

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

**July 21, 2011**

Present: Chairman Edward Cieleuszko, Philip Lytle, William Hamilton, Jeffrey Cutting and Associate members Ellen Lemire and John Marshall.

Absent: Vice- Chair Peter Billipp

Others Present: Jim Marchese, CEO; Barbara Boggiano, Recording Secretary and Charles Carswell, John Murphy, and others

**1. 7:00 P.M./ROLL CALL**

Chairman Cieleuszko called the meeting to order at 7:00 p.m. and introduced the members of the Board. He asked if the applicant was present and Mr. Carswell indicated that he was.

Chairman Cieleuszko outlined the proceedings for the order of the meeting.

Chairman Cieleuszko thanked those present because the Board had to re-visit the first case, as indicated on the agenda.

**2. PUBLIC HEARINGS**

**Continuation of Public Hearing on Request for Variance by Ted Long and Ted Long, Inc. and Bolt Hill Associates, LLC for extension of time for substantial completion of each phase of the development, Article 33, Sec. 59. Property located on Bolt Hill Road, Eliot (Map 17, Lot 31).**

Chairman Cieleuszko asked Bill Hamilton if he would mind stepping down, since he had recused himself at the last meeting. Mr. Hamilton took a seat with the members of the community.

Chairman Cieleuszko said that the voting members would be Phil Lytle, John Marshall, Jeff Cutting and Ellen Lemire.

Chairman Cieleuszko indicated he had told Attorney Roberts and Ted Long at the last meeting that if they did not come back with a complete packet and proof of ownership, the Board would not allow them standing and would not hear the case. According to the Board of Appeals manual, they are to deny a variance request if there is no standing. He said that the lack of standing was based on lack of proof of ownership.

Chairman Cieleuszko said he had reservations about denying an appeal if he cannot deliver the Notice of Decision to the owner and asked for a motion to dismiss the case.

Ms. Lemire asked if the Board dismisses the case, can Mr. Roberts re-submit the application.

Mr. Marshall asked if the Board could postpone hearing the case.

Chairman Cieleuszko said he had opened the meeting (on June 16, 2011) and then the Board agreed to continue the hearing until this next meeting.

Mr. Marshall said the Board sort of heard the case.

Chairman Cieleuszko replied the Board cannot continue the hearing any further and that Mr. Roberts had his chance. He felt Mr. Roberts was on a different track now, with merit.

Mr. Marshall asked if the Code Enforcement Officer could explain and asked if he had received a letter from Mr. Roberts.

Chairman Cieleuszko said the letter is irrelevant right now.

Mr. Marshall replied it is not because it will have a bearing on what happens in the future with Ted Long.

Mr. Marchese responded that in fairness, the applicants need to be present. He said they wanted the Board to postpone and continue the hearing until this month. He said the applicant indicated that he would be at this meeting and wants to be here.

Chairman Cieleuszko asked if there was any letter that was sent to the Board and indicated that the letter the CEO is referring to is his letter from the applicant.

Mr. Marchese said he did receive an e-mail from Attorney Roberts on July 11, 2011 asking that the case be heard next month, but he did not receive a letter from the office of Sanford Roberts.

Mr. Lytle asked if the Board denies the request, does Mr. Roberts have an option, or will he have to wait until next year. Mr. Lytle thought the Board should hear the case next month. He said if Mr. Roberts does not show up next month, then the Board should forget it, but he thought that the Board should not stop the process.

Chairman Cieleuszko reiterated that the Board told Mr. Roberts at the last meeting and he still has not given them a complete packet for tonight.

Mr. Lytle asked the CEO if he had made that known to Attorney Roberts that the Board would not hear the case without the proper information, and that was the Board's consensus.

Mr. Marchese responded by asking the Board if they would like a copy of the e-mail received from Sanford Roberts, asking for this case to be continued to the August meeting.

Chairman Cieleuszko replied yes. The CEO returned and Chairman Cieleuszko read the e-mail from Mr. Roberts to the CEO:

{dated July 11, 2011}

*Jim,*

*I will be sending you a letter today asking that the BOA application of Ted Long be continued until the Board's August meeting. I have not yet clarified the ownership situation and I will be away for the next couple of weeks. I am hopeful to get that resolved as well as make a decision concerning your letter regarding the subdivision issue prior to the August meeting. Thanks, S.*

**Mr. Lytle moved to continue the hearing on the variance request of Ted Long and Bolt Hill Associates until August, seconded by Ms. Lemire for discussion.**

Chairman Cieleuszko asked if the Board should add a stipulation that the packet submitted needs to contain the proper information.

Mr. Marshall asked if the Board had standing if they do not hear it next month and asked if there was a statute they could cite. He said he wanted to make sure there is a valid reason other than they are upset.

Ms. Lemire replied the Board is holding Mr. Roberts accountable.

Chairman Cieleuszko said the Board does not have to state that if the applicant does not show or have standing, they would not hear the case, but rather, he does not know who to send the notice of decision to.

Mr. Cutting asked if the Board would hear the case providing Mr. Roberts and Mr. Long have a full (complete) packet.

Chairman Cieleuszko replied that Mr. Roberts knows that already and asked how many times could the Board vote to continue. He said that he is not giving Mr. Roberts any more time.

Mr. Marshall said that the Board did initially. Chairman Cieleuszko replied that was the last time.

Mr. Marshall wanted to know if the clock had started ticking.

Chairman Cieleuszko replied that he opened the hearing (last month), and the Board discovered that Mr. Roberts did not have the proper documentation as to what lots he owned.

Ms. Lemire said the Board cannot hear this case indefinitely.

Chairman Cieleuszko stated that is what Mr. Marshall is saying.

Mr. Marshall said that he did not see anything in the ordinance.

Chairman Cieleuszko said Mr. Marshall is referring to what happens if a decision is not made by the BOA in a certain amount of time and he thought that it is 60 days from the first meeting.

Mr. Cutting read the minutes from the last meeting referencing this issue.

Chairman Cieleuszko said that he would let the application stand, but that Mr. Roberts needed to send in a complete packet before the July meeting so he knew, but chose not to do that.

Chairman Cieleuszko said that Mr. Roberts may not have realized the clock is ticking, but read from page 45-19, §45-101. He said that is an appeal, asking for a variance, and that is part of it.

Mr. Marshall said the appeal and a variance are different and this is for appealing a decision, not what the Board does.

Chairman Cieleuszko replied, in totality of note (k), (§45-50), everything the Board hears is an appeal.

Mr. Marshall read "k":

*"Except where noted, the board of appeals shall act by affirmative vote of those present to reverse or modify any order, requirement, decision or determination of the code enforcement officer or planning board, or to decide other matters on which it is required to pass under this chapter or other ordinances. The failure of the board of appeals to reach a decision within 60 days of the filing of the appeal constitutes a denial of the appeal, unless the board has already scheduled a meeting on the appeal, under which circumstance the 60 days begins on the date of the first meeting on the appeal..."*

Mr. Marshall said "k" is in regard to the appeal procedure, not appealing a decision and the Board of Appeals' time and the clock (ticking), by not hearing the case in a timely manner. He said the Board has not made a decision so there is no appeal yet.

Chairman Cieleuszko said that is an all-encompassing note of what the Board of Appeals does. He asked that the Board refer to Sec. 45-49, Powers, (a) Administrative Appeals and (b) Variance Appeals. He said when a person asks for a variance, whether it be for an extension of time, or for an area it is still an appeal.

Chairman Cieleuszko said that Mr. Roberts was asking for a variance appeal and note "k" encompasses both aspects of the Board of Appeals' powers, administrative and variance. He stated that if the Board of Appeals does not make a decision within 60 days of the first hearing, the appeal is automatically denied; therefore, the 60 days stands.

Chairman Cieleuszko said that is his accurate understanding of that section and told the Board not to be fooled by the word "appeal."

Mr. Marshall referred to the segment "unless the board has already scheduled a meeting on the appeal."

Chairman Cieleuszko asked Jim Marchese to get them a calendar to see if Mr. Roberts has 60 days.

Mr. Marchese gave the calendar to Chairman Cieleuszko, who counted from the June 16<sup>th</sup> meeting. Chairman Cieleuszko noted that this case would be about a week off from August 18<sup>th</sup> – the next regularly scheduled Board of Appeals meeting.

Chairman Cieleuszko said it is a moot point because Mr. Roberts will not make it in time so, in his mind, they should not discuss continuation of the hearing any further.

Ms. Lemire asked if the Board dismisses the case, would it prevent Mr. Roberts from re-applying.

Chairman Cieleuszko said that he thought Mr. Roberts could re-apply if the Board dismissed the case.

Mr. Marshall objected, saying that the Board did not hear the case.

Mr. Cutting asked if the Board could dismiss the case because they received an incomplete package.

Chairman Cieleuszko replied that the hearing was opened, so, in his estimation, the Board has to deny it.

Mr. Marshall said that seemed like an extreme technicality.

Ms. Lemire said that is true.

Chairman Cieleuszko said the case was opened, and then the applicant could not prove ownership, so they decided, as a Board, that Mr. Roberts and Mr. Long had to re-apply.

Mr. Marshall added that Mr. Roberts did not submit the application on the correct form.

Chairman Cieleuszko said that Mr. Roberts could not show the Board what property he was talking about and that the right form was an afterthought.

Chairman Cieleuszko said in reading the manual, the Board cannot dismiss the case. He said the applicant did not have standing, showing the Board proof (of ownership) and that, because of the lack of proof of any ownership, the case could not be heard, and if they do nothing, the appeal will automatically be denied from the first meeting, June 16<sup>th</sup>, within 60 days.

Mr. Lytle asked if the Board could schedule another meeting, prior to August 18<sup>th</sup>.

Chairman Cieleuszko replied no, not without the applicants being present.

Mr. Lytle asked if Mr. Roberts was out of town.

Chairman Cieleuszko thought that Mr. Roberts was on vacation.

Mr. Marchese confirmed that he was.

Mr. Cutting asked when Mr. Roberts would return.

Chairman Cieleuszko said that Mr. Roberts was not acting as an attorney for the case, but as a principal of the case and that he is not Ted Long's attorney.

Ms. Lemire said she did not want to deny it and that if so he could not come back for a year. She said she did not know if a dismissal is like a denial.

Chairman Cieleuszko replied he did not think the Board had dismissed a case before. He said that in the past, if there was a problem with standing, or the applicant did not show up, the Board denied the appeal. He said he was not sure of what the ramifications of dismissing a case would be.

Chairman Cieleuszko said maybe they could dismiss it, if they had not started it, but he opened the case, and that is when the Board asked for Mr. Roberts to prove standing.

Mr. Marshall replied the packet should not have been accepted and that it should not have been submitted to the Board.

Chairman Cieleuszko pointed out to the Board that this is not a "back yard" guy wanting to put up a garage, but Mr. Roberts has appeared before the Board before and there are no excuses. He said they do not have to "babysit" him and that Mr. Roberts knows what he is doing. He said this is not a small project.

Mr. Lytle said that is the whole problem – it is not a small project.

Chairman Cieleuszko said that if the Board members vote on the original motion to continue, he believed that after 60 days, they would be wrong in hearing it next month.

Mr. Lytle asked what would be the latest date the Board could hear Mr. Robert's variance appeal.

Chairman Cieleuszko said that the Board would have to have a special meeting on August 14<sup>th</sup>. Mr. Cutting read from the ordinance that the Board should reject any application (not complete) and thought they should deny it.

Mr. Marshall said then it goes down as if the Board did not hear it.

Chairman Cieleuszko said the motion would be to deny the appeal because the applicants did not have standing. He said they did not ask for a continuation or submit a request to extend and the next meeting will be moot because the applicants have gone beyond the 60 days.

Mr. Marshall asked how does the Board know who to deny? He said they did not hear it because they did not know who to deny so how can the Board tell Mr. Roberts that he cannot come back.

Chairman Cielezsko replied that is an interesting question, but someone who does not have standing should not be able to bring a case. He said, according to the Code, the Board should just deny the appeal.

Mr. Marshall said but then the Board cannot hear it for another year.

Chairman Cielezsko asked the Code Enforcement Officer if he had anything else to offer.

Mr. Marchese replied no.

Chairman Cielezsko said that there is a motion and a second on the floor, but he can assure the Board, at the next meeting, if they hear this case, it will be past the 60 days and we will lose the Supreme Court appeal.

**Phil Lytle withdrew his motion and Ellen Lemire withdrew her second.**

Mr. Marshall thought the Board was stuck in a box.

Chairman Cielezsko pointed out that the applicants have put the Board in a box.

Mr. Marshall repeated that the case should not have come to them.

Chairman Cielezsko mentioned that a lot of cases come before the Board and the applicants are able to fulfill the requirements.

Mr. Marshall said, in reply, that usually the applicants will come to the meeting with whatever piece of information is missing.

**Mr. Cutting moved to deny the application for a request for a variance by Ted Long and Ted Long, Inc. and Bolt Hill Associates LLC for an extension of time based on the packet and that the applicants could not prove ownership, seconded by Mr. Lytle.**

Chairman Cielezsko said it is not the Board that has put themselves in this box, and he wished they could have done more, but the applicants could have done more by having the completed packet submitted in time for tonight's meeting.

Chairman Cielezsko asked if there was any other discussion.

Mr. Lytle said the e-mail that was sent to Jim from Sanford Roberts is July 11<sup>th</sup> and wanted to know if the Board of Selectmen could hear the request.

Chairman Cielezsko replied that they could bring it to the Board of Selectmen and that he will issue a Notice of Decision letter and send it to both Ted Long and Sanford Roberts as representing Bolt Hill Associates.

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

Mr. Hamilton rejoined the Board members.

At 7:40 p.m., Chairman Cielezsko declared a five minute recess.

At 7:45 p.m., Chairman Cielezsko called the meeting back to order to take up the second item on the agenda.

**A. Variance Request by Charles Carswell, 143 Adlington Road, Eliot, Maine (Map 14, Lot 18) to allow the division of an existing lot into two non-conforming lots, or one conforming and one non-conforming lot, Article VII, Sec. 45, sub-section 405.**

Chairman Cielezsko opened the hearing at 7:45 p.m. and announced the voting members would be Phil Lytle, Bill Hamilton, Jeff Cutting and Ellen Lemire. A couple of members of the Board complimented Mr. Carswell on his submission of a complete packet.

Chairman Cielezsko confirmed with Ellen Lemire that the applicant has standing and timeliness is relevant. He said the applicant has one lot with 1.66 acres which he would like broken up into two – one way or another with either one conforming, and one non-conforming or two non-conforming lots. He said the applicant is requesting a variance to the minimum lot size in Sec. 45-405.

Mr. Carswell said the economic environment is making it very difficult and due to personal circumstances, of getting a divorce in 2009 and re-financing his house, as well as losing his job in January 2010, he has not been able to recover.

Mr. Carswell said he would like to sell part of his property to be able to care for his home and keep ownership in Eliot. He said if he could sell his house, he could build on the small lot and will maintain a mortgage. He said he prefers to stay with the lot and build an efficient house, but he could sell and refinance his home.

Mr. Carswell said he has lived in Eliot for many years and graduated from Marshwood. He said he put his two daughters through Marshwood High School and would like to stay.

Mr. Carswell would like to sell his existing home and either of the two split lots would be fine. He said his preference is to split the property in half because one acre is required in the Village district.

Mr. Lytle asked what zone is the property located in.

Mr. Carswell replied the Village zone.

Mr. Lytle asked what is the required minimum lot size.

Mr. Carswell replied one acre.

Mr. Lytle asked if something was brought up during the Comp. Plan revision about changing that requirement.

Ms. Lemire replied it had been discussed, but has not been changed yet.

Mr. Lytle said that Mr. Carswell listed his house lot as less than one acre. He said his question would be how many of the lots were made after zoning or prior to zoning.

Mr. Carswell replied he did not know the answer and was not sure.

Mr. Hamilton asked when did he originally purchase the property.

Mr. Carswell replied in 1992.

Mr. Hamilton said that Mr. Carswell was aware when he bought the property and had full knowledge at the time that it could not be subdivided.

Mr. Carswell replied that was correct.

Chairman Cielezko said in Mr. Carswell's packet, under the second criteria, he mentioned "cabling" and wanted to know what that meant.

Mr. Carswell explained that he has an oak tree which has five limbs that have grown together so in order to save his house, he had Maine Tree Service come out and cable them together so the tree would not fall.

Chairman Cielezko asked if this was necessary maintenance.

Mr. Carswell replied yes.

Mr. Lytle asked if he was on town sewer.

Mr. Carswell replied no.

Ms. Lemire asked if he was on public water.

Mr. Carswell replied yes.

Mr. Lytle asked if there was room for another septic system on the property.

Mr. Carswell replied he believed there was more than enough room for another septic system.

Chairman Cielezko said that Mr. Carswell has to meet all four criteria in order to get a variance and asked him to review the four criteria and explain how he met them.

Mr. Carswell replied, in answer to #1, “ the land in question cannot yield a reasonable return...” because he would have to sell the house with more than the minimum lot size required and the large amount of land he is required to keep to pay taxes and maintain is more than a potential buyer would want.

Mr. Carswell replied to #2, “the need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood” by saying the lot is larger than 52% of the 21 house lots on the road and the unusual size makes it unique.

Mr. Carswell said this goes back to the first, the larger piece of property is disproportionate to the size of the house, which is a 2 bedroom with no garage.

Mr. Carswell said that it would be more attractive to sell. He said it would be ideal for a young couple starting out, or a retired couple.

Chairman Cielezsko said that was interesting, how Mr. Carswell referred to the first question, and that the value of the land is not worth it, compared to the house and the work in maintain the property. He asked Mr. Carswell if he thought he could get more from two lots than one lot.

Mr. Carswell responded that was correct.

Chairman Cielezsko said the Board could only grant the minimum required to relieve the hardship. He wanted to know if Mr. Carswell had done anything, such as, to consider selling a portion to add to someone else’s lot.

Mr. Carswell replied that he had not. He said he would prefer to sell the house site and build something more efficient. He said of any land he could sell, he would prefer to sell the house site.

Mr. Carswell said he had abutters on three sides of his property and one side has a private road. Chairman Cielezsko asked if it was a right-of-way and did Mr. Carswell own it.

Mr. Carswell replied he did not.

Chairman Cielezsko asked if other people could use it.

Mr. Carswell replied only two families use it, it abuts on his property line, but it is a public right-of-way to the water.

Chairman Cielezsko asked about the property behind Mr. Carswell’s.

Mr. Carswell replied it is the Goodwin’s driveway and said they could purchase part of his land, if they wanted to, but this is the area he would like to retain.

Mr. Marshall asked if Mr. Carswell was aware of the accessory dwelling ordinance.

Mr. Carswell replied that he was not.

Chairman Cieleuszko said the Board is looking at the request as if he explored another ownership.

Mr. Marshall asked if Mr. Carswell could rent his house and build another dwelling that was 650 sq. ft.

Ms. Lemire said it has to be part of the (principal) structure.

Mr. Cutting said Mr. Carswell could build a garage with a 650 sq. ft. apartment.

Mr. Hamilton said that Mr. Carswell had mentioned 52% of the 21 house lots have less than one acre and wanted to know if he had done a calculation of how many have more than one acre.

Mr. Carswell replied at least four, on the average, and added he knew of two that are over six acres.

Chairman Cieleuszko asked the Code Enforcement Officer if he had anything to add to this discussion.

Mr. Marchese replied that he asked the applicant to review the four criteria the Board of Appeals would base their decision on and informed him that there is no precedent setting by the Board and Mr. Carswell's response would only apply to this request.

Mr. Marshall asked what is the allowable lot size.

Mr. Marchese replied one acre.

Chairman Cieleuszko said that is the waiver on a non-conforming lot to begin with, but this is a conforming lot.

Mr. Cutting asked if the right-of-way was a private way.

Mr. Carswell replied yes, Island Cove Road is a private way.

Mr. Cutting asked if it was a paved way or was it dirt.

Mr. Carswell replied that it was both.

Mr. Cutting asked if it met the requirements to be able to be built on.

Mr. Marchese replied yes, there is adequate frontage.

Chairman Cieleuszko asked if Mr. Carswell had the right-of-way to the back lot.

Mr. Carswell replied he would have to acquire that from the owner.

Mr. Cutting wanted to know if Mr. Carswell owned it and he replied that he did not.

Mr. Carswell said that it has been indicated to him that it is accessible to him.

Chairman Cieleuszko asked if there were any more questions of the applicant from the Board.

Hearing none, he asked to hear from abutters in support of Mr. Carswell's application.

Chairman Cieleuszko said they have a copy of an e-mail which was sent to Town Clerk Wendy Rawski from James Peterson, 157 Adlington Road, although he was not sure of the legality of an e-mail.

Ms. Lemire said that it is legal.

Chairman Cieleuszko said that Mr. Peterson was writing in support of Charlie Carswell wanting to split his property into two non-conforming lots or one conforming and one non-conforming lot. He said that Mr. Peterson further indicated he will be out of town on the date of the hearing but will have access to e-mail and cell phones this week, but he has no objection to what Mr. Carswell proposes.

Mr. Hamilton wanted to know the date of the e-mail.

Chairman Cieleuszko replied July 17, 2011 and wanted to enter it into the record.

The Board had no issue with the Chair entering the e-mail into the record.

Sean Daniels, 13 Island Cove Road said he lives across the road from Charlie, but was here tonight to support him. He said that Mr. Carswell is a good neighbor and he would like to keep him as a neighbor. He said the long-term comprehensive plan had included addressing the lot size in the future and he wanted to support Charlie.

Pam Wildes of 137 Adlington Road said she lives right across the street from Charlie and they have been neighbors for many years. She said before he bought his property, he lived around the corner in a rental and has been a wonderful neighbor, citing, as an example, helping her to get her car out of snow drifts. She said that she and Charlie have found themselves in a similar situation these past few years as they are both unemployed and struggling to keep their homes.

Ms. Wildes said if the Board had to "jiggle" the regulations for anyone, it would be Charlie.

Chairman Cieleuszko said the Board cannot entertain that suggestion.

James Bugbee, 21 Island Cove, said he owns the road and actually it is an easement, not a right-of-way, but he does not object to Mr. Carswell's request. He said he would grant Mr. Carswell an easement for the road.

Chairman Cieleuszko asked if there were any parties opposed who wished to speak.

Dick and Betsy Goodwin wanted to speak against Mr. Carswell's request, although Mr. Goodwin said they could not agree more about Charlie personally. He said that he has great sympathy for him and his financial hardship.

Mr. Goodwin said that their concern, and main objection, is how he might benefit from it financially, but it may be a financial detriment to them, where their property line is located. He said they live below Mr. Carswell and own 3 ½ acres.

Mr. Goodwin said they enjoy their privacy because they are isolated back there, even though they can see Charlie's house. He said he would hate to see another house be right on the edge or near to their house. He said it is a privacy thing.

Mr. Goodwin said the other point relates to there are four criteria and he only heard Mr. Carswell address the first two. He wanted to know what about the other two?

Chairman Cielezko replied that in Mr. Carswell's packet he addresses all four and added he has not gotten to the other two yet.

Mr. Goodwin responded that, regarding #1, if Mr. Carswell did want to sell, he would think about buying it, and that is one issue.

Mr. Goodwin said the second issue relates to Island Cove Drive and he thought, by splitting the property, it would alter the essential character of the locality – which is the third criteria.

Betsy Goodwin added Island Cove Drive is only 12 ft. wide and it is not safe for another driveway on it. She said that if Mr. Carswell puts in a tiny home, where there are expensive homes, it will alter the essential character.

Mrs. Goodwin said she knows Charlie is having a hardship, and they spoke with their lawyer. She said they would enter into an agreement to buy the land, but he does not want to do that. She said Mr. Carswell wants to put another driveway out on a 12 foot wide private road with a blind hill.

Mrs. Goodwin said they tried to buy ½ acre from him, but he would not sell.

Mr. Carswell said the ½ acre is the part on Adlington Road and it makes sense to put the home there.

Mrs. Goodwin said she heard that if it was less than ¼ acre he would not sell.

Chairman Cielezko reminded her that the Board does not want to hear what she had been told, only what she discussed with the applicant.

Mrs. Goodwin apologized and said that Mr. Carswell had told her that. She said she would like to see him stay there and wished he could find another way to do so.

Mr. Marshall said he did not see her name on the map.

Chairman Cielezsko said he sees a "Betsy Telford."

Mrs. Goodwin said that it used to be "Telford," but now it is "Goodwin."

Chairman Cielezsko asked if she was all set.

Mrs. Goodwin wanted to know why this case does not set a precedent, if the person can claim a hardship. She said she does not understand that.

Chairman Cielezsko explained that the Board looks at each case as unique and that sometimes they have to go back and look at a specific case, in case there was a mistake. He was adamant that the Board does not let one case decide on a future case.

Mr. Marshall said that every applicant has to meet the four criteria to prove undue hardship in order to be granted a variance.

Chairman Cielezsko added that only the Supreme Court can do that (set a precedent) and asked if the Board had any more questions of the abutters.

Mr. Cutting said someone testified that the road is only 12 feet wide.

Mrs. Goodwin said it is 12 ½ ft. wide.

Mr. Cutting wanted to know how their house was built back there.

Ms. Goodwin replied theirs was built in 1984.

Chairman Cielezsko said there is a difference between what is measured across and what is in the deed and that is what they are talking about.

Mr. Marshall said that is the paved part of the road.

Mr. Cutting wanted to know if the CEO could give them a building permit because he thought the road had to be 15 ft. wide.

Chairman Cielezsko reminded the Board that building permits are not under their purview and they would not get locked into that issue.

Chairman Cielezsko said it is a substantial right-of-way.

Mr. Hamilton stated that the Board of Appeals' job is not to decide if lots are buildable or not, but rather if the applicant can divide the lots or not.

Mr. Marshall wanted to know who is John Grove.

Dick Goodwin replied that they bought their house from him.

Chairman Cieleuszko said that every person here is an abutter, and the information is from the tax maps.

Chairman Cieleuszko asked if there were any other interested parties who wanted to speak.

Jack Murphy, Brixham Road, said having been on the Planning Board for 16 years, he was curious as to how they are proposing to set up non-conforming lots, when the tendency of the town is to reduce non-conforming lots. He said, looking toward the future, when there is sewer and water available, the town could allow small lots.

Mr. Murphy said he went to the ordinance, Art. VII, Sec. 45-405, the third paragraph references another section for rules where the Board of Appeals makes decisions on non-conforming lots or uses, and that reference was repealed one year ago.

Chairman Cieleuszko asked what section Mr. Murphy was looking at.

Mr. Murphy replied if you look at the section, it refers you to another section on the decision process.

Chairman Cieleuszko said he still did not follow what Mr. Murphy was saying.

Mr. Murphy said he was asking a question and that he looked at the volume outside of Barbara Thain's office.

Mr. Hamilton said it is not the authority of the Board of Appeals to encourage or discourage non-conforming lots and that the Board determines whether or not the four criteria have been met.

Chairman Cieleuszko said he agreed.

Mr. Murphy wondered whether or not the Board has power in the Shoreland zone.

Chairman Cieleuszko said that the Board has the authority to change area dimensional requirements if the four criteria are met, under Chapter 45, Zoning. He said that is their understanding.

Chairman Cieleuszko asked if there were any final comments.

Mr. Carswell said he has tried to be a good neighbor and he understood his neighbor's concerns. He said that his privacy is just as important, but his property line is 260 ft. from their house and he knows he has to stay 30 ft. back. Mr. Carswell said he has no desire to cut down trees.

Mr. Carswell said as for the road, he appreciates their concerns, but they came to the Board last year for a home business and have delivery trucks using that road.

Mr. Carswell said the issue is that he wants to create two lots close to the requirement – 83% of an acre. He said he has a neighbor with 33% and some have 44%.

Mr. Carswell said by having two lots, it would not increase the traffic flow and the town will not have to plow it. He said it would allow him to stay in the town. He said he talked with a local realtor who said as long as his property is maintained, it will add value to the neighborhood. Mr. Carswell said he did not believe his neighbors' concerns were overly valid.

Chairman Cielezsko asked if there were any last questions.

Mr. Hamilton asked Mr. Carswell to address the last criteria, #4, that the hardship is not the result of an action taken by the appellant or a prior owner.

Mr. Carswell said that he was not creating the hardship, in that his hardship is one acre is too close, too large to all, but not close to split.

Chairman Cielezsko closed the public hearing at 8:30 p.m. and stated the findings of fact.

- The owner of the property is Charles Carswell, who is also the applicant;
- The address of the property is 143 Adlington Road, in the Village Zone;
- Proof of ownership demonstrated by Quitclaim Deed, recorded in the York County Registry of Deeds on Book 15730, page 229;
- The property is identified as Tax Map 14, Lot 18 and contains 1.66 acres;
- The application is dated June 27, 2011 but does not have an acceptance by the town, at least the Chair's copy does not;
- The appellant is asking for a variance to the lot size to create either one conforming and one non-conforming lot out of his existing property or two equal non-conforming lots;
- It was testified by the appellant that he bought the property in 1992 and that he bought the property with full knowledge of the zoning;
- The appellant testified that it is his intent to sell the front lot, to be made the front lot with the existing house and build, on the back lot, a new residence;
- Abutters Sean Daniels, Pamela Wildes and James Bugbee testified on behalf of the variance request;
- A letter (e-mail) was received from James Peterson, an actual abutter, in support of the request;
- Abutters Dick and Betsy Goodwin had reservations for the travel way of the proposed access, financial ramifications and general value of the area and it was testified that there were other avenues to pursue for remedies to Mr. Carswell's problems;
- The Village Zone requires a minimum one acre lot;
- It was testified that the break up (of the property) would only require one variance and that would be to the lot size. All other requirements for the lot would be met;

Chairman Cielezsko asked if there were any other findings of fact the Board wished to contribute.

Phil Lytle asked how about the lot has public water and private sewer.

- The property has public water and private sewer;

Bill Hamilton suggested:

- It was testified by the abutter that the road is 12 ½ ft. and it is a private road to access the property;

Chairman Cielezsko said that the Board has the authority – if he meets the required criteria – to grant him a variance one or two ways and he would entertain a motion.

**Bill Hamilton moved to deny the application for a variance request by Charles Carswell because the applicant has not met all four of the requirements, seconded by Jeff Cutting.**

Chairman Cielezsko asked for a poll of the Board members to give their reasons as to whether or not the appellant met all four criteria and that the results of the poll would be added to the findings of fact.

Bill Hamilton: #1 – “The land in question cannot yield a reasonable return...” has not been proven because the land does have value.

#2 – “The need for a variance is due to the unique circumstances of the property...” Mr. Hamilton said he does not think that was met because there are other properties that are larger and some are smaller, which the appellant had testified. He said it was quite a mixture.

#3 – “The granting of a variance will not alter the essential character of the locality.” Mr. Hamilton said he was not sure about that one and possibly it would change the character, but he felt the applicant met that one.

#4 – “The hardship is not a result of action taken by the appellant...” Mr. Hamilton said that Mr. Carswell had not met that one. He said that the appellant said that the hardship is a result of the zoning, but Mr. Carswell knew the zoning when he purchased the property.

- Chairman Cielezsko added as a finding of fact because Mr. Carswell bought the property with full knowledge of the ordinance.

Mr. Hamilton said now Mr. Carswell wants to do something else with it, so he has created the hardship.

Phil Lytle: #1: Has not been met. Mr. Lytle said the land in that area has high value and it could yield a reasonable return.

#2: Mr. Lytle said he agreed with Mr. Hamilton, and there are other properties in the same area in the same situation.

#3: Mr. Lytle had no problem with it and that the applicant met #3.

#4: Mr. Lytle said that this has not been met because Mr. Carswell bought it that way. He said he understood what the situation was, but he wants to split the property. He thought that it would be the action by Mr. Carswell that would create the hardship.

Jeff Cutting: #1: No, this has not been met. Mr. Cutting said what it says is “reasonable return” not “maximum return,” and there are some remedies to Mr. Carswell’s situation.

#2: No, Mr. Cutting agreed this has not been met because the property is not unique to that neighborhood.

#3: Mr. Cutting thought that Mr. Carswell had met this one.

#4: Mr. Cutting said the hardship relates to the problem with the individual, not the property and he thought this had not been met.

Ellen Lemire: said she concurs with the other Board members’ responses on all four of the criteria.

Chairman Cieleuszko summarized that the Board thought the appellant had not met #1, 2, and 4, but had met #3.

**Vote was taken by a show of hands and motion passed 4-0 to deny the variance request by Mr. Carswell because the appellant did not meet criteria 1, 2 and 4. The Chair concurs.**

Chairman Cieleuszko said that he would issue a Notice of Decision letter to Mr. Carswell within seven days.

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

Chairman Cieleuszko said that the Board has the June 16, 2011 minutes before them and asked for any corrections, omissions or deletions.

Only one was cited by the Chair, to remove line 289.

**Ms. Lemire moved that the Board accept the minutes of June 16, 2011, as amended, seconded by Mr. Lytle. A vote was taken by a show of hands and the motion passed 4-0-1 (Jeff Cutting abstained). The chair concurred with the majority.**

### **4. ELECTION OF OFFICERS**

Chairman Cieleuszko said that, because this is the first meeting following the town meeting, the Board had to re-elect officers.

**Mr. Lytle moved the nomination of Ed Cieleuszko as Chair, seconded by Ms. Lemire.**

**Mr. Lytle moved that nominations cease, seconded by Mr. Marshall.**

**Vote was taken on the motion by a show of hands and motion passed 5-0-1 (Ed Cielezsko abstained).**

Chairman Cielezsko said that he had spoken with Peter Billipp, who indicated that he would like to remain Vice-Chair.

**Mr. Hamilton moved the nomination of Peter Billipp as Vice-Chair, seconded by Mr. Marshall.**

**Mr. Hamilton moved that nominations cease, seconded by Mr. Marshall.**

**Vote was taken by a show of hands and motion passed 6-0.**

**Mr. Lytle moved to nominate Bill Hamilton as Secretary, seconded by Mr. Marshall.**

**Mr. Lytle moved that nominations cease, seconded by Ms. Lemire.**

**Vote was taken by a show of hands and motion passed 4-0-1 (Bill Hamilton abstained). The chair concurs with the majority.**

#### **5. OTHER BUSINESS AS NEEDED**

Mr. Lytle brought up the town meeting and the vote on the Comp. plan. There was a brief discussion and Mr. Lytle said he did not write down the wording, but would bring this up at the next meeting.

Mr. Cutting noted that the sign was back up on MBT Equipment on Route 236.

Chairman Cielezsko asked the CEO if they had reached an agreement.

Mr. Marchese asked if they meant MB Equipment.

Mr. Cutting replied that the Board had voted to turn it down, but someone gave them approval to put it back up.

Mr. Marchese said he will take a look at that.

Mr. Cutting said the Board had turned down their variance request.

Ms. Lemire said she was a bit frustrated tonight about the standing and the procedure and she did not remember what Bruce {Trott} did, but wanted to know if the Board could go through this before the meeting is started.

Chairman Cielezsko said he had fallen a bit behind in that regard, but he would make sure the application is prepared.

Mr. Cutting thought that it was part of the Planning Department's job to review the packet and wanted to know why was an incomplete packet allowed to come to the Board.

Chairman Cielezsko said it required the vote of the Board to deny standing.

Mr. Cutting wanted to know why wasn't there proof of standing in the packet and emphasized that someone needs to make sure that there is no information missing. He stated that it is a waste of time.

Mr. Marchese said he would take full responsibility for what happened. He said he asked about the form and made the assumption that the packet was professionally done. He apologized and said he would make sure it does not happen again.

Mr. Marshall wanted to know if it was part of the Board of Appeals' by-law's, that if a packet was not complete, the Chair should not open the hearing.

Ms. Lemire said that it depends on the procedures.

Mr. Marshall said the Board should have it written that if they do not receive a complete packet, they will not open the hearing.

Mr. Cutting added the Board should refuse to hear the case.

Mr. Hamilton wanted to know who decides to put the application on the hearing schedule.

Chairman Cielezsko said when the application is accepted and paid for.

Mr. Marchese responded that it was either himself or Wendy Rawski.

Mr. Hamilton asked if the Board should speak with Wendy.

Mr. Cutting asked the CEO if he had a checklist.

Ms. Lemire replied that the Board of Appeals does and it is on their form.

Mr. Cutting said he is referring to everyone here – if everyone had a checklist.

Chairman Cielezsko said it is a Board decision whether to accept the package.

Mr. Marshall asked the CEO why if he could say that he is not giving the applicant a date unless the packet is complete.

Mr. Cutting said the appeal request should not be put on the agenda.

Chairman Cielezsko said the Board decides standing.

Ms. Lemire said they are talking about a completed package, not standing.

Mr. Hamilton said they are discussing a completed form – that is the key.

Chairman Cieleuszko said that is what they did at the last meeting...the Board said the town form has to be filled out.

Mr. Lytle said he did not think Wendy knows that.

Mr. Cutting said that they may want to come up with a checklist to share with her.

Mr. Hamilton wanted to know if they could ask Jim Marchese to let Wendy know that this creates a problem.

Mr. Cutting said it starts the clock as soon as the hearing is opened.

Mr. Marshall asked about Ted Long and wanted to know if the Board was taking away his standing.

Chairman Cieleuszko said he would look into that.

Mr. Cutting said the Board is not denying anything, but it should be given to the applicant and stated "here is the checklist – here is what you need to have."

Mr. Marshall said as a Board, we are here to provide service to the residents of the town.

Mr. Hamilton said that is not the job of the Board of Appeals.

Mr. Hamilton said he agreed with Jeff Cutting, and said the same thing, if there is no proof of ownership or the application is not complete, than it should not be put on the agenda.

Mr. Cutting suggested there be a date certain, i.e. tell them exactly what they need and if they do not have everything, the appeal request gets put on the agenda for the next month.

Ms. Lemire asked if there was a definition for dismissal because she had never heard of it, only approve or deny.

Chairman Cieleuszko said he had reservations denying an appeal where proof of ownership had not been shown because he did not know to whom he should address the Notice of Decision letter.

Discussion continued.

## **6. ADJOURN**

**Mr. Marshall voted to adjourn the meeting at 9:12 p. m., seconded by Mr. Hamilton. A voice vote was taken with all in favor. Motion passed.**

Respectfully submitted,

Barbara Boggiano  
Recording Secretary

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

Date Approved: Sept. 15, 2011