

TOWN OF ELIOT BOARD OF APPEALS MEETING

November 21, 2013

ROLL CALL

Present: Chairman Edward Cieleuszko, Vice-Chairman Peter Billipp, Secretary Bill Hamilton, Jeff Cutting, Ellen Lemire and Associate Members John Marshall and Charles Rankie.

Others Present: Code Enforcement Officer Jim Marchese; Michael Kelley, appellant; 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 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 the appellants will be determined.
- The appellant will present uninterrupted testimony and may present anything she would like to present as long as it is pertinent to the case.
- The Board will question the appellant.
- The Code Enforcement Officer will present testimony.
- The Board will question the CEO.
- 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.
- 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 the decision goes beyond the current hearing, the next date to hear the case will be determined and that determination will be the only notice given. There will be no mailings to abutters regarding further meetings.
- 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.

Mr. Rankie stated that his understanding of the procedure was that associate members join in the discussion of the case but do not vote on the decision. Chairman Cielezsko stated that after the public meeting is closed, the non-voting members are silent.

Chairman Cielezsko stated that the voting members would be Jeff Cutting, Bill Hamilton, Peter Billipp and Ellen Lemire with his own vote being cast in the event of a tie.

REQUEST SUMMARY

Chairman Cielezsko stated that the request was for a variance to Article 1, Section 45-405, side setbacks, by Michael Kelley of 5 Wood Avenue, Tax Map 7, Lot 102.

TESTIMONY FROM APPELLANT

Michael Kelley stated that he was asking for the variance because the distance on the side of his house is only approximately 9 feet from one corner to the driveway next door to him and only 7 feet from the other corner. Mr. Kelley stated that he understood that the Town had changed some of the ordinances since the house was built and that now the side setback needs to be 20 feet.

Mr. Kelley stated that he grew up in the neighborhood and that the house that abuts his own house had been his parents' house and now belongs to Mr. Higgins who is a good friend of his.

Mr. Kelley stated that he had presented the BOA with letters from his neighbors. He stated that the Fontaines are across the back of his property and 65 feet from his house. He added that Tim Sturdevant's property is 20 feet on the other side and that Mr.

Sturdevant was present at the meeting. He added that another letter was from Richard Goodale whose property is on his driveway side.

Mr. Kelley stated that the neighborhood is known as Clay Village and that the houses are close together. He stated that the owners of many of the houses have added a second story, a porch or built outward. He stated that several have done so within 100 feet of his own house. He stated that Mr. Goodale put a big garage in his back yard and that the neighbor on the other side of Mr. Goodale added a second story a few years ago. He stated that he did not know whether that building permit required a variance.

Mr. Kelley stated that a neighbor on Leech Road recently built upward resulting in a house that looks like it has a little more than just a second story. Mr. Kelley stated that the house really looks nice. He stated that that house was able to get a building permit because the side setback was 15 feet.

Mr. Kelley stated that he was aware that the law allows the CEO to grant a building permit with a side setback of 15 feet but that distance would not work for him because he does not have 15 feet and only has a little less than 10 feet. He stated that the only reason he needs a variance is for a distance only equal to his own height.

Mr. Kelley stated that if he wanted to sell his property it would be very advantageous if he was allowed to build upward because a lot of his neighbors have three- to four-bedroom houses which he could not have without a variance. Mr. Kelley stated that he has a pull-down to access the full attic.

Mr. Kelley stated that, as the drawings he submitted in his packet demonstrate, he was hoping to build upward only six feet and that he was not planning to include dormers or extend the current footprint.

Mr. Kelley stated that he could point out various houses in the neighborhood which had expanded upward.

Mr. Kelley stated that he had been playing exactly by the rules. He stated that he had recently replaced a simple shed in his backyard and that he had gone to the CEO to get a building permit. He stated that some people had questioned why he even bothered with a permit because the shed was not permanent and was not attached to the house. Mr. Kelley stated that he had responded by stating that he was aware that codes had changed since he built the original shed and he wanted to make sure he was within the law.

Mr. Kelley stated that when he sought a building permit for adding a second story, he was unaware of the side property line being only seven feet. He stated that the distance

between his house and the abutting house is actually no different than many of the houses in the neighborhood but that the property line comes close to his house.

Mr. Kelley stated that his parents had owned the abutter's house and that he had bought his own house from his best friend. He stated that he knows the history of the whole neighborhood and that it is a good neighborhood. He stated that if he wanted to sell his house, he would not be able to compete with other houses in the neighborhood which have expanded, even though some of them do not have yards as large as his. He stated that his property is a big property with plenty of space in the back yard, but that the lot is narrow in the front.

QUESTIONS FOR APPELLANT FROM THE BOARD

Mr. Hamilton stated that the appellant had lived in the neighborhood for a long time and had commented on how other properties had expanded on their lots. He asked if the appellant knew whether or not those lots had the same sorts of issues that the appellant has in terms of the setback.

Mr. Kelley stated that he was not sure about all of them. He stated that he did question one of the properties with the CEO and that the CEO's answer was that the property in question had a 15-foot setback and that the CEO could grant a permit in that situation. Mr. Kelley stated that he understood that and also understood that the CEO's hands were tied.

Mr. Kelley stated that a house two houses away from him added a second story a few years ago. He added that he did not know how long the current ordinances had been in effect. Ms. Lemire stated that it had been almost ten years.

Mr. Sturdevant, an abutter, stated that he added a second story with similar space issues and that if he was doing so under current ordinances, he would need a variance also. He added that he shares a driveway. He stated that adding the second story was a vast improvement on the house and that several houses in the neighborhood have done the same thing. He stated that several houses along his street have added full second floors.

Mr. Kelley stated that the house next to his abutter across Wood Avenue added a full second story five years ago.

Mr. Billipp asked if the appellant had explored with the CEO the fact that the CEO could grant relief which would allow expansion out the back in an L-shape rather than adding a second story. Mr. Kelley stated that he made it clear to the CEO that he was not interested in extending out the back. He stated that he has a hot tub out there with a

cement pad and that he would not want to expand that way. He stated that the reason he was seeking to build according to the plans he submitted was because of the requirement for a riser. He stated that his original plan was to put dormers in the existing space but that that plan would not work because of the riser requirement.

Mr. Kelley stated that he has kept up the house on the outside and has a new furnace but that the roof is probably 30 years old with two or three layers of shingles on it. He stated that it is time to reroof the house and that he would not want to expand upward after doing that.

Mr. Billipp asked the appellant if he understood that, in order to be granted a variance, he had to demonstrate that he had met the four criteria of the variance. Mr. Kelley replied in the affirmative. Mr. Billipp asked the appellant if he thought he had met them and Mr. Kelley replied in the affirmative. Mr. Kelley stated that in terms of the first criteria, he would be held back financially if he could not get a variance because it is not as large as others in the neighborhood, even though his land is nicer. He stated that if he added a second story, the value would really increase.

Mr. Billipp asked how many bedrooms the appellant currently has. Mr. Kelley replied that he has one bedroom and that he has a family room in the back of the house which used to be a three-season room. He stated that he supposed he could make that room into a bedroom but that it is very small and is used as a family room.

Ms. Lemire asked the appellant if he had any other options that he would consider. Mr. Kelley replied that he did not. He stated that he did not know how he could construct an extension in the back because he would need a foundation and it would cost a lot more. He stated that that option also would not solve the existing problem of the need for a new roof. He stated that financially that option would not work.

Mr. Rankie stated that Mr. Kelly has a good-size, buildable envelope where he could build on the lot. He stated that he could see no hardship whatsoever because he can add on to his house and get more room as he is requesting. He stated that he sees no hardship. He added that State and case law have found that reasonable return, which Mr. Kelley stated he could only realize by adding a second story, does not equal maximum return. Mr. Rankie stated that to realize a reasonable return, Mr. Kelley could sell his house at market value because it is a very nice house.

Mr. Rankie stated that as he looked around the Mr. Kelley's neighborhood, it appeared that a very good number of the houses included configured additions. Mr. Rankie asked why Mr. Kelley would not build on a buildable envelope as permitted by the Town. He asked why Mr. Kelley was saying that he had a hardship when he could add to his house on the buildable envelope.

Mr. Kelley stated that it would not be feasible to extend out the back of the house because of the financial hardship and that the extension would still be on the corner with the 7-foot side setback.

Ms. Lemire asked if the design for the second story had to be for the full length of the house. Mr. Kelley stated that the second story would go above the existing first floor without expanding or extending outward. He added that shortening the second story would create stairway problems. He stated that right now he would have a 3-foot platform at the bottom of the stairs in order to make everything legal. He stated that a shortened second story would also not look appealing.

Mr. Kelley stated that the CEO had also presented the option of chopping off part of the house in order to meet the side setback requirement. He added that there is a common sense factor involved in his situation.

Chairman Cielezsko asked for the age of the house. Mr. Kelley replied that it was built in 1942 and that all of the houses in the neighborhood were built in the 1940s. He stated that he has owned the house since 1993 and that his parents owned the house next door since 1942. Mr. Kelley stated that he had also lived in Hobbs Circle in the same neighborhood.

Mr. Marshall noted that the diagram included in the packet shows a change in the property line. Mr. Kelley stated that in 1964 the owner of the abutting house on the driveway side added five feet to accommodate both owners because one wanted a straight driveway and the other wanted more room in the back yard. He stated that the original owner of his lot chopped 20 feet off the back property line and added five feet to the front. Mr. Marshall noted that Mr. Kelley's lot lost more than it gained. Mr. Kelley concurred.

Mr. Marshall stated that from looking at the setbacks it appeared that the appellant could add a 16 by 16 foot addition but that it would be a small addition.

TESTIMONY FROM THE CODE ENFORCEMENT OFFICER

Mr. Marchese stated that the issue in the case was Ordinance 45-195 which states that a nonconforming building cannot be extended or expanded. He stated that the appellant was looking for a variance to raise his house by six feet.

The CEO stated that there was ample evidence from the survey done in 1964 to locate the house on the property line. He stated that it was his opinion that the appeal was the only way for the appellant to get relief from the ordinance.

The CEO stated that the application was reviewed by the Town's attorney and that he agreed with the CEO's interpretation of that section of the ordinance and had supplied a copy of the email from the attorney.

QUESTIONS FOR CEO FROM THE BOARD

Chairman Cielezsko asked what the appellant needed for relief. The CEO responded that the appellant needed a six-foot vertical relief. The CEO stated that they were not talking about the side setback because the lot is already nonconforming and that the setbacks are seven feet in the back and nine feet in the front from the property line. He added that the lot is already in an existing, nonconforming position and that the appellant wants to expand six feet vertically. The CEO stated that the ordinance addresses both extension and expansion.

Chairman Cielezsko stated that he had thought he understood what the variance request was. He stated, however, that if the variance was asking for relief in a vertical plane, the issue would be height restrictions. He added that if the request was to expand upward on a side property line, the appellant would still need relief from the side setback requirement.

The CEO stated that the appellant needs a seven-foot side setback for a six-foot vertical expansion. Chairman Cielezsko clarified that what the appellant needed was to have his non-conformity confirmed. The CEO concurred.

Mr. Marshall stated that the appellant was not only nonconforming on the side but also on the front according to the survey map, resulting in his having only two very short, conforming dimensions. He added that at the time the house was built, the setbacks were conforming.

The CEO stated that he could waive 25% of the side setback requirement, although many of the other houses in the neighborhood have similar issues. Mr. Marshall stated that from the GIS map it appeared that several houses are only five feet from the boundary and have a second story on them. Mr. Marshall stated that some of the houses look as if they are sitting right on the property line and that it would seem that precedent has been set.

Mr. Marshall stated that there had to be an easier way for the appellant because he probably could not technically pass the first criteria.

Mr. Hamilton asked if the CEO would consider that the six-foot height extension would make the lot more nonconforming. The CEO concurred. Ms. Lemire asked for the reason

and the CEO replied that the appellant is not allowed to have a structure there. The CEO stated that the structure must be only 35 feet high and must meet the side setback.

The CEO stated that an example would be an existing structure with a three-foot setback. If he was to be allowed to build upward to 35 feet, the CEO questioned how he could maintain the building without trespassing on his neighbor's property to set up a ladder. He stated that currently the appellant would only have to set up a small ladder to maintain the side of the house. He added that the higher he was allowed to extend the house, the more room he would need to maintain that side of the house.

Mr. Billipp stated that it appeared that the BOA could come very close to what the appellant needs through a waiver. He asked if the BOA had the ability to go beyond the 50% allowed through a waiver. The CEO stated that he did not know of a way in which to accomplish that.

Ms. Lemire stated that that had been the reason she was asking about alternatives because with a waiver, the appellant could get almost the whole addition although there would have to be some changes.

Ms. Lemire stated that in the letter from the CEO of November 5, 2013 he stated that, "The waiver option as found in Section 45-194(c)(2) would only allow a 10' setback at most and would create a 3' offset between floors." She stated that she did not understand the offset between floors. The CEO stated that currently the first floor is seven feet from the property line and the second floor would be offset three feet because of the need for a ten-foot side setback to meet the terms of a waiver.

Mr. Kelley asked if that meant he could not go to the edge on the side. Mr. Marshall stated that if Mr. Kelly held the addition back three feet from the side it would make a waiver easy to get. Mr. Kelley stated that it would not be feasible because the house is so small already. Mr. Marshall asked if he could cantilever the addition out on the other side to make up the difference in space. Mr. Kelly replied that he could not because it would be over the driveway.

Mr. Marshall stated that the option may be to either hold the addition back three feet or to fail to be able to build. Mr. Kelley stated that he wanted to go with the plan he submitted. He stated that he did think of a couple of different options but that his wife wanted the plan which had been submitted.

Mr. Billipp noted that on the sketch supplied by the CEO of the 1964 plan by Albert Moulton there is a green square around the house. He asked if the green area represented an eave or basement. The CEO stated that he did not know.

Mr. Rankie asked if the CEO was aware of any other variances in the neighborhood. The CEO replied that he was not.

TESTIMONY FROM ABUTTERS

Chairman Cielezsko noted that the recording secretary is an abutter, that the BOA had received an email from her and that there was no bias in his mind if she spoke on behalf of the appellant because she is not a voting member of the BOA.

Linda Keeffe of 10 Wood Avenue stated that she did want to speak on behalf of the appellant. She stated that she questioned whether Lot 7-100 had a 20-foot side setback. She stated that the owners of the property did erect a second story four years ago and received a building permit without the need for a variance. She stated that all of the houses in the neighborhood started out nearly identical and all were built in 1942 as part of a development. She added that it is a very friendly neighborhood. She mentioned the problem of putting a ladder up to the second story and stated that the abutter, Mr. Higgins, would actually hold the ladder for the appellant. She added that she realized that her statement had nothing to do with meeting the four criteria.

Timar Sturdevant of 109 Leach Road stated that he lives abutting the back yard of the appellant. He stated that what the appellant was asking to do was exactly what he did himself. He stated that he tore the whole roof off of their house and built a garrison on top of it by just pulling a permit with no problems.

Mr. Sturdevant stated that he looked at the cost issues, including simply putting in dormers. He stated that the most cost-effective way to improve the house was to literally rip the top off and install an entire second floor. He added that he did his plumbing and installed a full bathroom. He stated that the extra room is needed for the staircase to be legal.

Mr. Sturdevant stated that as far as extending out the back was concerned, that would have required a foundation and would have cost tens of thousands of dollars. He added that the excavation would have been difficult because the ground is nothing but clay and mud. He stated that what the appellant was asking to do was no different than what many people have done in the neighborhood. He added that he thought it would be an improvement to the neighborhood and that it is a great family neighborhood. He stated that the reason he built a second story was that they had kids and needed the room and it made the most sense in an economical way to go straight up.

Mr. Sturdevant stated that if nobody had a problem with the appellant's plan, he did not see what the problem was.

Michael Higgins of 7 Wood Avenue stated that he has lived next to the appellant for 13 years and that he shares the property line in question. He stated that he had no problem with the appellant's project at all and that it would not deteriorate his own property values. He added that in actuality it would probably increase both property values as well as the tax assessment, which would be a win-win for everybody.

Mr. Higgins stated that he would have no problem with the appellant's use of his driveway for equipment or material.

Mr. Higgins stated that the appellant would probably be about the sixth house in the neighborhood to add a second floor and that he thought it would be grossly unfair to not allow the variance. He added that he was not sure house could become more nonconforming by raising it up because it is the same distance from the property line no matter how tall it is. He stated that in his view the structure is either nonconforming or it is not and that none of the houses in the neighborhood conform. He added that even putting up a shed would result in problems with setbacks because the houses are all on ¼-acre or less house lots.

Mr. Higgins stated that he was in favor of the appellant and that he thought the project would be a great thing for the neighborhood.

Chairman Cielezsko stated that he had received written letters from abutters, all dated November 21, 2013, and he read the letters.

Kevin Spinney of 148 Bolt Hill Road wrote, "To Whom It May Concern; I do not have a problem with Michael Kelley adding on to his house."

Crystal Spinney of 148 Bolt Hill Road wrote, "To Whom It May Concern; I don't have a problem with Mr. Michael Kelly doing anything to his house. He may do whatever he wants! The add on to his house is fine!"

Nancy and Robert Fontaine of 144 Bolt Hill Road wrote, "It is fine with us if Michael Kelley adds a second story to his house on Wood Ave. We have no complaints or issues with this."

Richard and Pauline Goodale of 3 Wood Avenue typed and signed a letter stating, "To Eliot Board of Appeals; We are abutters of Michael and Debbie Kelly. We live at 3 Wood Ave. This note is in response to your note regarding the upward expansion of the Kelley's home. We have absolutely no problem with their wish to upgrade their home. With the number of homes that have already added second floors, this would not be a detriment to the neighborhood."

QUESTIONS FOR ABUTTERS FROM THE BOARD

There were no questions from the board.

TESTIMONY FROM INTERESTED PARTIES

Chairman Cielezko informed Charles Rankie that he could speak as an interested party regarding the variance appeal. Mr. Rankie stated that he really does not see any hardship for the appellant because there is a buildable envelope on the property which allows for any expansion which Mr. Kelley would like to complete. He stated that he noted that a lot of the neighbors have put in additions which do conform and which fill the buildable envelope.

Mr. Rankie stated that the CEO had raised the issue of servicing the house. He stated that he knows the abutter well and that he is a good neighbor but that if Mr. Kelley's abutter was someone who did not like him, there would be no way to service the house. He added that the appellant could not get a bucket truck in there if he didn't have the room and that is why the ordinance exists.

Mr. Rankie stated that the term "reasonable return" does not mean "maximum return."

Mr. Marshall stated that he thought the BOA had heard from just about all of the appellant's abutters and none have any grief at all with the project. He stated that it was encouraging to him that the abutters were happy to have Mr. Kelley improve his home and that it would seem a shame, with nobody making a beef, that that project could not be done.

FINAL TESTIMONY FROM APPELLANT

Mr. Kelley stated that if he built an extension out the back of his house he would need even more equipment, such as bulldozers, than he would need if he added a second story. He stated that he did not know how he would get equipment into the back yard. He added that he did not think it would be feasible.

Mr. Kelley stated that he thought he would be at a major disadvantage in terms of financial return if others in the neighborhood had added improvements and he did not.

Mr. Kelley stated that he did not want to expand out, that he did not want to be closer to any of the neighbors and that he did not want anyone to be blocked off. He added that he did not have a problem with any of the neighbors.

FINAL QUESTIONS FOR APPELLANT FROM THE BOARD

There were no final questions for the appellant.

PUBLIC HEARING CLOSED

The public meeting was closed at 7:52 PM.

FINDINGS OF FACT:

- The appellant is Michael W. Kelly.
- The appellant's mailing address is 5 Wood Avenue, Eliot, Maine 03903.
- The property in question is 5 Wood Avenue, Eliot, Maine 03903.
- The lot is identified as Tax Map 7, Lot 102.
- Ownership is proven by deed in the Registry of Deeds Book 16088, Pages 923 and 924, registered on May 2, 2011.
- The application was written and dated October 30, 2013.
- The application was accepted by the Town on October 30, 2013.
- The lot size is 0.22 acres.
- The lot is in the Village District.
- The appellant is asking for a variance from the side-yard setback conforming to the existing footprint of the house, which has a 7-foot side setback, to build upward by adding a second story.
- Section 45-405 requires a 20-foot side setback in the Village District.
- Section 45-49(b) grants the Board of Appeals the power to hear variance requests and grant them if the four criteria for a hardship are met.
- All lots in the area, including the lot in question, are non-conforming lots.
- The house was built on the lot in 1942.
- The Code Enforcement Officer provided a site plan done by Albert Moulton, dated June 17, 1964, showing the dimensions of the lot.
- There were nine abutters who testified by writing or in person in support of the appellant.

Chairman Cielezsko stated that the duty of the BOA was to grant as little relief as possible and only to grant relief if the variance request meets the four criteria.

Mr. Billipp stated that he did not think that the appellant met the four criteria. He stated that although it is not what the appellant was asking for or what the appellant wanted, he thought that what the BOA could grant would be a waiver. He added that he could not support a motion to grant the variance so he would like other opinions on how to proceed. Chairman Cieleszko stated that the appellant was asking for a variance and that if the BOA only granted a waiver, it would be denying a variance. He added that the appellant would have to come back with a new request. Mr. Billipp asked if the appellant could do so if the variance was not granted. Chairman Cieleszko stated that if the appellant failed in the current hearing, it would only be in regard to the variance application.

Ms. Lemire asked about the timeliness issue. Chairman Cieleszko stated that timeliness would not be an issue because a waiver would be an entirely different application.

MOTION

Mr. Billipp made a motion to deny the request for a variance. Ms. Lemire seconded the motion for the purpose of discussion.

DISCUSSION

Mr. Billipp stated that in regard to the first criteria (*The land in question cannot yield a reasonable return unless the variance is granted*), the appellant has a house and is living in the house, that the house is a dwelling and meets the reasonable return test.

In regard to the second criteria (*The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood*), Mr. Billipp stated that the property is similar to all of the other lots in "clay village", many of which are nonconforming as is the current property. He added that he did not think that the individual property is unique.

Mr. Billipp was in agreement with the third criteria (*The granting of a variance will not alter the essential character of the locality*) because it is a residential area and all of the houses are similar.

Mr. Billipp stated that in terms of the fourth criteria (*The hardship is not a result of action taken by the appellant or a prior owner*) the appellant failed to meet the criteria because if the appellant created a second story without the relief of a variance he would be creating his own hardship.

Ms. Lemire stated that she concurred with Mr. Billipp. She added that in terms of

criteria #4, the appellant had not started the project yet so there really is no hardship. She stated that the ordinance is creating a barricade or a stumbling block for the appellant to get what he wants to get.

Chairman Cielezsko clarified Ms. Lemire's position as being that there is no hardship caused by either the appellant or a former owner. Ms. Lemire concurred.

Mr. Billipp stated that he would like to modify his statement on the fourth criteria in that the hardship was not created by the appellant but was certainly caused by a prior owner or the builder of the house in 1942 because the location creates the problem currently.

Mr. Hamilton stated that he was not sure what the zoning ordinances were in 1942. Therefore it is not known whether the builder made a mistake or not. When the ordinance requiring a 20-foot side setback was enacted, it made the lot a nonconforming lot. Mr. Hamilton stated that he did not think the fourth criteria applied and that the appellant passed that criteria.

Mr. Hamilton agreed that the appellant passed the third criteria because the appellant's project would not alter the character of the neighborhood. He stated that the second criteria which addresses the unique character of the property also relates to the fourth criteria. He stated that he was assuming that the side setbacks were correct when the houses were built but that they are incorrect currently which has caused the need for a variance. He stated that he thought the appellant passed the second criteria.

Mr. Hamilton stated that he was stuck on the first criteria. He quoted from ordinance 45-49 which states that, "The board of appeals shall grant a variance where a party establishes that the strict application of this chapter will cause undue hardship. The words 'undue hardship' mean:" and then the ordinance lists the four criteria.

Mr. Hamilton stated that it was the first time he had noticed that the ordinance does not state that the appellant has to meet all four criteria. He stated meeting all four had come by case history and that it is also stated in the application which says that the appellant must meet all four criteria. He added that the ordinance does not say that.

Ms. Lemire stated that the ordinance is based on State law. Mr. Hamilton stated that the problem was that State law required that the appellant meet all four criteria, regardless of how much support he had from neighbors or of how sensible or insensible the project is. He stated that the BOA is tied to the State ordinance.

Mr. Hamilton stated the neighborhood as it is currently may not be the same as that which it will become in 20 years. He stated that the BOA ruling is based on property not on the current owner of the property or the current abutters of the property. He stated

that he did not think the appellant met the first criteria

Mr. Hamilton stated that when the MSR law was written about variances it was designed to be incredibly difficult to obtain a variance. He stated that waivers and administrative appeals are not as difficult to obtain but that the variance law was established to support the zoning ordinances of each town. He stated that in order to create an exception to the ordinances, an appellant has to have a really, really good reason to do so and could have no other choices to accomplish the desired goal.

Mr. Hamilton stated that it had been proven by case history through the Supreme Court that the appellant is not required to gain maximum benefit from the property but only that the property has a reasonable return. He stated that if an owner paid \$10,000 for a property and could sell it for \$50,000 without a variance the result would be more than a reasonable return.

Mr. Hamilton stated that as much as he was sympathetic to what the appellant wanted to do, with the neighbors' total support and his own total support, and regardless of what other neighbors had done, perhaps through another CEO who didn't pay as much attention to code as the current CEO, the issue remained the four criteria exclusively. He stated that he would have to state that the appellant did not meet the first criteria.

Mr. Cutting stated that the appellant's village looks like someone basically laid it out on a piece of paper and there was no reason not to build it that way because there were no ordinances at the time. He stated that ordinances have gotten stricter and stricter and that rules have changed. He added that he did not think the hardship was created by anybody and therefore agreed that the appellant passed the fourth criteria.

Mr. Cutting stated that he did not see any reason that the appellant's project would affect the general characteristics of the neighborhood and agreed that the appellant passed the third criteria. He stated that he also agreed that the appellant passed the second criteria because the property is unique.

Mr. Cutting stated that he was stuck on the first criteria. He stated that what was reasonable for building a house back in 1942 would not be reasonable today and that that would be the only way he could attempt to get around the first criteria. He stated that based on the four criteria of the State, he would have to vote no on the first criteria.

Chairman Cielezsko stated that even though the ordinance does not state that the appellant has to meet all four criteria, State law stated that "undue ship means" and then lists all four criteria and the period to punctuate the sentence is at the end of number 4 so the definition of undue hardship requires meeting all four criteria.

Mr. Hamilton noted that the ordinance states that the BOA shall grant a variance where a party establishes that the strict application of this chapter will cause undue hardship and does not say that the party has to meet all of the criteria but that they are a description of what a hardship is. He added that the BOA did know that the party does have to meet all four.

Chairman Cielezsko stated that his only reservation on the reasonable return of criteria #1 is that the State court system of Maine is very strict on the meaning of the term. He stated that they heard examples such as being able to put a tent up on a piece of beautiful piece of property on a lake, which would constitute a reasonable return. He stated that the first criteria is almost insurmountable.

Chairman Cielezsko stated that the State of New Hampshire also had a strict set of four criteria, the same four which were established nation-wide. He stated that the Superior Court all of a sudden got softer on what a reasonable return was. He added that Botany Bay computers in Portsmouth fought in the Supreme Court of New Hampshire and won on a hardship that would never have been won anywhere else. He stated that that had changed the standard of hardship in New Hampshire and that currently it is much more lenient. He stated that the only way to push the envelope is to send it through the court.

Chairman Cielezsko stated that if the variance was granted and then appealed by someone who did not want the appellant to build his project or the appellant appealed the denial of the variance, the court could decide and that they might change as they did in New Hampshire. He stated that he wanted everyone to know that there is never anything etched in stone.

Chairman Cielezsko stated that he did agree on the conclusions that the BOA members had reached on the criteria.

As a synopsis and the last Finding of Fact, Chairman Cielezsko stated that the voting was as follows:

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

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

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

Mr. Hamilton and Mr. Cutting thought that the appellant met this criteria. Mr. Billipp and Ms. Lemire did not agree.

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

All agreed that the appellant met this criteria.

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

Mr. Hamilton and Mr. Cutting thought that the appellant met this criteria. Mr. Billipp and Ms. Lemire did not agree.

DECISION

Chairman Cielezsko stated that there was a motion the floor to deny the variance appeal for a side setback down to seven feet. The motion to deny the variance request passed unanimously.

Chairman Cielezsko stated that the appellant would receive a Notice of Decision within seven days. He stated that the appellant could appeal the decision within 45 days to Superior Court.

Mr. Kelley stated that he would not fight the decision and would move instead. Mr. Billipp stated that he wanted the appellant to know that each member of the BOA supported the appellant but that the State standard was meant to be very difficult to achieve. He stated that the appellant did have an alternative to come back to the BOA with a waiver request. He stated that he thought he appellant would have a very good chance of receiving a waiver, even if it did not result in 100% of what he wanted.

Mr. Kelley asked if the waiver request would be made before the same BOA. Mr. Billipp stated that it would be but that it would be a totally different application. Ms. Lemire concurred and stated that he would not have to meet the four criteria.

Chairman Cielezsko stated that what the appellant should do is to discuss his options with the CEO. Mr. Kelley stated that he was just going to move, even though he had been an Eliot resident since he was born.

APPROVAL OF MINUTES

The minutes of October 17, 2013 were accepted as amended.

OTHER BUSINESS

Chairman Cieleuszko read a letter from J.P. Nadeau Profession Offices sent via certified mail on November 15, 2013 addressed to Ms. Jean Hardy of 2 Little Brook Airpark, Ms. Elizabeth Todak and to Sweet Peas LLC with copies to the BOA, the Selectmen, The Planning Board and the Code Enforcement Officer. The letter read:

“Re: Maintenance of Littlebrook Lane

Dear Ms. Hardy, Ms. Todak and Sweet Peas LLC,

Please be advised that I represent John and Sheila Brigham of 36 Littlebrook Lane, Eliot, Maine, along with several other property owners who hold deeded interests in Littlebrook Lane, Eliot, Maine, as shown on the Plan prepared by Civil Engineer, William Locke, and which is recorded in the York County Registry of Deeds at Book 89 Page 40.

My client’s rights also include the obligation of the Grantor to maintain that roadway ‘until such time as it is conveyed to the town of Eliot’. As I am sure you know, the Grantor was John E. Hardy, Jr. and Littlebrook Air Park, Inc. A copy of Mr. and Mrs. Brigham’s deed is enclosed.

It is our position that these deeded rights run with the lands owned by my clients and that the obligation to maintain Littlebrook Lane passed to Ms. Hardy, Ms. Todak and/or Sweet Peas, LLC as successors in interest to John Hardy and/or Little brook Air Park, Inc.

This letter is occasioned by the appearance of your representative, Ms. Edith Breen before the Town of Eliot Board of Appeals September 19, 2013 and the apparent position she advanced on behalf of Ms. Todak and Sweet Peas, LLC that the obligation to maintain Littlebrook Lane ended with the death of Ms. Hardy’s husband, John Hardy.

My clients advise that for the most part, Littlebrook Lane is in terrible condition and that seems to have been acknowledged by Ms. Breen by her stating that ‘there is no question that the road needs help’.

The purpose of this letter is two-fold:

First; this is to formally advise all of you that it is our position that all owners of all land previously owned by John E. Hardy, Jr. and/or owned by Littlebrook Air Park, Inc. that was or is accessed by Littlebrook Lane, have the continuing

obligation as their successors in interest to maintain Littlebrook Lane until such time as it is conveyed to the Town of Eliot.

Secondly; this is to make formal demand on all of you who have had and/or who currently have any ownership in Littlebrook Lane and/or any land accessed by the roadway to undertake all measures necessary to bring Littlebrook Lane up to reasonable maintenance standards, and to see to it that the roadway is maintained with reasonable grading, plowing, sanding and salting when reasonably necessary. Please understand that these specifications, for maintenance measures are not inclusive of all your maintenance obligations as we deem them to be. My clients expect and are entitled to all reasonable maintenance of Littlebrook Lane.

My clients desire to resolve this amicably but are prepared to proceed with Court action to preserve and enforce their rights if necessary, in which event they will also seek your payment of their attorneys (sic) fees and costs. If you have legal counsel, please immediately direct this letter to his/her attention.

I request that either you or your legal counsel contact me on or before Friday, November 22, 2013 so that we may know whether or not there is any reasonable likelihood of resolving this matter without filing legal action.

Very Truly Yours,
J.P. Neadeau, Esquire

Enclosures

Cc: All Clients
Eliot Board of Appeals
Eliot Planning Board
Eliot Code Enforcement

Mr. Rankie asked why the letter was relevant to the BOA. Chairman Cielezsko stated that he shared the letter because it was addressed to the BOA. Ms. Lemire stated that the BOA heard the case.

Mr. Marchese stated that he made the Board of Selectmen aware of the letter.

When Chairman Cielezsko asked if anyone had any other issues for discussion, Ms. Lemire stated that she had an issue with the variance just heard but she did not see any way to rectify the situation. Chairman Cielezsko stated that he thought the BOA did an excellent job in deciding on the variance.

Ms. Lemire stated that she agreed that the BOA did an excellent job but that she was concerned because, although ordinances are good as a control for living civilly together and not impinging on neighbors, there were no ordinances in 1942 and all of sudden houses built during that time are subject to current ordinances. She stated that people are not going to keep up with ordinances and would not expect that they would not be able to put a second story on a house or to add an extension.

Mr. Hamilton stated that the owner of a piece of property has an obligation to be aware of and to follow ordinances and restrictions and that that is the cost of living in a civilization. He stated that people would love to do things to their property but cannot if it will affect their neighbors. He stated that he did not know whether the variance just requested would have had adverse effects or not because the BOA does not live in the neighborhood and does not know who would live there 20 years from now. He stated that he did not know whether someone in the future would look back and wonder how a variance had been allowed to happen.

Mr. Hamilton stated that part of the obligation when owning property is to obey current ordinances and to be aware of changes in the ordinances. He added that he thought the BOA's job was a tough one because they have to support an ordinance under a difficult situation.

Mr. Rankie stated that he agreed with Mr. Hamilton. He apologized for coming on a little too strong in the beginning of the meeting and asked to be given the protocol of how a BOA meeting operates. He stated that he has Board of Appeals experience, ZBA experience and that his experience is all on that side of the bench. He stated that he prepared for his first BOA meeting by watching the last meeting and that he could not disagree more with the BOA's ruling at that meeting when a variance was granted.

Mr. Rankie stated that he had a leg up on the BOA because he knows the property very well and that the property had been before the board before with an attempt to subdivide it into three lots. He stated that the property is a nine-acre parcel which extends onto good, high land. He questioned why someone would not build back there. He questioned why the owner was granted a variance for building on a little dog leg of a large piece of property. He stated that he hoped the BOA did not grant such variances all of the time.

Mr. Rankie stated that he was pleased to be part of the current hearing and that he thought the issue was really black and white.

Mr. Cutting stated that he had seen how other boards operated in the State of Maine, Massachusetts and New Hampshire and that he had been on the Eliot BOA for five years. He stated that one of the things he admires about the Board is that each individual has his own opinion and makes up his own mind and that nobody talks about

the issues ahead of time but hashes out the decision at the meeting. He stated that he thought the Eliot BOA works better than most of the boards he has seen. He stated that he respects the fact that sometimes the BOA makes a decision that is contrary to what someone else may agree with and that others have the right to dissent. He added that he thought they did a good job overall.

Mr. Rankie stated that that was good as long as a decision was made based on the criteria that were given by the State. Mr. Hamilton and Chairman Cieleuszko both stated that that is exactly what the BOA considers every time. Chairman Cieleuszko stated that once a position is taken, there are always two positions in that some people don't like the decision and some people do and that includes BOA members. He stated that once the decision is reached, it is a firm decision.

Mr. Rankie asked how the list of the four criteria included in a variance application is filled out. He asked if the BOA oversaw the answers before the application was submitted. Mr. Rankie asked if the application came to the BOA regardless of whether or not the questions had been answered. Chairman Cieleuszko concurred.

Mr. Rankie asked what determines the abutters. Chairman Cieleuszko stated that an abutter has to be either adjacent to the property or to the road and that it is also a radius. The CEO stated that the definition is included in the book of ordinances.

Chairman Cieleuszko stated that the BOA workshops, along with the Planning Board, are also good informative resources. He stated that the information presented can vary depending on the presenter because some say you can get away with murder and others say that the letter of the law has to be kept.

Mr. Hamilton stated that members of the BOA attended a workshop with the Board of Selectmen on October 31, 2013 to discuss to issue of Consent Agreements. He stated that the discussion lasted for over 1 ¼ hours and he read the minutes from that meeting. The minutes stated:

"There was discussion and clarification of the seeming undermining of a Board of Appeals decision by the Board of Selectmen regarding a particular case heard and decided by the Board of Appeals regarding Selectmen policies around the granting of Consent Agreements. There was discussion to clarify the specific case as well as general Board of Selectmen policies they had in place to enter into Consent Agreements. It was resolved that the Board of Selectmen did not undermine the Board of Appeals in the specific case."

Mr. Hamilton stated that he did not recall that happening at the meeting and he did not recall any sort of resolution. He stated that he did not agree that the BOS did not

undermine the BOA. He stated that he still felt that the BOS undermined the BOA's decision.

Mr. Hamilton stated that there was a corollary to that because the BOS asked the CEO to decide in the particular case. He asked Mr. Marchese to clarify the situation but Mr. Marchese stated he did not want to discuss the issue.

Ms. Lemire stated that she thought that there was resolution as far as the particular case was concerned. She stated that some of the session was an Executive Session.

Chairman Cielezsko stated that he had asked the BOS why they did what they did and that their response was that they couldn't tell him. He added that there was definitely not a resolution.

Mr. Hamilton stated that he never felt there was a resolve which made him feel uncomfortable that the BOS could exercise that authority when there is nothing in the Eliot code that gives them that authority.

Mr. Hamilton stated that the BOS did not even follow their own guidelines regarding Consent Agreements. He added that they have guidelines that the BOA actually worked on in an advisory role a couple of years ago. He stated that the BOS then came up with a series of guidelines but that in the particular case they did not have to follow the guidelines because they did not mention making a Consent Agreement. Mr. Hamilton stated that the BOS had said that if the CEO reviewed the decision and issued a building permit, then the BOS would not have to issue a Consent Agreement. He added that the BOS had said that if they did need to issue a Consent Agreement, they would then follow the guidelines, which would require public hearings, notifications, etc. He added that none of that is done in Executive Session.

Mr. Rankie stated that if the BOA did not agree with what had been written it needed to be put in writing because it is a matter of public record.

Ms. Lemire stated that the BOS minutes had not yet been approved. She stated that she wrote the summary (as recording secretary for the BOS) and that she really thought that there was some resolution about the process of what the BOS went through and why they did what they did. She stated that there was no intention to undermine the BOA but that the BOS was trying to get Sweet Peas LLC to start over and go through the procedures to cover in case she went to court. She stated that that happened at a different meeting.

Mr. Hamilton stated that he was talking about the workshop meeting and that his understanding was that the Selectmen would work with the BOA to come up with some guidelines and that he did not see that in the minutes.

Ms. Lemire stated that the minutes were a summary because there was no live recording. Mr. Hamilton stated that he thought it was a pretty important meeting and that he was disappointed that there was nothing more than a summary that did not express what really happened. He stated that it had been a scheduled, public meeting and should have been recorded. Ms. Lemire agreed that it should have been recorded.

Mr. Hamilton stated that he would like to propose that the BOA ask for clarification from the BOS about the BOA's role in working with them about Consent Agreements since the actions of the BOS affect what the BOA does. He added that he thought the BOA should at least have an advisory say in Consent Agreements. He stated that from what he remembers from the workshop meeting, the BOS actually asked the BOA to do that and that he did not see that in the minutes. He stated that he would like to see that reiterated.

Mr. Hamilton stated that he would like to see it mentioned that at the Board of Selectmen meeting of October 31, 2012, it was suggested that the BOS and the BOA work together on the concept of Consent Agreements. He stated that he did not see that in the minutes and he wanted to make sure the BOS got that message.

Chairman Cielezsko stated that he disagreed. He stated that the BOS minutes are draft minutes and that there had been no time constraint on when the BOS had said they would get back to the BOA. He stated that it is an ongoing process.

Mr. Rankie stated that the only thing that happens to draft minutes in a BOS meeting is that Jack Murphy puts a couple of comments and changes some spelling.

Chairman Cielezsko stated that even if nothing changes in the minutes they aren't used until they are official. Mr. Hamilton stated that draft minutes are subject to amendment and that he did not agree with the draft minute statement that the BOS did not undermine the BOA in the specific case. He stated that he did not come to that conclusion and he did not see that the Selectmen did either. He added that he thought it was a misleading statement.

Ms. Lemire stated that the time to change the minutes would be before they are approved.

Mr. Rankie stated that he thought the only thing the BOA could do would be to send correspondence saying that the minutes misrepresent what happened. He stated that he watched the meeting on the video stream and was aware of how upset Mr. Hamilton had been and what Chairman Cielezsko had said during the meeting.

Mr. Hamilton stated that he did not feel there had been any resolve from the workshop meeting whatsoever other than the fact that the BOS did ask that the BOA cooperate with them. He stated that he expected that after the meeting, the Chairman of the Board of Appeals would receive a letter requesting a special meeting to discuss Consent Agreements. He stated that he interpreted Chairman Cieleuszko's statements to mean that it was not the business of the BOA.

Chairman Cieleuszko stated that he had not meant that at all. He stated that the minutes are draft minutes from notes taken by Dan Blanchette. He stated that the BOS does not work like the BOA and that they don't sit around at their meetings discussing things and that they could not do all that they do completely in open meetings. He stated that a BOS meeting is not a very open environment and that the BOA should not jump to the conclusion that they are being brushed off. He added that the BOS worked on the Consent Agreements last time for six to eight months before they came to the BOA, at which point the BOA tore them apart and gave them back.

Ms. Lemire stated that the BOS is in the process of revising the Selectmen policies, including the meat of the Consent Agreement language. Mr. Hamilton stated that he would like the BOA to be part of that process since the BOS had invited them to do so. He stated that he would like to see as part of the BOS minutes that the BOA had been asked to be a part of the process.

Mr. Billipp asked if one needed standing to comment on some other group's minutes. Mr. Hamilton stated that the BOS had called the meeting with the BOA. Mr. Billipp stated that it would be appropriate to comment on the draft minutes. Mr. Hamilton stated that he would like to see the minutes reflect that the BOS had asked the BOA to work with them on the composition of Consent Agreements.

Mr. Hamilton stated that in his opinion Consent Agreements are to be used strictly for violations and not as an intermediary between the BOA and the Superior Court. He stated that the issue should be one of violation and that he thought that was the way the Town's attorney interpreted it. He stated that Consent Agreements are a way for the Town and the violator to come to some sort of understanding. Mr. Billipp stated that it is similar to settling out of court.

Mr. Billipp stated that in the particular case, it appeared that the only reason the Town wanted a Consent Agreement was that the appellant was threatening legal action.

Chairman Cieleuszko stated that he thought there was more to the issue and that is why he had asked the BOS why they were doing what they were doing but he was not given a reason. He stated that he thought there was a lot to the issue and they the BOA needed to give the BOS time to work it out.

Mr. Hamilton made a motion that the BOA write a letter to the Selectmen saying that, as per the meeting of October 31, 2013, the Board of Appeals would like to be included in the assessment and evaluation of Consent Agreements as the Board of Selectmen had suggested and that the draft minutes do not accurately reflect what happened at the meeting.

Ms. Lemire stated that she is the recording secretary for the Board of Selectmen and is also a member of the Board of Appeals and that she is the one who prepared the BOS draft minutes. He stated that she summarized because she did not have her recorder at the meeting and that there was also no live streaming.

Chairman Cielezsko stated that Ms. Lemire had stated when the October 31, 2013 meeting started that she was present as a BOA member and that Dan Blanchette was doing the minutes. He added that the problem was Dan's problem and that he had heard Dan agree to do the minutes. Ms. Lemire stated that she had felt very uncomfortable wearing two hats at the meeting and had thought it had been recorded. She added that she wished that she had at least had her recorder at the meeting.

Ms. Lemire stated that she put as much in the BOS minutes as she could remember from memory. She added that she would not put something in the minutes that she was not 100% sure of. Chairman Cielezsko stated that it was a horrendous role to try to remember what was said at the same time as she was trying to figure out what to say in the meeting herself as a participant.

Mr. Hamilton asked Ms. Lemire if she felt that it had been resolved that the BOS did not undermine the BOA. Chairman Cielezsko stated that he did not feel that it had been resolved. Ms. Lemire stated that she had thought they did agree that it had been resolved. She stated that she did not think that the BOS undermined the BOA in that particular case.

Mr. Hamilton stated that the BOS actions of having countermanded the decision of the BOA so that the case would not go to the Superior Court in a sense undermined the function of the BOA. He asked why the BOA should keep making decisions if it was possible that for some reason a Consent Agreement would be initiated by the BOS.

Ms. Lemire asked if Mr. Hamilton's concern was that having done so once, the BOS would do so again. Mr. Hamilton stated that he did not see any compelling reason for doing it the first time. He added that he thought the BOA had made a decision on the case, understanding the history of the case and the fact that the appellant would be sued for \$200,000 by the people to whom she promised a lot.

Chairman Cielezsko stated that the statement in the minutes that there was resolution would be valid if the BOS felt among themselves that they did not undermine the BOA.

Chairman Cielezsko stated that whether or not Mr. Hamilton believed there had been resolution was not represented in the statement in the minutes. Mr. Hamilton stated that if that was true, the statement should also have been included that the BOA did feel that the BOS action was undermining. Chairman Cielezsko stated that that was not resolved either.

Chairman Cielezsko mentioned that Mr. Marshall had stated in the meeting that he thought the BOS did a great job. Mr. Marshall stated that just because he was venting did not necessarily mean that he was correct.

Chairman Cielezsko stated that the BOA did not reach any conclusion as to whether or not the BOS did undermine the BOA. Mr. Hamilton stated that in his interpretation of the meeting, the BOS did not make any "resolve" either.

Chairman Cielezsko stated that the BOA was not as strong an organization when they were among the Selectmen as they are in their own meeting. He stated that in the BOS meeting, the BOA members were individual contributors with a little more push because they are on the Board of Appeals. He added that they are at the whim of the BOS to begin with.

Mr. Hamilton stated that BOA members are appointed and have a duty to the State statutes and that they have to swear an oath to perform that duty. Chairman Cielezsko stated that the BOS can remove a BOA member for a cause. Mr. Hamilton stated that he did not see any cause.

Chairman Cielezsko stated that the BOA members were bringing their concerns as individuals to the attention of the BOS. Mr. Hamilton stated that he thought the BOA had agreed as a Board to meet with the Selectmen. Chairman Cielezsko stated that they had accomplished that goal. He stated that they went to the meeting to discuss rather than to say the BOS was wrong. He stated that there was a wide range of opinions among the individual BOA members when they stated their positions to the Selectmen. He added that it was a workshop and that the BOS did not have to vote on anything.

Chairman Cielezsko stated that the BOA got the requested meeting and presented their opinions to the Selectmen and that the BOS said they were going to continue with the rehashing of Consent Agreements with BOA input. He stated that a motion had not been made and that it had only been a month since the meeting and that it was early in the game. Mr. Marshall added that this issue was not the only item on the BOS table.

Mr. Hamilton stated that his concern was that he did not want to see misinformation become part of the public record.

Mr. Hamilton made a motion to write a letter to the Board of Selectmen stating that the Board of Appeals would like to be included in discussions regarding Consent Agreements as was agreed in the October 31, 2013 meeting and that the Board feels that the draft minutes do not reflect what actually happened at the meeting. Mr. Billipp seconded the motion.

Mr. Marchese stated that based on a revised application that was presented to him as the CEO by Sweet Peas, coupled with an opinion from the Town's attorney, a growth permit was issued for the lot. Ms. Lemire stated that it is public record. Mr. Marshall asked if the growth permit was synonymous with a building permit. Ms. Lemire stated that they are not exactly the same. The CEO stated that someone could file for an Administrative Appeal within 30 days.

Mr. Hamilton asked when the growth permit was issued and Mr. Marchese replied that it was issued on November 8, 2013. Mr. Hamilton stated that the reason he was asking was that the abutters who were at the public hearing on the case were under the impression that there was no permit. Ms. Lemire stated that it was issued after the public hearing.

Mr. Hamilton stated that his concern was that the abutters had no knowledge that a growth permit had been issued which could be appealed. He stated that he thought they should be notified. He stated that if he had been an abutter, he would have left the BOA meeting feeling satisfied that they had acted correctly in not allowing the permit. He added that a month later he could see a house being built on a lot where the BOA had said there would be no house. He asked if he had to constantly check the Town to determine what the CEO is doing after a BOA decision was made that nothing was going to happen on the lot.

Chairman Cielezko stated that such issues exist in every town and that Eliot is not unique. He added that you cannot have an abutters list for notification of every building permit. Mr. Hamilton stated that in this case the BOA decision was essentially reversed in less than 30 days. Chairman Cielezko stated that getting the information was still up to the abutters.

Mr. Marshall stated that if Sweet Peas had gone to the CEO with their revised permit application and the same questions were asked of the Town's attorney, the appeal never would have come to the BOA to start with. Mr. Hamilton stated that the Town's attorney stated in his own letter that his opinion was only one of many opinions. He stated that the only way opinions get resolved is through litigation.

Chairman Cielezko asked for a vote on the motion to write a letter to the Board of Selectmen stating that the Board of Appeals would like to be included in discussions about Consent Agreements, as was agreed at the October 31, 2013 meeting, and stating

that the Board of Appeals does not feel that the Board of Selectmen draft minutes accurately reflect what happened at that meeting. The motion passed by a vote of 4 to 1, with Mr. Hamilton, Mr. Cutting, Ms. Lemire and Mr. Rankie in favor and Mr. Billipp and Mr. Marshall opposed. Mr. Billipp stated that he was not at the meeting so he could not determine whether any statements accurately reflected what happened at the meeting.

ADJOURNMENT

The meeting was adjourned at 9:12 PM.

Respectfully Submitted,
Linda Keeffe
Recording Secretary

Approved by: _____

Ed Cieleuszko, Chairman, Board of Appeals

Date Approved: _____