

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

**October 20, 2011**

Present: Edward Cieleszko, Chairman; Peter Billipp, Vice Chair; Philip Lytle; William Hamilton; Ellen Lemire and John Marshall, Associate members.

Absent: Jeffrey Cutting

Others present: James Marchese, Code Enforcement Officer, Barbara Boggiano, Recording Secretary, Joe Gorman, applicant and Steve Shervanian

**1. 7:00 p.m. ROLL CALL**

Chairman Cieleszko called the meeting to order at 7 p.m. and introduced the Board members. He said that since Mr. Gorman was the only public hearing tonight, he would explain the procedures on how the meeting would be run.

Chairman Cieleszko stated the voting members for tonight's hearing would be Phil Lytle, John Marshall, Bill Hamilton and Peter Billipp and he would vote in case of a tie.

**2. PUBLIC HEARING:**

**A. Variance Request by Joseph Gorman, 11 Spring Lane, Eliot, Maine to Article VIII, Sec. 45-405, §194 (2) and 405 - Maximum Lot Coverage – 20%.**

Chairman Cieleszko opened the public hearing and said the applicant is looking for an expansion to the lot coverage requirement in the Village zone, which has a maximum of 20% and Mr. Gorman wants 21.6% lot coverage for a carport with a roof connected to the garage.

Chairman Cieleszko gave the floor over to Mr. Gorman and asked him to address the four criteria to grant a variance.

Mr. Gorman said he would like to build a carport onto the garage, and that one of the main reasons for doing this is shoveling snow because he is 70 years old and he does not like to shovel snow. He said it is a one car carport – it won't stick out that much. He said he designed the garage 10-11 years ago, which is pretty and classy and historical and, if he built a carport, it would be aesthetically pleasing and blend in with what they have now.

Mr. Gorman said as the winters go by, he is out there shoveling and at first, he did not think it was too much, I know it's borderline but it is getting more difficult.

Mr. Gorman said that his carport would be open on three sides and it would be a single carport with a roof. He wished he had brought pictures. He said having the carport would make his life easier.

Chairman Cieleszko asked if the Board had any questions.

Mr. Marshall asked if the brick pavers – that are shown in the picture that was done by the surveyors were they there already.

Mr. Gorman replied yes.

Mr. Marshall wanted to know how long did Mr. Gorman own his house.

Mr. Gorman responded since 1995, 1996-97.

Mr. Lytle asked if it is a three-sided carport, would that save him shoveling much snow.

Mr. Gorman replied that with a strong blizzard, he would put up a plastic tarp on one side.

Mr. Lytle asked him what would happen if he went with a 12' x 24' instead of a 14 ft.

Mr. Gorman replied if it takes two feet in order to do this, that would be fine.

Chairman Cieleuszko asked if Mr. Marchese could add his thoughts and comments.

Mr. Marchese replied clearly, the lot coverage is 19.9 % so two feet is not going to help. He said he would still be at 21.31% and Mr. Gorman would still be over the requirement.

Mr. Hamilton did not have any questions at this time.

Mr. Billipp said, on the plan by Easterly Surveying, it shows the calculations for square footage, porch, house, garage, etc., it also shows brick pavers. He said they do not seem to be included as lot coverage, or in the lot area. He asked if the CEO could help clarify that.

Mr. Marchese said they are not in the Shoreland zone.

Mr. Billipp wanted to know if the pavers were not considered to be part of the lot coverage.

Mr. Marchese said this pertains to structures only.

Chairman Cieleuszko asked if the structure included the driveway.

Mr. Marchese replied no.

Mr. Billipp said if the brick walkway, porch and stairs are not included then that is all he had for now.

Ms. Lemire said that Mr. Gorman has a carport and asked if he had a waiver granted before for any dimensional requirement.

Mr. Gorman replied no, not that I know of.

Chairman Cieleuszko said it is a non-conforming lot of record to begin with.

Chairman Cieleuszko said it might not meet the current code and might not have waivers or a variance on it.

Chairman Cieleuszko said he would like Mr. Gorman to address the four criteria for a hardship that have to be met in order to have the variance granted.

Chairman Cieleuszko began with #1, *“the land in question cannot yield a reasonable return unless a variance is granted”* and asked Mr. Gorman if his property would yield a reasonable return without a variance.

Mr. Gorman replied that it would add class to the house.

Chairman Cieleuszko asked Mr. Gorman if he was not physically capable of moving the snow.

Mr. Gorman said he is 70 years old, but he could get by.

Chairman Cieleuszko said but it would be hard.

Chairman Cieleuszko read #2, *“the need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood.”* He said according to the photos, Mr. Gorman’s lot goes across two streets and asked if it was unique on that street.

Mr. Gorman replied no – there was another property that crossed over.

Chairman Cieleuszko asked Mr. Gorman if there were other carports in the neighborhood.

Mr. Gorman replied that his neighbor has a carport.

Chairman Cieleuszko asked about Mr. Gorman’s driveway, whether it goes across.

Mr. Gorman answered no, but someone has a right-of-way up the road.

Chairman Cieleuszko said that Mr. Gorman has to show a uniqueness to the property and there is only one other property on the street that crosses over from street to street.

Chairman Cieleuszko said Mr. Gorman already has a lot of coverage on his property.

Chairman Cieleuszko said #3, *“the granting of a variance will not alter the essential character of the locality.”* He said, as Mr. Gorman had mentioned in his testimony, that he thought it would be aesthetically pleasing with his neighborhood. Chairman Cieleuszko asked Mr. Gorman if he felt by adding a carport would it change the characteristics of the neighborhood.

Mr. Gorman replied that there is a carport next door, and he would build it the same way as the original garage, like soffits, trim, etc.

Chairman Cieleuszko read the last criteria, #4: *“the hardship is not the result of action taken by the appellant or a prior owner.”*

Chairman Cieleuszko said he wasn’t sure the Board could put the blame on Mr. Gorman personally, other than it’s getting harder for him to shovel the snow, which is not his fault.

Ms. Lemire said she was struggling with why the applicant is asking for a variance and not a waiver.

Chairman Cielezsko said he could ask the Code Enforcement Officer about that.

Chairman Cielezsko asked Mr. Marchese why, when he met with the applicant, did he not present this to the Board as a waiver, and he could see his point, but why is it a variance instead of a request for a waiver.

Mr. Marchese replied that in reading Sec. 45-194 of the ordinance in its entirety, it shows 25-50% reduction, 25% by the CEO, 50% by the Board. He said a waiver does not apply in this situation because he did not think they were looking at lot coverage.

Mr. Marchese said he read “c” which applies to non-conforming lots, and the relief only allows the CEO to authorize a 25% reduction to the frontage setback and it is not clear with the yard requirements.

He said he was not clear about the yard requirements and if he had the ability to add or reduce 25% in lot coverage. He said if he had that kind of flexibility with building height, 25%, he could allow the building height to be 45 feet instead of 35 feet.

Mr. Marchese said he looked at the dimensional section separately and as far as the maximum lot coverage and yard dimensions go, they are two different categories.

Mr. Marchese said long story short, it is not clear and he has had problems in the past. He said in the interest of the applicant to get approval from the Board a waiver is not possible.

Chairman Cielezsko asked if anyone else had questions for the CEO.

Ms. Lemire asked even by the Board of Appeals?

Mr. Marchese said it applies to the setbacks and yard dimensions.

Ms. Lemire read the section 194 and said it may be a 25% waiver – after a public hearing was held.

Mr. Marchese said it was in the sentence above, where it says yard coverage.

Chairman Cielezsko said regarding yard requirements, the Board of Appeals has the power to grant waivers to yard front, side and rear yard setbacks – to a principal structure, but setbacks in general are to any structure on the lot. He said that is why he was trying to differentiate.

Mr. Marshall said that does not sound right and the Board is discussing lot coverage and not setbacks.

Mr. Billipp said what the CEO is saying is the term “lot coverage” is not mentioned; therefore, the CEO cannot grant a waiver to it because it is not specifically mentioned.

Chairman Cielezsko said the CEO can allow 25% of three – front, side and rear setbacks – and the Board can grant 50% of the same three.

Mr. Marshall said he was looking at Sec. 45-39, lot coverage in the Village Zone – and it is 20% with “Q” and “Q” relates to elderly housing. Mr. Marshall asked how old does someone have to be to be considered elderly.

Chairman Cieleuszko said that half the town would be elderly housing.

Mr. Hamilton stated that the requirements of the four criteria do not apply to an applicant's individual circumstances. He said they are specifically designed to be applied to a property, so in each of the four criteria, the applicant has to address the property, i.e. value, characteristics, etc.

He said whether or not the property has value has nothing to do with the applicant and his physical age.

Mr. Hamilton said it is not personalized and the general criteria have to apply for each instance.

Ms. Lemire said a waiver or a variance goes with the land and not the property owner, and agreed with Mr. Hamilton's statements.

Chairman Cieleuszko said something else to keep in mind, a "reasonable return" does not have to be "financial" and asked if it could be a health issue. He said if a person dies because he is bound by some strange rule and if he cannot get any use of his property because of his health abilities, could that be a hardship.

Ms. Lemire thought that Chairman Cieleuszko was stretching it.

Mr. Hamilton said in the past, the Board may have been considering the applicant's condition rather than the property, but it should not be treated as a hardship. He said he does not know what criteria to use for reasonable return, but it is not a maximum return, and has nothing to do with the applicant's health.

Chairman Cieleuszko said he wish he could expound on the law, but there are no other cases in front of him, although there have been results from cases elsewhere in Maine. He said the Board has used other criteria for assessing "reasonable return" other than just financial.

Chairman Cieleuszko said other decisions have been held up by the Maine Supreme Court and not all have been financial. He said the Board has to look at each case individually.

Mr. Hamilton thought that it is broad.

Chairman Cieleuszko said he remembered a case and he would try to get him a copy.

Chairman Cieleuszko asked if Mr. Marchese had anything to add to the discussion.

Mr. Marchese replied that he sat in Chairman Cieleuszko's seat for 10 years and the whole time he was there, they had the same discussion and there is no clear answer.

Mr. Marshall said, in light of the recent discussion, would it be reasonable that the owner could expect a reasonable return in the comfort and convenience of his property and to be able to house his vehicles.

Chairman Cieleuszko said he remembered a case whereby the Board had granted a request for a variance to an elderly woman who needed a garage for her car.

Ms. Lemire asked if the CEO had discussed this with the Planning Board or research in prior minutes as to the intent of Sec. 45-194.

Mr. Marchese replied no.

Ms. Lemire said one of the pieces of "c" includes lot coverage, and there are other things in "c" which is not in "1" and "2."

Ms. Lemire said that on the face of it, all these different things under "c" sub-c for 1 and 2 that it would apply to.

Chairman Cielezsko said to summarize what Mr. Marchese had said, "c" is for everything which applies like a regular, conforming lot, but 1 and 2 are exceptions and that is the only limit.

Chairman Cielezsko said first, there is a lot of lot coverage for a tiny lot, and second, there are certain aspects that are not all encompassing, as well as other requirements like the principal structure to the frontage lot.

Chairman Cielezsko asked the CEO if he had anything else to offer.

Mr. Marchese replied it is a tough situation and that the lot coverage is close and it would be very tight because he has the carport already, but Mr. Gorman wants to put a roof on it. He said in this case Mr. Gorman does have a lot of surface area, so he does not have the authority to grant Mr. Gorman any more than what he already has.

Mr. Hamilton said suppose it was another structure, for instance, it was not a carport, but an extension of the garage.

Mr. Marchese said he was looking at it the same way.

Ms. Lemire asked the applicant how many cars does his garage currently hold.

Mr. Gorman replied two.

Ms. Lemire wanted to know how many vehicles does Mr. Gorman have.

Mr. Gorman answered four.

Chairman Cielezsko asked if there were any other questions for the CEO. There were none.

Chairman Cielezsko asked the man identified as Mr. Gorman's neighbor if he was an abutter.

Mr. Shervanian replied yes, to the east. He said his name is Steve Shervanian and he lives next door at 9 Spring Lane. He said there are a couple of things that came up which reflects on Mr. Gorman and on the way he handles his property. He said he they go back and forth in that whatever Joe Gorman plans to do or has done or whatever he wanted to do, he does well. He said Mr. Gorman supports his neighbors. He said that Mr. Gorman has been more than amiable.

Mr. Shervanian said that Mr. Gorman has never done anything, since 1995 when he moved in, without first coming over to say what he wanted to do or was thinking of doing, and he wanted to support Mr. Gorman in every aspect. He said that Mr. Gorman has done wonderful things with the property and he supports Mr. Gorman going forward. He does not have a problem with the carport. Mr. Shervanian said that it is a tough area for Mr. Gorman to put his vehicle in.

Ms. Lemire asked Mr. Shervanian, which side of the property is his house, if he was facing Mr. Gorman's house.

Mr. Shervanian replied the left side.

Chairman Cielezsko wanted to know if Mr. Shervanian's property is on the side where Mr. Gorman's garage is.

Mr. Shervanian responded that is correct.

Ms. Lemire asked if Mr. Shervanian's property abuts two streets.

Mr. Shervanian answered yes.

Mr. Marshall wanted to know, in Mr. Shervanian's opinion, does he think that not only would Mr. Gorman's proposed carport not impact the neighborhood, but that no one would notice.

Mr. Shervanian replied that was a good way to put it.

Mr. Shervanian thought of one other thing that Mr. Marshall brought up. He said that everyone got the letter and that no one has come forward with any problems or complaints with what Mr. Gorman wants to do and he thought that reflected well for Joe Gorman.

Chairman Cielezsko asked Mr. Gorman if he wanted to add anything further.

Mr. Gorman replied probably not. He thought his neighbor had said all that he wanted to say.

Mr. Billipp asked if Mr. Gorman knew the dimensions of the garage. He saw it was listed as 975 square feet.

Mr. Gorman replied no, he did not.

Mr. Billipp asked Mr. Gorman how many cars can fit in it.

Mr. Gorman replied two.

Mr. Billipp asked if there was a work area off to the side.

Mr. Gorman responded he can't pull in his car because he had a snow blower in the garage and he can only get one car in the garage.

Mr. Billipp asked the applicant if he could have a three-car garage and another temporary building to house the snow blower.

Mr. Gorman answered he can't, because he had put shelves and drawers in the garage.

Mr. Billipp asked if the garage had three doors.

Mr. Gorman responded yes.

Mr. Billipp asked Mr. Gorman if it were possible to put his vehicle in there if he made some modifications.

Mr. Gorman replied yes, if he ripped out the shelves.

Mr. Billipp, looking at the site plan, asked Mr. Gorman what is the overhang in the back of the garage, and wanted to know if it was a shed and if he kept things underneath there.

Mr. Gorman answered that is where he puts his ladders.

Ms. Lemire asked what are the dimensions in the back.

Mr. Billipp responded 245 sq. ft.

Ms. Lemire asked the applicant if he could park his vehicle there.

Mr. Gorman replied no.

Mr. Marshall said Mr. Gorman has to have a place to put his stuff.

Ms. Lemire asked the applicant what is his business.

Mr. Gorman responded home improvements, like sheds, gutters.

Chairman Cieleuszko asked if there were any other comments or questions, and hearing none, closed the public hearing at 7:40 p.m.

Chairman Cieleuszko stated the findings of fact:

- The owner of the property is Joseph Gorman;  
(corrected to Linda J. and Joseph L. Gorman by the Chair, as pointed out by Mr. Billipp)
- The mailing address is 11 Spring Lane, Eliot, Maine, 03903;
- The location of the property is the same;
- Proof of ownership is by deed, recorded in the York County Registry of Deeds as Book 5830, page 219-220;
- The property is identified as Tax Map 1, Lot 101;
- The applicant is asking for a variance to the lot coverage of 20% and for relief to Article VIII, Sec. 45-194 and Sec. 45-405, to increase the lot coverage to 21.61%;
- The public hearing was held October 20<sup>th</sup>, 2011;
- The Board of Appeals has the authority to hear appeals under Article II, Sec. 45-49 Powers, (b), Variance appeals;

Chairman Cieleuszko asked the other Board members if they wanted to add any Findings of Fact.

Mr. Billipp offered, which was added:

- The property is located in the Village district with a lot size of 22,171 square feet, and
- According to Easterly Surveying, in a letter dated August 30, 2011, the existing lot coverage is 19.9% and
- The property is a non-conforming lot of record.

Chairman Cieleuszko also added:

- Steven Shervanian has testified, as an abutter, in support of granting the variance, as stated in the minutes;
- It was testified that the property, according to the deed, which was recorded September 13, 1991 was purchased on September 11, 1991, but Mr. Gorman built his house in 1996-97.

There were no other findings of fact offered by the Board.

Chairman Cieleuszko said since there are no other findings, he would entertain a motion.

**Mr. Billipp moved to deny the request for a variance by Joseph Gorman, seconded by Mr. Hamilton.**

Chairman Cieleuszko asked for a poll of the Board members as to the four criteria for a variance:

Mr. Billipp said he would go through each of the four criteria that the Board has to look at in order to grant the variance:

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

Mr. Billipp said the applicant did not meet this one because obviously he has a house and a garage, as we see it today, which can certainly yield a reasonable return.

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

Mr. Billipp said he agreed that there are unique circumstances to the applicant's property in that it is a small lot and a non-conforming lot and he already has close to the allowed lot coverage.

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

Mr. Billipp said the applicant meets this one, because the addition of the carport would not alter the character of the neighborhood. He said the applicant meets 2 and 3.

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

Mr. Billipp said, in this case, it would be the result of an action taken by Mr. Gorman, the owner.

Mr. Billipp said that as much as he would like to be in favor of the request, the Board has to look at the cold facts and the lot coverage percentage of what Mr. Gorman has versus what he would like to do as well as the ordinances.

Mr. Billipp summarized by saying the applicant meets 2 and 3, but not 1 and 4.

Mr. Hamilton agreed the applicant meets criteria 2 and 3, but not 1 and 4.

Mr. Lytle concurred with Mr. Billipp, in that the applicant meets 2 and 3, but not 1 and 4.

Mr. Marshall said he guessed if he looked at it, he would have to agree, but, in the case of #1, reasonable return, he thought that the applicant should be able to use his property in this way.

He agreed the applicant met 2 and 3. He said the hardship is not his action, but said the size of the lot impacts what Mr. Gorman can do. Chairman Cieleuszko asked if he would put down that he met all four. Mr. Marshall said "yes" on all four and that Mr. Gorman met all four criteria.

Chairman Cieleuszko said that he wanted the poll responses included in the findings of fact.

**Vote was taken by a show of hands, and the motion passed 3-1 (with John Marshall voting in opposition).**

Chairman Cieleuszko said that he would issue a Notice of Decision letter within seven days and that Mr. Gorman can appeal this decision to the Superior Court within 45 days. He said the draft minutes would be ready for any packet that Mr. Gorman wanted to present to the court.

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

Chairman Cieleuszko asked if there were any corrections, deletions or omissions to the minutes of September 15, 2011. Mr. Marshall pointed out a correction - Beech Ridge Road and a clarification, Beech Ridge Road is a state road.

**Ms. Lemire moved to approve the minutes of September 15, 2011 as amended, seconded by Mr. Billipp. Vote was taken by a show of hands and by voice and the motion passed unanimously.**

### **4. OTHER BUSINESS AS NEEDED**

Ms. Lemire asked the CEO if Mr. Gorman could put one of those tarp structures on his property.

Mr. Marchese replied no – that is not what he asked for.

Ms. Lemire asked if there was an ordinance to cover that.

Mr. Marchese replied there was one.

Mr. Hamilton pointed out that there is no definition for temporary structures.

Chairman Cieleuszko said temporary structures are included in the lot coverage.

Mr. Hamilton said he was thinking the same thing, to put up a portable unit.

Ms. Lemire said she could not put a portable, temporary structure without town approval.

Chairman Cieleuszko asked the Board members if they were comfortable with the findings in the Notice of Decision letters from last month's meeting. No one voiced any objections.

Chairman Cieleuszko said he is looking at the budget for next year and assumed he would put in the same figure as last year, \$4,400.

Ms. Lemire said the Board has held the same amount for the last few years.

Mr. Marshall asked if Chairman Cieleuszko had heard if the Board was over budget.

Chairman Cieleuszko said no one has told him they were over, but he would speak with Barbara Thain.

Chairman Cieleuszko said that he has received a letter of resignation from Barbara Boggiano, Recording Secretary, which was accepted by the Board of Selectmen.

Chairman Cieleuszko read the letter into the minutes, which was addressed to him and Dan Blanchette:

*Dear Dan and Ed,*

*After careful consideration, I have decided to resign from my position as Recording Secretary for the Eliot Board of Appeals. This has been a difficult decision for me to make; however, at this point in my life, I feel I need to pursue other personal endeavors. Therefore, the last Board of Appeals meeting I plan to attend (if held) will be on December 15, 2011.*

*Working with all of you has been a rewarding experience for me and I thank you for having had the opportunity to serve the Town of Eliot.*

*Sincerely,*

*Barbara Boggiano*

Chairman Cieleuszko thanked me and said it would be hard to replace me. Mr. Lytle said he would give me a letter of recommendation. Chairman Cieleuszko said if I ever needed a letter of recommendation, they would be happy to give me one, either individually or as a Board. I thanked the Board.

-----  
Mr. Marchese wanted the Board to know that he did let Mr. Gorman know that he had a slim chance of getting a variance, but it was something that he felt he had to do.

A brief discussion ensued regarding the ordinance and the criteria for a variance request.

Chairman Cieleuszko said he was hoping the Board could do something for him, but there was nothing they could do because it is the State law.

Mr. Hamilton said it is not only a State law, it is a national law. He said the applicant has to meet the four criteria.

Mr. Marchese said the applicant cannot go through the Board of Selectmen to change the variance, but someone could write to the Board of Selectmen requesting that the Planning Board look into a specific section of the ordinance with a question is there a way to allow relief in the Village zone. He said that is how things get changed, otherwise we will keep going along.

A discussion ensued.

Mr. Billipp suggested writing a "laundry list" of things that have come to the Board's attention over the years and submit it.

The Board continued to discuss lot coverage and the ordinances.

Mr. Billipp said if you want to see a town with no zoning, go to Houston, Texas.

Ms. Lemire wanted to know how did Mr. Gorman get away with all that paving if he was in the Shoreland zone.

Chairman Cieleuszko responded Mr. Gorman's property was not in the Shoreland zone.

There was no other business to discuss.

**5. ADJOURN:**

**Mr. Marshall moved to adjourn the meeting at 8:09 p.m., seconded by Ms. Lemire. Voice vote was taken and motion passed unanimously. Meeting adjourned.**

Respectfully submitted,

Barbara Boggiano  
Recording Secretary

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

Date Approved: December 15, 2011