteria addressing reasonable return for the land (criteria #1) because it is a wood lot. Mr. Woods replied that that would be true if one considered timber as an asset. Chairman Cieleuszko stated that timber is clearly an asset with the proper amount of acreage. Chairman Cieleuszko stated that he had a problem with criteria #1 for that reason.

Chairman Cielszko stated that he also had a problem with criteria #4 because the owner was aware of the ordinance changes and did not do anything about them at the time. Mr. Woods stated that he doubted Mr. Crowell looked at the ordinances changes and looked ahead to realize that after he passed away, he would want his family to be able to sell the property. He stated that Mr. Crowell would have had to take on the whole issue of zoning and he would have had to tell the Town that they could not initiate zoning because it would put him out of business. He added that the situation would have been one resident of one town trying to fight state-mandated zoning. He stated that he does not think there is anything the owner could have done.

Chairman Cielezsko, addressing criteria #1 concerning the inability of the property to yield a reasonable return with a variance, stated as an example that he has a wonderful, old, rotten wooden boat that he loves. He stated that if he gave it to his kids thinking that its value was \$1,000,000 and the kids put it on the market, they would have trouble finding anyone who would even tow it off the land. He asked how Mr. Woods would answer his concern about criteria #1.

Mr. Woods stated that he did not think a wood lot provided a reasonable return. He stated that there had been many cases before the Superior and Supreme Courts in the State of Maine that have shown that when you have a vacant piece of property, whether it be 72 acres or three acres, and the decision is that it cannot be developed, the property is not worth anything. He stated that he did not think that a 72-acre piece of property in Eliot that can only be used as a wood lot today and into the future is a reasonable return. He added that if that was true, then the Town should not have been passing any of the variances and the Planning Board should not have been granting waivers.

Mr. Woods stated that the family is paying taxes on a 72-acre piece of property and are being billed as if it is a buildable parcel. He stated that he did not think that the Town can restrict every back lot that does not have a 50-foot right-of-way and which existed prior to zoning and determine that the owners should have paid attention to zoning and now the property is a wood lot and that should be considered as a reasonable return. He added that the fair market value of the piece of property to settle the estate is not as a wood lot.

Mr. Wood asked how Ms. Berthiaume would ever settle the estate if the property is a wood lot. He stated that she would have to put together a forestry management plan, have it cut every 15 years and then divide the proceeds. He stated that the family wants the estate settled now. He stated that the family wants to convey a small portion to Deborah's sister and sell the other portion. He added that he did not think the family was being greedy in only asking for two lots from a 72-acre parcel, but that they needed to settle the estate. He stated that liquidating it into two buildable lots was a lot different than liquidating it as a wood lot.

Chairman Cielezsko asked what the value of the property would be as one buildable lot. Mr. Woods stated that he did not know but that he thought if it was two buildable lots, the family could get what they needed to settle the estate. He and Ms. Berthiaume both stated that they would not be comfortable putting a dollar value on the property because it had not been appraised. He stated that whatever the figure is, Ms. Berthiaume felt it would be enough to settle the estate to divide among the heirs. He added that Mr. Crowell took care of the property and intended for it to be divided among the children. He stated that if the property itself was divided among the children, he would still be asking for variances.

Mr. Marshall asked for clarification of specific area on the survey map and Mr. Wood provided information about which parts were being divided. He explained that the hatch-marked portion on the survey map is an area claimed by Mr. Crowell. With that area, the total parcel is 72 acres. Without that area, the property is 62.5 acres. He stated that about 3.5 acres would be transferred to Tax Map 83, lot 1 from Tax Map 83, Lot 2. That piece would contain the orchard, which is maintained by Ms. Berthiaume's brother-in-law.

Mr. Marshall asked if the family was planning to retain any portion of the back property and Mr. Woods stated that they are not.

Mr. Lytle asked what the taxes are on the land and whether or not it was taxed as a wood lot or a house lot. Mr. Wood stated that he did not know the tax amount but that the assessed value is \$189,200 as vacant land. Mr. Marshall asked if that figure applied only to the back lot and not to the land on which Ms. Berthiaume lives. She stated that he only includes the back lot and that she pays four separate taxes for the family property pieces.

TESTIMONY FROM THE CODE ENFORCEMENT OFFICER

Mr. Marchese stated that he had provided the Board with the Eliot GIS map and had tried to simplify the layout. He stated that the red boxes indicated residences. He stated that the only thing he had reservations about was the 20-foot-wide right-of-way that extends approximately 800 to 900 feet. He stated that the minimum width of a road is established as a 15-foot traveled roadway and it was his opinion that that creates a very dangerous situation. He added that utilities would have to go in there. (Mrs. Berthiaume stated that utilities are already in that location.)

Mr. Marchese stated that the property is a considerable distance from a through way and that an emergency situation would obviously be an issue. He stated that it would be a new lot and that the people buying the lot would, hopefully, realize the issue.

The CEO stated that he wanted to remind the Board that they have to consider the four criteria and that is very important in this variance that the appellants to meet all four of them.

QUESTIONS FOR THE CEO FROM THE BOARD

Mr. Hamilton asked for clarification that there is a 20-foot right-of-way and 900 feet of road. The CEO stated that the engineer's plan shows the extension from Ordiorne Road through the field and almost to the property.

TESTIMONY FROM ABUTTERS

Connie Weeks of 44 Ordiorne Lane stated that she had a number of issues that she would like to address. She stated that when they purchased their parcel, the road had been switched from going right by their house to a location several feet over so that it would not be so close to the house. She stated that the reason was that the trucks going back and forth when Ms. Berthiaume's house was being built were so onerous to the people who lived in her house that they swapped land with the Crowells.

Mrs. Weeks stated that her lane is two rods wide but that it is also two rods wide through the Crowell's parcel up to her land. She stated that both her deed and their deed indicated that the road should never be paved.

Mrs. Weeks stated that her second issue was that Ordiorne Lane is the obvious access to the parcel in question because it is the least expensive access. She stated that to her way of thinking, Ordiorne Lane already has several people traveling on it, that it is narrow and that there is a fork just below her house where there has already been one accident. She added that Tippy Lane also comes into Ordiorne and creates a traffic problem.

Mrs. Weeks stated that the residents do not have a road association. She stated that the Town saves a lot of money because there are many people all over Town who maintain the roads that they use to get to their land.

Mrs. Weeks stated that when Ms. Berthiaume approached her, she suggested access through Bartlett Lane. She stated that it may cost a little more than driving up Ordiorne Lane but it would certainly tax Ordiorne even more to have more people traveling on it. She added that there is no policing because the police do not have to take care of problems on the back roads. She stated that she had had problems with people speeding and that that was a concern because she used to have sheep. She stated that she planned to sell her property to the Meyers and that they plan to have animals. She stated that all of the residents have dogs.

Mrs. Weeks stated that it was scary to think of more people traveling over the narrow, bumpy, pot-hole-ridden road that is Ordiorne Lane. She stated that she cannot believe that it is not possible to come down Bartlett Lane and enter the property, which is north of the Weeks' property.

QUESTIONS FOR ABUTTER FROM THE BOARD

Mr. Cutting asked who is responsible for maintaining Ordiorne Lane currently. Mrs. Weeks stated that there are two young fellows who have been doing the work. She stated that last spring she personally paid one of them to have the lane smoothed out because she was about to have a couple of parties. She stated that while she doesn't mind dealing with the condition of the road all of the time herself, she does have concern for the people who visit her.

Mr. Cutting asked who is responsible for plowing the road. Mrs. Weeks replied that was up to the person who has to get out first. She added that there is no road association.

TESTIMONY FROM INTERESTED PARTIES

Michelle Meyer of 1159 State Road, Eliot, Maine stated that she and her husband Jay will close on the purchase of Mrs. Weeks' property on July 1, 2013. She stated that she is in agreement with Mrs. Weeks that there is currently no policing, no speed limit signs and no Town maintenance and that they will care for the road and plow the road.

Mrs. Meyer stated that Mrs. Weeks will be staying on the property with a lifetime lease and that the Meyers will be in a second home. She stated that they will care for the lane right past their house. She stated that an increase in traffic is of great concern to them. She stated that even with building on only two properties, there is no way to determine the increase in the number of vehicles. She stated that it would fall to them to police any reckless speeding or noisy vehicles.

Mrs. Meyer stated that Ordiorne Lane is a small road with a dangerous turn onto the back property. She stated that she was sympathetic to the family's desire to sell the property but she thought that serious consideration should be given to access from Bartlett.

QUESTIONS FOR INTERESTED PARTY FROM THE BOARD

Chairman Cielszko asked who lives in the second house on Mrs. Weeks' property currently. Mrs. Meyer stated that is rented to a tenant who will vacate by June 30, 2013.

TESTIMONY FROM SECOND INTERESTED PARTY

Mary Fournier of 16 High Meadow Farm, Eliot, Maine asked if Chairman Cieleuszko would read the Ordinance with all of its criteria that must be met to have a variance granted. Chairman Cieleuszko stated that they would be introduced during the meeting and that he could give her a copy of them but that she should know what they are.

Mrs. Fournier asked who had the map that indicated a wetland on the property and when the survey was done. Mr. Woods replied that it was done in 2008.

Mrs. Fournier stated that she lives at the end of a lane and that she has the advantage of a right-of-way agreement which is registered. She stated that road maintenance on Ordiorne Lane is not a serious concern because the road is a dirt road. She added that it does save the Town a lot of money to have the road maintained by the homeowners. She stated that there is an advantage of having a private right-of-way and paying the cost of it.

Mrs. Fournier stated that Mrs. Weeks' concerns sounded very valid and that, as a concerned citizen of the Town, she would be concerned with granting a variance for the lots which will be subdivided and would require a 50-foot right-of-way. Chairman Cieleuszko stated that was not the case and asked Mrs. Fournier to make her point. She stated that it sounded like the property was going to be subdivided for profit with a request for a variance being the first step. She added that there is wetland involved and that the Town is not that great at keeping track of the wetlands protection.

Chairman Cieleuszko stated that there is a division of land because the property is currently one lot and that there will be one division into two lots. He added that it is not a subdivision.

Chairman Cieleuszko asked Mrs. Fournier to assume her worst-case scenario and make her point on that premise and the Board would consider her point. Mrs. Fournier asked if the property was on the corner of Ordiorne Lane and Ms. Berthiaume answer that it is way back from that location.

Chairman Cieleuszko asked Mrs. Fournier again to make her point. He added that he was not going to review the whole case so that she could have a clear understanding of it. Mrs. Fournier asked if she could look at the subdivision plan. Chairman Cieleuszko stated that there was not a subdivision plan and that the survey was just boundaries.

Mrs. Fournier stated that there is a required right-of-way width and that Ms. Berthiaume was requesting a variance for a reduction in the required right-of-way width

and an increase in the length of a dead-end road for property located on Ordiorne Lane, Tax Map 83, Lot 2. She asked why they needed the variance. Chairman Cielezko stated it was needed to fulfill the requirement for the creation of a legal, buildable lot.

Chairman Cielezko asked Mrs. Fournier again to assume her worst case scenario and make her point. Mrs. Fournier stated that she understood that the family wants to settle the estate by splitting the property so that they can divide the proceeds. She stated that she thought she heard that more than one lot was a possibility but that they would have to approach the Planning Board and have soil testings. Chairman Cielezko stated that those statements had been conjectures but that those considerations were not part of the current proceedings.

Mrs. Fournier stated that she realized that fact but that granting a variance would be the first step. She added that increasing the profits from a property does not constitute a financial hardship. Mrs. Fournier stated that the appellant must meet all of the criteria. She stated that safety issues would also be a problem because an abutter had already stated that the lane was narrow in many areas. She stated that another complication was that the people who want to buy the property will cause a hardship for Mrs. Weeks because she has people who want to buy her property and then someone comes in after the fact and wants to change the whole road scenario.

Mrs. Fournier discussed the configuration of the BOA (five members and two alternates) and questioned whether non-voting members or alternates could contribute to a discussion. She stated that she did not think they should be talking. Chairman Cielezko stated that during a public hearing they have the right to ask questions as Board members. Once the public hearing is closed, the non-voting members cannot input anything more.

Mrs. Fournier suggested that the Board not grant the variance.

FINAL TESTIMONY FROM APPELLANT

Ms. Berthiaume stated that the family does not have any legal right to Bartlett Lane. She stated that they could not use Bartlett as access. She stated that, even if that detail could be overlooked, the lay of the land is such that Bartlett Lane comes in over flat land and the land of the Crowell family is very steep. She stated that her land cannot be accessed by Bartlett Lane using good road-building practices because the lay off the land is all wrong. She stated that a road cannot be built on the land as it exists.

Ms. Berthiaume stated that the family had researched and consulted with lawyers and had found that they cannot get to the land except by Ordiorne Lane.

FINAL QUESTIONS FOR APPELLANT FROM THE BOARD

Mr. Marshall stated that he was mulling over the issue of who maintains the road. Ms. Berthiaume stated that from 1960 until 2000, when her father's health failed him, Mr. Crowell maintained the road himself. She stated that once her father's health failed him, her brother-in-law and nephew who live on the road helped maintain the road. She stated that, as Mrs. Weeks had said, the person who needs to go to work first may be the one who does the plowing. She added that many of the people who live on Tippy Lane also have their own plows. She stated that the road is maintained by everybody who uses it as they are able.

Mr. Marshall stated that he was looking at the part that goes across Mrs. Weeks' property, not Ordiorne Lane itself. Ms. Berthiaume stated that the road in the location is still Ordiorne Lane. Mr. Marshall stated that it appeared that it would be up to the purchasers of the property and Ms. Berthiaume's sister to come to an agreement on maintenance.

Mr. Cutting asked if Ms. Berthiaume had talked to anyone about the highest and best use of the property, such as a realtor. Mr. Cutting asked if there was a plan in place to market the pieces of property as they are. Ms. Berthiaume stated that the family does have to settle the estate and they do have to unload the estate of the piece of real estate in order to settle the estate. She stated that they had talked to realtors because they have to sell it.

Mr. Cutting asked if the property was on the market currently. Ms. Berthiaume replied that the property is not listed and is not on the market because the family needed to know exactly what they are selling. She stated that first they need to know whether they have one or two lots and whether the lots are buildable.

Mr. Cutting stated that he wondered whether Ms. Berthiaume was premature in requesting the variance before she can determine what the prospective buyer's plans are because they could be something completely different than what she anticipates.

Mr. Woods stated that in order to market a buildable lot, it has to have been determined to be a buildable lot. He stated that if they sell the lot and the new owner tries to get a building permit and has problems doing so, the seller would have a lot of liability. He stated that before putting a lot on the market that is advertised as a buildable lot, the seller needs to make sure the lot is buildable.

Mr. Cutting asked whether current access to the lot is the determining factor. Mr. Woods stated that there is access over Ordiorne Lane but that the CEO would not issue

a building permit because the lot does not have any frontage conforming to the Ordinance.

Ms. Lemire referred to the appellant's statement that she is "required" to sell the property to settle the estate. Ms. Berthiaume asked how she could settle the estate without doing so. She stated that there are seven heirs and that she could not otherwise liquidate the estate. Ms. Lemire clarified that the property needed to be sold in order to close everything out.

Ms. Lemire asked why a 50-foot right-of-way would not be possible in that location. Mr. Woods stated that the reason was that they could not purchase the property from the abutters. He stated that the access was created as a 33-foot right-of-way to the two lots. He stated that Eliot used to have a 40-foot right-of-way standard and they increased it to 50 feet. He stated that to create a 50-foot right-of-way now would be impossible without purchasing land from the abutters and that there are 11 other houses on the lane. Ms. Berthiaume stated that the road dates back to the 1700s. Mr. Woods stated that if the property had a 50-foot right-of-way, they would not be asking for a variance.

Ms. Lemire asked if there was any possibility of widening the portion in question. Mr. Woods stated that there is no possibility of getting a 50-foot right-of-way and there is no legal access from Bartlett Lane. He stated that the property has been in the family since 1960 and has been taxed as a buildable piece of property since that time. He stated that Ms. Berthiaume had two of her sisters present at the meeting to support her position that they need to divide the property, they need to sell the property and they need to settle the estate.

Mr. Woods stated that his wife was the trustee of her father's estate with three other siblings in the family and that he was well aware that being a trustee is not fun.

Ms. Lemire asked if the family could sell the property as a single, large piece of property. Mr. Woods replied that they could sell it but that it still would not be buildable and the purchaser could not build a house on it. He stated that they would have to sell it as a non-buildable piece of property.

Chairman Cielezsko asked the CEO for the definition of vacant land. The CEO replied that vacant land is non-habitable, meaning there is no one living on it. Chairman Cielezsko asked if there was a different definition for a wood lot or if a wood lot also be considered as vacant land. The CEO replied that the questions were assessment questions.

Mr. Woods stated that vacant land is just a piece of property with no buildings. He stated that what he thought Chairman Cielezsko was looking for was a definition of property that is in tree growth. He stated that on such a property, if an owner has a forest management plan, there is a reduction on the taxes. If the property is taken out

of tree growth and put into what is called “current use”, there is a penalty to be paid. Mr. Woods stated that the Crowell property had never been put into tree growth and that it has been assessed and taxed as buildable.

Chairman Cielezko stated that in the Table of Lane Uses, there is Forestry but that the Crowell property is only recognized by the tax maps as vacant land. Mr. Woods replied that the lesser tax definition would be tree growth.

Chairman Cielezko asked for the distance measurement to the end of Bartlett Road from a non-dead end street. The CEO replied that Bartlett is approximately 2300 feet to Brixham Road. Chairman Cielezko asked if the solution was to connect the two roads (Bartlett and Ordiorne) or if they would still have the same problem if they used Bartlett. Mr. Woods stated that the property is currently 2300 feet to the last lot.

Chairman Cielezko asked if there were any last thoughts from the appellant. Mr. Woods stated that he certainly understood the Meyer’s concerns and Mrs. Weeks’ concerns but that he doubted they felt like they were living on an unsafe road. He stated that there are constraints on the road, as there are on several roads in Eliot. He stated that he lives on a lane that is 12 feet wide and that when there was a fire at the end of the road, the fire department managed to get down the road. He added that he did not have a concern that fire vehicles would not be able to get up Ordiorne Lane to the two lots in question. He stated that the situation is similar to a lot of private roads in Eliot.

Mr. Lytle clarified that the variance request concerned two lots and that there was no intention to change the goal to a subdivision. Mr. Woods stated that they could not request a subdivision.

PUBLIC HEARING CLOSED

The public hearing was closed at 8:20 PM.

FINDINGS OF FACT:

- The request for the variance is on property located, according to the application, on Ordiorne Lane.
- The property is identified on tax maps as Map 83, Lot 2, in the Rural District.
- The property is owned by William H. Crowell Heirs, c/o Deborah Berthiaume.
- Ownership of the property is shown through Deed Book 1419, page 560 in the York County Registry of Deeds.

- The variance requested involves Street Design Standards, Section 37-69(f) which requires a 1000-foot maximum length for a dead end road and Street Design Standards, Section 37-70 which requires a 50-foot right-of-way.
- The original lot was bought in 1960 by the Crowells and has been owned by them since.
- It was testified that the parcel is proposed to be divided into two residential lots.
- The road will need to be at least 2100 feet to get to the first lot and 2400 feet to get to the second lot.
- There have been test pits done on both lots.
- There is a dispute about the western boundary of the whole lot, resulting in the fact that the land could be either 60 or 70 acres.
- There is currently on the road a 900 foot section that has a 20-foot right-of-way.
- The road, because of construction on upland lots, had been moved in an agreement with Mrs. Connie Weeks and the Crowells, according to testimony from Mrs. Weeks.
- Mrs. Weeks also testified that the deeds stated that the road will not be tarred.
- It was testified that the owners of the road currently maintain the road and there is no road association.
- The land is identified by the Town Assessor as vacant land of approximately 70 acres with a value of \$189,200.

Mr. Hamilton stated that he did not think the division of the property into two lots was part of the variance application. He stated that the appellants were asking for a variance on the road width and the road length. Chairman Cielezsko stated that the appellants' proposed lot would require a length of 2400 feet. Mr. Hamilton stated that the application hinted at two lots.

Mr. Hamilton stated that if variance was granted for a length of 2400 feet and other lots came up in the future, there would already be a variance on that road. He stated that the BOA could probably put a restriction on the variance. Chairman Cielezsko stated that that would be difficult to do.

Chairman Cielezsko stated that it was a Finding of Fact in that it had been presented that the variance was for only land division. Mr. Woods cited the variance request as, "The variance request is for approval of an existing, deeded right-of-way to provide access and frontage to an existing 70-acre parcel, Map 83, Lot 2. The parcel is proposed to be divided into two residential lots."

Chairman Cielezsko stated that the Board of Appeals has the authority to hear the case through Section 45-49(b), Variance Appeals. He stated that the appellants have to meet four criteria. He stated that he would like to start with a motion and then discuss in order to chart out how they do or do not meet the four criteria as determined by the four voting members.

MOTION

Mr. Hamilton made a motion to deny the variance request for a reduction in the right-of-way width and an increase in the length of the dead-end road. Mr. Cutting seconded the motion.

DISCUSSION

Mr. Hamilton stated that he did not think the appellants met the first criteria which states, *"The land in question cannot yield a reasonable return unless the variance is granted."* He stated that it is a large parcel and although the highest and best use would be the development of separate lots for residential use, it still has value, as clearly attested to by its appraised value and its tax map value.

Mr. Hamilton stated that he was not sure whether or not they met the second criteria, *"The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood."*

Mr. Hamilton stated that he thought the appellants did meet the third criteria, *"The granting of a variance will not alter the essential character of the locality."*

Mr. Hamilton stated that he did not think they met the fourth criteria, *"The hardship is not a result of action taken by the appellant or by a prior owner."* He stated that they know that there are current zoning requirements of a 1000-foot limit and a 50-foot-wide right-of-way, even though they have owned the property since 1960. He added that it is a tough decision but there is concern about the safety issues and that is the reason the Ordinance was adopted.

Mr. Hamilton stated that exceeding the 1000-foot limit of dead-end roads, even if the roads do meet Town standards, has been determined from a number of cases to be inadvisable. He stated that he thought the appellants were aware of the issues and, although they have the right to seek a variance to that substandard, he believed they were creating the hardship by trying to change the nature of the property, given the current standards.

Chairman Cieleuszko asked if Mr. Hamilton had made a decision about criteria #2 and Mr. Hamilton stated that he did think the appellants met that criteria.

Mr. Cutting stated that he did not think they met any of the criteria.

Ms. Lemire stated that the appellants had not addressed criteria #3 in the attachment package for the variance application. Mr. Hamilton stated that it is up to the BOA to decide whether or not the appellants meet the criteria and Chairman Cieleuszko stated that there was testimony to the issue.

Ms. Lemire stated that she did think the appellants met criteria #2, but that she was struggling with #1 because they could not use the property as a buildable lot unless something changes. She stated that as far as a reasonable return is concerned, the property cannot be used except as it is being used currently. She added that she did not think the appellants met criteria #3 or #4.

Ms. Lemire stated that she did not think the appellants could get a reasonable return on their property without some change being made to the property. Chairman Cieleuszko stated that would mean that she did agree that they met criteria #1 and Ms. Lemire concurred.

Mr. Lytle stated that he thought the appellants met all of the criteria.

Chairman Cieleuszko stated that the survey, by State law, must have one of the criteria voted against by a majority opinion in order for the denial to hold up. He stated there was a majority vote that the appellants did not meet criteria #4, "*The hardship is not a result of action taken by the appellant or by a prior owner.*" He stated that that majority provided backing for a decision on the variance and asked if there was any other conversation.

Mr. Hamilton stated that the need to settle their estate was the impetus for the appellants to divide the property. He stated that that need had no bearing on the BOA's decision, even though he did understand the problem. He stated that the appellants mentioned several times in their presentation that they really needed to settle the estate and he does understand that need, but that the need really had nothing to do with the BOA.

Chairman Cieleuszko asked Mr. Lytle if he would like to take a stab at trying to change some minds on whether or not the appellants met criteria #4. Mr. Lytle stated that the family had owned the land since 1960 before the Ordinance came in and the fact that the land did not satisfy the Ordinance was not the fault of the owner or the prior owner. He stated that he did think they met the fourth criteria.

Chairman Cielezsko stated that he would agree with Mr. Lytle except that the appellants were not talking about the original land but were taking instead about a change they were trying to make currently. He stated that the appellants were trying to change the forest land into buildable lots.

Mr. Cutting stated that, in terms of criteria #1, a “reasonable return” does not mean maximum return and the criteria is denied on the basis of the “reasonable return” standard, absent proof that the person has tried to sell that property “as is” and no one will buy it unless the proposed construction can occur.

Chairman Cielezsko stated that there were tie opinions on all criteria except one. He stated that BOA had to be sure of the results because the vote would be overturned if there was not a majority on one criteria. He asked if everyone was sure of their vote on criteria #4.

Chairman Cielezsko stated the survey results were as follows:

#1 - “The land in question cannot yield a reasonable return unless the variance is granted.”

Mr. Lytle and Ms. Lemire agreed that the appellant met this criteria. Mr. Cutting and Mr. Hamilton agreed that the appellant did not meet this criteria.

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

Mr. Hamilton and Mr. Lytle agreed that the appellant had met this criteria. Mr. Cutting and Ms. Lemire agreed that the appellant did not meet this criteria.

#3 – “The granting of a variance will not alter the essential character of the locality.”

Mr. Hamilton and Mr. Lytle agreed that the appellant had met this criteria. Mr. Cutting and Ms. Lemire did not agree.

#4 - “The hardship is not a result of action taken by the appellant or by a prior owner.”

Mr. Lytle agreed that the appellant had met this criteria. Mr. Hamilton, Mr. Cutting and Ms. Lemire did not agree.

DECISION

The motion to deny the variance request was passed by a vote of 3-1 with Mr. Hamilton, Mr. Cutting and Ms. Lemire voting in favor and Mr. Lytle voting against.

Chairman Cielezko informed the appellants that their request had been denied and that they would receive a Notice of Decision within seven days. He stated that they could appeal within 45 days.

THIRD PUBLIC HEARING

Chairman Cielezko opened the third public hearing at 8:50 PM.

Chairman Cielezko stated that the voting members would be John Marshall, Philip Lytle, Bill Hamilton and Jeff Cutting.

Chairman Cielezko stated that the hearing was for a waiver request by Steven and Susan Wittrock of the side setback requirements for an attached structure of 20 feet. The request is for a 50% reduction to 10 feet. The property is located at 23 Park Street, Eliot, Tax Map 6, Lot 30.

TESTIMONY FROM APPELLANT

Steven Wittrock stated that he and his wife, Susan, had recently purchased a home and were looking at putting in an accessory structure within a garage because there is currently no garage. He stated that the street primarily contains houses with garages. He stated that they wanted to provide enough room for storage.

Mr. Wittrock stated that they had a recent survey done and looked at the location of the accessory structure with a 10-foot offset 5 feet from the house, shifting the front door of the house to a walk-through connecting the house to the structure. He stated that from an architectural standpoint, the walk-through is what makes the garage an attached structure as opposed to an accessory structure with a 10-foot setback.

Mr. Wittrock stated that the proposed location is the only one on the property because the property is a long, narrow property to the river front. He stated that staying outside the 75-foot required buffer limits the buildable area. He stated that the surface area near the road is really the only location for the garage.

QUESTIONS TO APPELLANT FROM THE BOARD

Mr. Marshall asked for clarification of the location of the property on the provided aerial map and Mr. Wittrock showed him which lot was his.

Mr. Lytle asked if it was Mr. Wittrock's intent to build the structure when he bought the property. Mr. Wittrock replied that he knew that he wanted a garage. He stated that initially there was uncertainty as to where the property lines were and what would be conceivable. He stated that as part of the sale, they did the survey which updated where the property lines were.

Mr. Lytle asked if there was any area on the property to put a garage that would meet the requirements. Mr. Wittrock replied that there was no other location because of the front setback and the back location near the required buffer from the river. Mr. Wittrock stated that the adjoining property is a Town-owned 20-foot right-of-way for an abandoned sewer access.

Mr. Hamilton asked Mr. Wittrock where he was measuring the 10 feet from. He stated that he noticed that the structure has an overhang of about 2 feet that is part of the setback. Mr. Wittrock stated that he had not been aware of that. Mr. Hamilton stated that would mean that the setback was 8 feet and that the waiver would be more like a 60% reduction instead of a 50% reduction. Mr. Wittrock stated that he would eliminate the overhang in order to stay within the 10-foot setback.

Mr. Cutting asked if there had been a survey done on the property so that Mr. Wittrock was sure of the boundary lines. Mr. Wittrock replied that the recent one was done within six months by Civil Consultants in South Berwick.

Ms. Lemire stated that she noticed that one corner of the proposed garage is in an area with drainage into a PVC culvert. She asked how building the garage would impact that and whether he had thought about how to reconfigure the drainage. Mr. Wittrock replied that the drainage would have to be relocated. He stated that the current location is probably within the last two feet of the garage and it would have to be moved over. Ms. Lemire asked if he has specific plans to do that and he replied that he did not yet have plans. He stated that the drainage comes from a neighbor's storm drain and that it is a fairly simple project to relocate it.

Ms. Lemire asked what the maximum lot coverage would be for the proposed structure. Mr. Wittrock replied that the lot is 18,000 square feet and that the current house is 1000 square feet. He stated that the garage would provide an additional 500-600 square feet. He stated that there would be some additional paving and that the garage would cover about half of a shell driveway that is there right now, so he would be well under 20% of the maximum coverage.

Chairman Cielezko stated that the shell driveway is still counted. Mr. Wittrock stated that the garage would take over about half of the shell. Mr. Wittrock stated that the area that is impermeable would remain impermeable.

Chairman Cieleuszko stated that Mr. Wittrock could put an ADU (Accessory Dwelling Unit) upstairs in the garage. He asked if Mr. Wittrock had envisioned an extra room there. Mr. Wittrock replied that it would be used as just storage.

TESTIMONY FROM CODE ENFORCEMENT OFFICER

Mr. Marchese stated that he did not have anything further to add and that the application was complete and straightforward and contained all of the necessary information.

QUESTIONS FOR CODE ENFORCEMENT OFFICER FROM THE BOARD

Mr. Marshall stated that from the map, it looked like most everybody in the neighborhood already had a garage and asked if that was the case. The CEO replied in the affirmative.

Mr. Hamilton stated that he had trouble reading the dimensions of the garage and asked what they are. Mr. Wittrock replied that the garage is proposed as 15 feet by 29 feet. Mr. Hamilton asked for the square footage and Mr. Wittrock replied that with the entryway, it is about 500 square feet.

Mr. Hamilton asked what the minimum is for an ADU and Chairman Cieleuszko replied that it was 650 maximum square feet. Chairman Cieleuszko stated that the 650-foot measurement is for a primary structure. Mr. Hamilton asked if there was a minimum ADU. The CEO replied that he did not believe there was. He stated that there is a minimum size for a unit per the 2009 code, but it is not in the Ordinances other than through reference.

Ms. Lemire asked if the CEO knew the answer about the lot coverage. He replied that the property is in the Shoreland Zone and there is a maximum of 20% non-vegetative surface. He stated that he had done a quick calculation and did not believe that the Wittrocks are even close to that amount.

Chairman Cieleuszko asked the CEO if there were any other Shoreland difficulties that might crop up with the project. The CEO replied that he could not foresee any.

TESTIMONY FROM ABUTTERS OR OTHER INTERESTED PARTIES

Mike Moynahan stated that the plan started out as a detached garage. He stated that he talked with the CEO and they thought that someone would attach it down the road so

they started talking with the homeowners and leaned toward the current process to apply to the BOA to make sure there were no problems with the structure in the future.

Mr. Marshall asked if the appellants would need a waiver if the garage was unattached. Mr. Moynahan stated that they would not.

PUBLIC HEARING CLOSED

The public hearing was closed at 9:10 PM.

FINDINGS OF FACT:

- The appellants are Steven and Susan Wittrock.
- The lot is identified as Tax Map 6, Lot 30.
- The lot is zoned in the Village District.
- The date the application was written was May 29, 2013.
- Ownership is shown through the York County Registry of Deeds Book 16918, Page 308, received on January 28, 2013.
- The waiver needed is a reduction for the side yard setback from 20 feet for a primary structure down to 10 feet.
- The appellants are asking for the ability to build a garage with storage above and a breezeway, all attached to the existing house.
- The appellant stated that the overhang of the building encroaching beyond the proposed setback will be eliminated to meet the setback.

MOTION

Mr. Lytle made a motion to grant the waiver to the side setback requirement. Mr. Marshall seconded the motion.

DISCUSSION

There was no discussion

DECISION

The Board voted unanimously to approve a 50% waiver to reduce the garage side 20-foot setback requirement to a 10-foot side setback. Voting in favor were Bill Hamilton, Philip Lytle, John Marshall and Jeff Cutting.

Chairman Cieleuszko told the Wittrocks that they had been granted the waiver and would receive a written Notice of Decision within seven days. He stated that the waiver must be recorded at the York County Registry of Deeds and returned to the Code Enforcement Officer within 90 days or it becomes moot. He added that the decision can be appealed within 45 days.

OTHER BUSINESS

The minutes of the May 16, 2013 meeting were accepted as amended.

Mr. Lytle stated that he might not be at the next BOA meeting. Chairman Cieleuszko stated that he was glad that Mr. Lytle got elected to the Budget Committee and asked if that was the reason he would not be at the next meeting. Mr. Lytle stated that he could do both but that he had not yet decided if he would do so.

Chairman Cieleuszko stated that next year his term would be up with the BOA and he would be stepping down. He stated that there are plenty of people in the Town and that it has been and will continue to be a good Board. Ms. Lemire stated that she thought they all did a very good job.

Chairman Cieleuszko told Mr. Lytle that it has been a pleasure to work with him and that if he does decide to leave the BOA he wanted him to know that. Mr. Lytle stated that he might continue on the BOA for another year but that he had not quite decided yet.

Chairman Cieleuszko asked if it was the first meeting after the Town Meeting that the Board is supposed to vote for officers. Chairman Cieleuszko stated that they should have elections but that he wanted to wait until the next meeting and he thought he had credence to do so because there was obviously going to be another Town Meeting. Ms. Lemire stated that there may be a referendum instead. Chairman Cieleuszko stated that he would hold off the elections until the next meeting. There was agreement and Ms. Lemire stated that she would like to have them with a full Board.

ADJOURNMENT

The meeting was adjourned at 9:31 PM.