

## TOWN OF ELIOT – BOARD OF APPEALS MEETING

July 18, 2013

### ROLL CALL

Present: Chairman Edward Cieleuszko, Vice-Chairman Peter Billipp, Secretary Bill Hamilton, Jeff Cutting, Ellen Lemire and Associate Member John Marshall. (Chairman Cieleuszko noted that Ellen Lemire was to be sworn in as a Board Member and no longer as an Associate Member.)

Others Present: Code Enforcement Officer Jim Marchese; Mr. and Mrs. James Codair, appellants; Gerald and Brenda Becker, abutters.

### CALL TO ORDER

Chairman Cieleuszko called the meeting to order at 7:00 PM. He stated that the meeting was being streamed live on the internet.

Chairman Cieleuszko stated that he would open the public hearing for Mr. Codair's request after the BOA conducted a few other business matters. He stated that the procedure for the public hearing would be as follows:

- 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.
- The Code Enforcement Officer will present testimony.
- The Board will question the COE.
- 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 discuss their duties and what authority they have. They will then make a motion, discuss the motion and, 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 a copy of the paperwork delivered within 90 days to the Code Enforcement Officer. If this is not accomplished, the decision becomes moot.
- Any decision can be appealed to the Superior Court within 45 days.

### **ELECTION OF OFFICERS**

Peter Billipp made a motion to nominate Ed Cielezsko as Chairman. John Marshall seconded the motion. Ellen Lemire moved to cease nominations and John Marshall seconded. The vote was unanimous to elect Ed Cielezsko as Chairman.

Bill Hamilton made a motion to nominate Peter Billipp as Vice-Chairman. Ellen Lemire seconded the motion. Ellen Lemire moved to cease nominations. John Marshall seconded the motion. The vote was unanimous.

Peter Billipp made a motion to nominate Bill Hamilton as Secretary. Ellen Lemire seconded the motion. John Marshall moved to cease nominations. Ellen Lemire seconded. The vote was unanimous.

### **PUBLIC HEARING**

Chairman Cielezsko opened the public hearing at 7:06 PM. He stated that the hearing was for a waiver request to the rear yard setback from 30 feet to 17 feet for James Codair, 7 Cole Street, Eliot, Maine.

Chairman Cielezsko stated that the voting members would be Bill Hamilton, Peter Billipp, Jeff Cutting and Ellen Lemire. He stated that he would only vote in the event of a tie.

### **TESTIMONY FROM APPELLANT**

Mr. Codair stated that the request was for a waiver from 30 feet to 17 feet. He stated that the reality was that the house already sits at 20 feet and he wants to extend the house out an additional 12 feet. He added that the property line is on an angle which would bring the rear setback down to 17 feet. He stated that the house is already non-conforming on the property.

Mr. Codair stated that he had just received a copy of the Code Enforcement Officer's letter to the BOA and noted that it states, "Inquires of the possibility of building expansions should have been made prior to purchasing the home." Mr. Codair stated that they did make those inquiries and talked with Kate Pelletier a number of times. He stated that his real estate agent first contacted her by email. He stated that the email from Ms. Pelletier basically indicated that expansion would be possible if they wanted to build upward.

Mr. Codair stated that he came to the Town Hall a couple of times with building plans and talked with Kate Pelletier. Mr. Codair stated that he has never gone through the process before and that, unfortunately, she did not send him to Mr. Marchese until about two weeks ago. He stated that it was only then that the CEO informed him that he would need the setback waiver.

Mrs. Codair stated that before they made the offer to purchase the house, they came to the Town Planning Office and showed Ms. Pelletier the building plan and asked if it was feasible. Mrs. Codair stated that Ms. Pelletier indicated that if they were extending up to eight feet, they would not need a waiver but that if they wanted to extend it four more feet, they would need a waiver. Mrs. Codair added that they did do due diligence prior to purchasing the house because they thought the existing house would be too small to live in.

Mrs. Codair stated that they wanted a home large enough for their daughter to come home to in an emergency. She stated that she also has an elderly mother and that if they move here full-time, they would want to bring her. Knowing that they would be able to do so was very important before they made their decision.

Mrs. Codair stated that when they came in with the plans, the result was very different than what they had been told. Mr. Codair stated that Ms. Pelletier had not previously referred them to Mr. Marchese.

Mr. Codair stated that he was under the impression that they could expand by going up, but that they want to keep to one-level living which is why they requested a waiver to allow going out 12 feet. He stated that they are going to remove the eight-foot by 12-foot addition that was put on the house and extend it out 12 feet, which is the full width of the house.

Mrs. Codair stated that they did not want to do anything fancy but just wanted to build out a little more and make what is now an enclosed porch be as wide as the house. They want go out another four feet, enough to make the kitchen a little bigger and to have a deck. She added that it would not impact the neighborhood.

Mr. Codair stated that they wanted to enlarge the kitchen and add a separate bedroom. He stated that the one-level living would be of benefit because of his elderly mother-in-law who can barely walk and uses a wheel chair.

Mrs. Codair stated that the house where they currently live has a bathroom on the second floor and that when her mother visits, they have to provide her with a commode.

Mr. Codair addressed the first question on the waiver application, "Is the need for the Waiver due to the unique circumstances of the property and not to the general conditions of the neighborhood." He stated that when he and the CEO were looking at the properties online, the property is on a non-conforming lot to begin with and does not have any shoreline frontage. He stated that the majority of adjoining properties that the CEO showed him online were also on non-conforming lots.

Mr. Codair stated that he wanted to reiterate that they are looking for single-level living and that he really does not want to expand upward.

Mrs. Codair added that they just wanted to keep it simple, stretch it out a little and that it would not take away anything. They would be giving back some of the driveway by putting grass there. She stated that they would be taking away part of the driveway to create living space in the house. She stated that the neighborhood is wonderful, that they fell in love with the house and that they were under the impression that they could expand. For those reasons, they made the offer on the lot and now that they have purchased it, they love it.

Mr. Codair stated that they are only allowed 20% lot coverage which is why they will remove pavement and add grass areas which would get them below the current 23% coverage. He stated that the CEO had told him that they need to avoid adding to the non-conformity of the lot.

#### **QUESTIONS FOR APPELLANT FROM THE BOARD**

Mr. Hamilton stated that the tax map indicated that there is a shed located on the property. He asked what the plan was for the shed. Mr. Codair stated that he was hoping to move the shed diagonally. He demonstrated from the diagram. He stated that after discussion with the neighbors, he also might decide to try to move it forward to increase the neighbors' air flow on their property.

Mr. Hamilton asked how many bedrooms there are in the current house. Mr. Codair responded that there is one.

Mr. Billipp stated that Mr. Codair had mentioned that the house is currently 20 feet from the back property line and that by extending it out another 12 feet, he would then be at 17 feet. He asked if that was correct. Mr. Codair responded that it was correct. Mr. Billipp stated that that meant that he was requesting a three-foot reduction.

Mr. Codair stated that when the Town sent a letter to the neighbors (the notice of the public hearing to the abutters), Jack, the neighbor out back, had thought Mr. Codair planned to extend the house back towards his house.

Mr. Codair stated that he had a copy of the existing survey. Chairman Cielezko asked if that was the diagram contained in the BOA information packet. Mr. Codair replied that the packet contained a sketch put together by the CEO and himself but that he also has a survey which had been done prior to their purchase of the house.

Mr. Codair demonstrated the survey to the BOA and showed the angle of the property. He stated that an option he had not considered would be to offset the additional three feet of space, but that he would prefer to go forward from the house if that was possible. He clarified that he if he stuck the addition over, he could stay within the 20-foot rear setback but that it would be more beneficial to him if he could come over 12 feet so that he could add a second bedroom.

Mr. Marshall asked if he would still need a waiver if he stayed within the 20-foot setback, since the lot is already a non-conforming lot. Chairman Cielezko stated that he was not sure and would have to ask the CEO. Mr. Marshall stated that it looked like Mr. Codair could put a six-foot wide addition on at an angle.

Mr. Codair stated that he could go out eight feet without a waiver. He stated that when he was talking with Kate Pelletier, he did not realize that he should have been talking with Mr. Marchese.

Chairman Cielezko referred to the fact that Mr. Codair had said that he had discussed the situation with Kate Pelletier. He asked if Mr. Codair had presented her with the plan that he was presenting to the BOA. Mr. Codair replied in the affirmative. Chairman Cielezko asked if she had told him at that time that he should talk to the CEO.

Mr. Codair stated that the last time they spoke with Ms. Pelletier and told her that they wanted to move ahead, they brought the plan. At that point, she said that they should talk to the CEO. Chairman Cielezko asked if they had shown her the same plan as that in the packet. Mrs. Codair stated that it was exactly the same plan.

Mr. Codair stated that they did talk to Ms. Pelletier prior to purchasing the house and showed her the plan. Mrs. Codair stated that they talked with her for over an hour and that she pulled up all of the information on the shoreline.

Mr. Codair stated that, unfortunately, Mr. Pelletier's email to the realtor discussed going to a second story on the house rather than extending outward and that it had occurred prior to the Codairs' decision to try to stay on one level. He added that the realtor had talked to Ms. Pelletier about adding a second story but that he had talked to Ms. Pelletier solely about staying on one floor.

Chairman Cielezsko asked if Mr. Codair had an interior plan. Mr. Codair stated that he had a rough plan but that he is not an architect and that a contractor would put a package together to be submitted to the CEO. Chairman Cielezsko asked if the presentation to the BOA was based on the outside dimensions of the house. Mr. Codair concurred. Chairman Cielezsko asked if the plan incorporated any change to make it fit the 20-foot setback. Mr. Codair replied that it did not.

Mrs. Codair stated that when Ms. Pelletier saw the plan, which was the same one as in the BOA packet, she commented that it was a very good plan. Mrs. Codair added that they did not know that they should have done another step in the process. Chairman Cielezsko stated that they were in the right spot right now (the BOA hearing).

Mr. Hamilton asked if the property was on a septic system. Mr. Codair replied that it was on Town water and sewer.

Chairman Cielezsko asked if there had been mention of the need for a waiver when Mr. Codair bought the house. Mr. Codair responded that he knew nothing of needing a waiver until he spoke with the CEO. He stated that he thought Ms. Pelletier had said that they might have to get a waiver if they went out to 12 feet but that if they went out to eight feet, they probably would not have to get a waiver.

Mrs. Codair stated that Ms. Pelletier had used the word *variance* instead of *waiver*. Mr. Codair stated that Mr. Marchese directed them toward the waiver, as opposed to a variance.

Chairman Cielezsko asked if the conversations had been prior to purchasing the house. Mrs. Codair responded that he believed Ms. Pelletier had mentioned the need for a variance if they went out to 12 feet but not if they went out to eight feet. She added that after the purchase, the CEO told them that they would need a waiver anyway.

Ms. Lemire stated that the one thing she was concerned about was drainage on the property. She asked if it was well-drained. Mr. Codair responded in the affirmative. Mrs. Codair added that it was all gravel under the surface as well.

Chairman Cielezsko asked if they had included eaves in their measurements. Mr. Codair replied that he had gone by the survey plan and did not know what the surveyors had used for the measurements. He stated that there is a 12-inch overhang on either end of

the house but that they are well within the 20-foot side setback and probably are 40 to 50 feet from the side boundary. He stated that he did not measure the overhang on the back. He demonstrated what the survey had laid out.

Chairman Cielezsko asked if the surveyor had included eaves and Mr. Codair responded that he did not know. He stated that, for the sake of argument, the eaves would not be more than six inches. Chairman Cielezsko stated that if the limit was 17 feet, that additional six inches would destroy the waiver. Mr. Billipp stated that the surveyor measurements are usually taken at ground level and do not include eaves.

Mr. Marshall asked for the dimensions of the footprint of the house. Mr. Codair stated that the main house is 28 feet by 24 feet. Mr. Marshall stated that he did not know how accurate the GIS maps were, but that when he scaled the measurements from the GIS, it appeared to be close to 30 feet. He asked the CEO how accurate the GIS maps were. The CEO responded that they were supposed to be pretty accurate.

Mr. Marshall stated that he was wondering if Mr. Codair could stay within the 20-foot setback by setting the whole addition over three feet. Mr. Codair stated that that would make the bedroom smaller. Mr. Marshall stated that it would also make it more expensive to build because was referring to moving the entire addition over three feet and it added to the cost of a building every time you turn unnecessary corners.

Mrs. Becker asked if she was allowed to say anything. Chairman Cielezsko stated as an abutter, she would have a chance to speak soon after the appellant's testimony.

Mr. Cutting asked Mr. Codair why, in his opinion, the presented design was the best design. Mr. Codair replied that they wanted one-level living. He stated that the first factor is that the home was going to be their retirement home and they did not know how their health would be in the future. The second factor is that his mother-in-law is wheel-chair-bound and cannot take care of herself and that they have her in their house frequently. He added that if they expand and have a second bedroom, she would have access to the bathroom and that would make life a lot easier when they have her with them.

Mr. Cutting asked why the design had to be exactly as presented as far as the physical structure of the building was concerned. Mr. Codair responded that he wanted to keep the same profile of the house and keep it simple. He stated that by tearing off the existing 8-foot by 12-foot addition and going straight out with his new addition, that would be simple. He added that the other advantage is that right now the kitchen is seven feet wide. He stated that it is cozy but that they don't need cozy anymore. He stated that if they get a 12-foot addition, they could knock out the kitchen wall and have a 19-foot long kitchen. He stated that that was the other reason that they wanted to go out.

Chairman Cielezsko asked if the addition was going to be kitchen and Mr. Codair replied that it would be both kitchen and bedroom. Mr. Codair stated that with the island in the existing seven-foot kitchen, they cannot fully open the refrigerator door.

Mr. Hamilton asked if the structure was single-story and Mr. Codair replied in the affirmative. Mrs. Codair stated that the neighborhood was composed of small houses and it would fit the neighborhood better to keep their house single-story.

#### **TESTIMONY FROM CODE ENFORCEMENT OFFICER**

Mr. Marchese stated that there was an incorrect reference in his letter to the Board to the applicable Ordinance and that the appropriate reference is Section 45-194(C) (2), which allows a 50% reduction in setback as waiver after public hearing by the Board.

Mr. Marchese stated that the survey of the property was conducted by Easterly Survey.

#### **QUESTIONS FOR CODE ENFORCEMENT OFFICER FROM THE BOARD**

Mr. Marshall asked whether or not Mr. Codair would have to request a waiver if the ~~addition~~ addition stayed within the setback of the current house. The CEO replied that the house currently has a non-conforming 20-foot setback. Mr. Marshall clarified that as long as there is no increase the non-conformity, there is no need for a waiver. Mr. Marshall asked if the CEO could just issue a permit if Mr. Codair had a different design. The CEO replied in the affirmative.

Mr. Hamilton referred to the CEO's statement in his letter to the Board which stated, "It is the opinion of this office that the hardship test of the request will be difficult to prove by the applicant since he only recently purchased the property." Mr. Hamilton asked the CEO to expand on that statement.

The CEO replied that he had been unaware that the appellant had talked to personnel about the potential expansion of the home. He stated that it is up to people purchasing a property to do due diligence to determine the potential. He stated that he currently believed that they had done that and that he had no further comment on that issue.

Mr. Marshall stated that he wanted to follow up on Mr. Hamilton's question. He asked if the hardship test applied to an easement rather than to a waiver. Ms. Lemire stated that the hardship test applies to a variance rather than to an easement.

Mr. Marchese stated that in the application for a waiver, the third question asks "Is the hardship the result of action taken by the applicant or a prior owner?" Mr. Marshall

stated that in a waiver request, hardship is a guideline but not hard and fast. The CEO replied that it would be the same as that for a variance.

Chairman Cieleuszko asked if the waiver on the rear setback was the only issue holding up the project. The CEO replied in the affirmative.

#### **TESTIMONY FROM ABUTTERS**

Brenda Becker of 9 Woodbine Avenue, Eliot, Maine asked what Mr. Marshall meant when he stated that moving the house would be no problem. Mr. Marshall clarified that he was referring to moving the addition, not to moving the house.

Mrs. Becker stated that they live right next to the Codairs and that they have plenty of room to add the extension to the house. Mr. Marshall stated that he was in agreement. Mr. Marshall stated that he had just been looking for alternatives so that there would be a way to put an addition on the house without a waiver if that was necessary.

Chairman Cieleuszko asked if Mrs. Becker had any other concerns. Mrs. Becker stated that she did not. She added that Mr. Codair was going to fix the shed so that it did not interfere with her sight-line and that he would move it to whatever location was necessary.

Chairman Cieleuszko asked Mrs. Becker if she was in favor of the waiver request. She replied in the affirmative. Mr. Becker stated that was also in favor.

#### **QUESTIONS FOR ABUTTER FROM THE BOARD**

There were no questions for the appellant from the Board.

#### **FINAL TESTIMONY FROM APPELLANT**

The appellant had no further questions.

#### **PUBLIC HEARING CLOSED**

The public meeting was closed at 7:39 PM.

#### **FINDINGS OF FACT:**

- The owner of the property is listed as James Codair.
- The address of the property is 7 Cole Street in Eliot, Maine.
- The property is identified as Map 1, Lot 141 on the Eliot Tax Map.
- The property is in the Village District.
- The lot size on the application and by survey is 8176 square feet.
- Lot ownership is demonstrated by deed registered in York County Registry of Deeds, Book 16620, Page 900.
- The lot is a non-conforming lot.
- The lot was purchased on June 11, 2013.
- The Board of Appeals has the authority to grant the waiver under Section 45-194(C)(2) of the Code.
- The request for the waiver is based on a survey done by Easterly Survey.
- The current lot coverage is 23% and the proposed coverage would be just under 23%. The requirement by code is 20%, but the property is a non-conforming lot and a waiver request cannot exceed the current nonconformity.
- The appellant testified that there were meetings and correspondence with the Town Planning Assistant prior to purchase of the lot.
- Abutters Brenda and Gerald Becker testified that they are in favor of the waiver request.

Chairman Cielezsko stated that the BOA has the authority, under waivers for non-conforming properties, to grant as little as possible to meet a need. He stated that the BOA had to decide whether or not the appellants met the requirements for a waiver. He stated that he would like to get a motion and then have discussion.

## **MOTION**

Mr. Billipp stated that he would make a motion to grant the waiver request. He stated that the appellant was looking for a reduction to 17 feet with an eave of six inches. Mr. Billipp stated that the eave may be 12 inches and that the appellant really needs a reduction to 16 feet. Mr. Billipp made a motion to grant a waiver of a reduction to 16 feet for the rear yard setback for the proposed addition to the house. Mr. Hamilton seconded the motion.

## **DISCUSSION**

Mr. Billipp stated that he would address each of the points of the waiver. Addressing the first point, *"Is the need for the Waiver due to the unique circumstances of the property and not to the general conditions of the neighborhood?"*, Mr. Billipp stated that he did think the property had unique circumstances because the back lot line is at an angle to the house which is causing the need for the waiver. If the back lot line was parallel to

the house a waiver would not be needed. He added that in this case the back lot line actually getting closer and that situation is specific to the property and not to the neighborhood.

Addressing the second point, *“Will granting of a waiver alter the essential character of the locality?”*, Mr. Billipp did not think that granting the waiver would alter the character of the neighborhood at all because most of the lots are also non-conforming and there was testimony from an abutter in support of a waiver.

Addressing the third point, *“Is the hardship the result of action taken by the applicant or a prior owner?”*, Mr. Billipp stated that the appellant did seek advice from the Town prior to purchasing the property. He stated that possibly they did not get every item nailed down, but that he thought they had done due diligence and he did think the appellant met the requirements.

Addressing the fourth point, *“Will granting of the waiver substantially reduce or impair the use of abutting property?”*, Mr. Billipp stated that it would not and that they had heard testimony from an abutter in support of the waiver.

Addressing the fifth point, *“Is the granting of a waiver based upon demonstrated need, not convenience, and is there no other feasible alternative available?”*, Mr. Billipp stated that he thought the appellant had demonstrated need to keep the dwelling single-story. He added that extending up would result in a difficult staircase for the appellant’s elderly mother-in-law so he thought that keeping the house at one floor made sense and that they did demonstrate a need.

Mr. Billipp stated that he support all five of the guidelines.

Mr. Hamilton concurred with Mr. Billipp’s assessment.

## **DECISION**

The Board voted unanimously to approve a waiver for the reduction of the back setback to 16 feet. Voting in favor were Bill Hamilton, Peter Billipp, Jeff Cutting and Ellen Lemire.

Chairman Cielezko told Mr. Codair that they had been granted a waiver to 16 feet to give room for eaves.

Chairman Cielezko stated that the appellant would receive a Notice of Decision within seven days. He stated that the appellant must record this certification in the York County Registry of Deeds and a copy (with Book and Page) returned to the Code Enforcement Officer within 90 days of the granting date above (July 18, 2013).

Waivers are not valid until recorded. Waivers are vacated if not returned to the Code Enforcement Officer within 90 days.

Chairman Cielezsko stated that anyone who wants to appeal the waiver has 45 days to appeal to the Superior Court.

### **APPROVAL OF MINUTES**

The minutes of the June 20, 2013 meeting were approved as written.

### **OTHER BUSINESS**

Ms. Lemire stated that there were some members of the Board of Selectmen who were under the impression that Chairman Cielezsko was resigning immediately. Chairman Cielezsko stated that they would have to wait a year.

Ms. Lemire stated that she would be sworn in as a BOA member the next day. Mr. Cutting stated that he had been sworn in last week. Mr. Marshall asked if the BOA members all had to be re-sworn and Chairman Cielezsko stated that it was required at the end of each reappointment.

### **ADJOURNMENT**

The meeting was adjourned at 7:52 PM.

Respectfully Submitted,

Linda G. Keefe  
Recording Secretary