# TOWN OF ELIOT
# BOARD OF APPEALS
# REGULAR MEETING
# SEPTEMBER 19, 2019
# ELIOT TOWN HALL

## APPROVED MINUTES

Members present: Bill Hamilton, Chair; Charles Rankie, Ellen Lemire, Cabot Trott, John Marshall and Jay Meyer and Rosanne Adams, Alternates

Others present: Shelly Bishop, CEO; Andrea Bristol and Gregory Crosby, applicants; Kent Davis, and Kevin McCoole, abutters

1. **7:00 PM: ROLL CALL:** Chairman Hamilton called the meeting to order at 7:00 p.m. The members introduced themselves. He outlined how the public hearing will proceed, first asking Board members if there was any conflict of interest in this request. He said there are seven members, five regular members and two alternates, and only the five regular members will be voting tonight. He said they do have a quorum. He said all seven members will be able to participate in the discussion, but once the public hearing is closed, just the five regular members will deliberate.

Chairman Hamilton asked the Board members if they had any conflict of interest regarding this request, and none was noted. He determined that the appellant does have standing and timeliness of the application has been met.

**2. Public Comment Period:** Chairman Hamilton said this is the time for any comments from the public that have nothing to do with tonight's proceedings on the agenda.

There was no public comment.

**3. PUBLIC HEARINGS:**

Chairman Hamilton said there are two public hearings tonight and he would like to outline how the public hearings will proceed.

Chairman Hamilton explained there are two types of review; appellant, which typically applies to a decision made by the Planning Board or Code Enforcement Officer and involves only information submitted to the Board and de novo, which is what this type of hearing is tonight, where the Board can take new or existing information.

Chairman Hamilton said he will open the public hearing and identify parties to the action, and many times the Code Enforcement Officer is involved, and will cite the ordinance section. He said the Board will hear testimony from the appellant, who will have time to present their case, and then the Board will ask questions, hear testimony from parties to the action, the CEO or the Planning Board Chair, and ask questions as well as hearing testimony from abutters and interested parties. He said prior to closing the public hearing, he will ask the associate members for their input. He said all questions go through the Chair.

Chairman Hamilton asked those present to identify themselves when speaking as the minutes of the meeting are being recorded and will be available on the town's website. He said unfortunately their Recording Secretary is on vacation but will be providing the written minutes upon her return.

Chairman Hamilton said there will be discussion by the Board and then he will outline the Findings of Facts based on the testimony heard and the Board will vote on their decision. He said their decision is subject to appeal to the Superior Court within 45 days.

**A. Andrea H. Bristol, Map 1, Lot 20, Village Zone, requesting a waiver from rear setback requirements, Sec. 45-405, 45-456.1.d and 45-194c for property located at 160 Pleasant Street, in order to construct a Yoga studio and Reiki practice on the second floor of an existing barn.**

Chairman Hamilton opened the public hearing at 7:06 p.m. and asked the appellant to present her case.

Ms. Bristol said she is requesting a waiver from the setback requirements because she does not have as much of a setback to the back of the property as required.

Chairman Hamilton asked the applicant if she looked at the five questions and if she would care to elaborate on the five questions? He said unlike a variance, all four have to be acceptable, but the five questions are for information only.

Ms. Bristol responded that the nature of the waiver is so she can have a Yoga studio on the second floor of her barn. She said she understands it is a 22 ft. setback that is required.

Chairman Hamilton corrected her and said no, it is a 30 ft. rear setback that is required.

Ms. Bristol said that there is not another feasible alternative for the location of her studio – the barn is there.

Ms. Bristol said #1, yes, the waiver is due to the unique circumstances of the property and #2, it will not alter the essential character of the locality. She said #3, the hardship is not due to either myself or the previous owner and #4, it will not impair the use of the abutting property.

Chairman Hamilton asked the Board members if they have any questions.

Mr. Rankie said it is his understanding that this is a residential zone, and asked if that is correct?

Chairman Hamilton replied yes.

Mr. Trott wanted to know if there was anything on the property, a business, being conducted there.

Chairman Hamilton and the applicant both responded no.

Ms. Lemire wanted to know if it is in the Shoreland Zone.

Ms. Bristol responded no.

Chairman Hamilton asked if there were any other questions.

Mr. Marshall asked Ms. Bristol how certain she was of 15 ft and wanted to know if she measured it herself or did someone else check it?

Ms. Bristol answered that she got the information from the documents at the Town Hall. She said her neighbor's yard is overgrown into the back section of her property with various groves of trees and she cannot get to the property line there. She said she has photographs if the Board would like to see them.

Chairman Hamilton wanted to know, as a follow-up to Mr. Marshall's question, if she measured 18.3 ft. to the lot line?
Ms. Bristol said that is what she got from the Town Hall.

Mr. Marshall said on her application it says "22 ft." and wanted to know shouldn't that be 20 ft.?

Chairman Hamilton answered it should be 30 ft.

Ms. Lemire said that is what the rear setbacks are in the Village (Zone).

Mr. Rankie said he would like to hear from the Code Enforcement Officer, through the Chair, to confirm that.

Ms. Bishop replied 30 ft. is correct.

Ms. Lemire wanted to know what would Ms. Bristol do for parking?

Ms. Bristol replied she does have drawings, if the Board would like to see them, and Ms. Lemire replied sure.

Ms. Bristol distributed the drawings to the Board members.

Ms. Lemire said it is hard to tell from the picture what is that square between the house and the barn, and asked if it is a patio.

Ms. Bristol replied yes.

Mr. Trott said the applicant has to go to the Planning Board for that.

Ms. Bristol responded yes, she was there Tuesday night.

Mr. Trott wanted to know did it go well?

Ms. Bristol replied yes, she brought in a parking sketch and is hoping to have a sign.

Mr. Trott asked the CEO if everything else is conforming.

Ms. Bishop replied it is a legal non-conforming lot with structures.

Mr. Trott said that it is legally non-conforming.

Mr. Marshall asked how old is the barn?

Ms. Bristol responded they could not salvage the old barn and this one was built in 2015.

Chairman Hamilton asked the Board members if they had any other questions.

Ms. Lemire asked Ms. Bristol if she could elaborate a little more on a demonstrated need.

Ms. Bristol replied if she does not get this waiver, she cannot open her studio.

Ms. Lemire said okay.

Chairman Hamilton asked if Ms. Bristol wasn't adding any additional structures but this is a change in use.
Ms. Bristol responded yes.

Chairman Hamilton said again, this would have to go to the Planning Board.

Ms. Bristol replied yes, she is going back to the Planning Board on October 15th.

Chairman Hamilton asked if there were other questions, and hearing none, asked the Code Enforcement Officer if she cared to weigh in.

Ms. Bishop asked in what regard?

Chairman Hamilton answered for her assessment of the application.

Ms. Bishop replied that Ms. Bristol has a home business application before the Planning Board and has gone through the process but she needs a waiver to the setbacks to have her studio.

Chairman Hamilton asked if there were any other questions for the Code Enforcement Officer.

Ms. Lemire asked Ms. Bishop what is the official number of feet the applicant needs for her waiver.

Ms. Bishop responded 11.9 ft.

Chairman Hamilton said 11 feet, 9 inches.

Mr. Rankie said they could grant 15 ft. with the barn.

Ms. Bishop responded the barn as an accessory, yes, an accessory structure can be 10 ft. from either side.

Mr. Rankie asked if the applicant can be non-conforming with 15 ft.

Ms. Bishop replied she did not know about 15 ft. but an accessory structure can be 10 ft. She said, regarding Sec. 45-405 Dimensional Standards, the principal structure is 30 ft. for the front and an accessory structure is 30 ft. for the front and 10 ft. on either side.

Mr. Trott said to clarify, it is legally non-conforming and they would be making it more non-conforming.

Ms. Bishop replied that the ordinance has a non-conforming section and many lots cannot meet today's standards and there is relaxation for the setbacks, but she did not think it would be more non-conforming as it is in the ordinance.

Ms. Lemire said the relief would be internal to the structure and would not make it more non-conforming since the barn is already there.

Mr. Rankie said if they use 10 ft. for the setback granted and there is 18 ft. for the residential zone and the business is being asked for, he wanted to know if that is correct.

Ms. Bishop replied yes.

Chairman Hamilton asked if there were any more questions for the CEO?

Ms. Lemire said she wasn't sure, but there was an update to the "Home Business" section which states it is not to exceed four additional spaces per lot, and she wanted to know if that is applicable to any home business.

Ms. Bishop replied she believed it is. She said there are three types of home businesses and the Planning Board will address the parking requirements.

Mr. Marshall said the Planning Board will be dealing with the parking issue and hopefully will put a turn-around in there someplace.

Mr. Trott said there were letters sent referring to this application.

Chairman Hamilton replied there were two, one is dated September 16, 2019 from Deborah Ryan-Dolleman and Lloyd Dolleman, and one was received today from Susan Crothers.

Chairman Hamilton asked if there were any abutters who wished to speak, the Board will hear their testimony.

Kent Davis, 168 Pleasant Street, said, through the Chair, he wanted to give his appreciation to the Code Enforcement Officer, Shelly Bishop, for bringing this to our attention, both the Planning Board and the Board of Appeals. He said the town has had some businesses in South Eliot that were not approved and have been doing business in our neighborhood without permits.

Mr. Davis had a couple of questions, the first being if Chairman Hamilton could tell him the difference between a waiver and a variance.

Chairman Hamilton said a waiver is, in this case, the Board is allowed to waive certain very minimal standards to the dimensional requirements for setbacks and, as opposed to a variance request, is less restrictive and have a number of different options. He said with a variance, the appellant is required to meet the four conditions, which is the next appeal. He said a variance, under State Statute, is very difficult to achieve because of the four questions the State has asked us to satisfy. He said a waiver is simply a request to modify existing dimensional standards, such as lot lines or a square foot area.

Mr. Davis wanted to know, if Ms. Bristol decided to change the Yoga Studio to a Bakery, and it morphed over time, would she need to come back to the Planning Board or Board of Appeals.

Chairman Hamilton said that a change of use would require a re-application to the Planning Board but if the waiver does get granted, that goes with the property and also the new use. He asked the CEO if the applicant would need to re-apply for a change of use to the Planning Board, if that is correct.

Ms. Bishop replied yes.

Mr. Rankie said he would like to add vigilance that the Board of Appeals needs to take a look at this. He said Mr. Davis brought up a good point, that a waiver goes with the property, so if a different business were to approach the town and ask to be operating from this address and it would be the Planning Board at that point in time and not the Board of Appeals.

Chairman Hamilton asked if there were any other abutters who wished to speak to, for, or against this application. Hearing none, he asked the applicant if there was anything she would like to add?

Ms. Bristol said it is a small space and she teaches at different studios, so it would not be seven days a week or a full schedule and she will not have people coming in and out. She knows there is a concern about people going too fast on that road, but she did not think that would be impacting anyone.

Chairman Hamilton said he would like to hear from the alternate members and asked Rosanne Adams if she would like to begin.

Ms. Adams responded she had no comments at this time.

Mr. Meyer said he is curious, and wanted to know, if Ms. Bristol talked to the neighbor about the potential lot line adjustment. He said he is looking at one to seven feet behind her property.

Ms. Bristol replied she did ask her neighbor several years ago if she was interested in selling that piece, but she was not interested.

Mr. Meyer said that she needs 12 more feet and was curious if she spoke with the neighbor.

Ms. Bristol replied no, this whole studio came to fruition this past winter.

Chairman Hamilton read the letters into the record. He read the first one from Deborah Ryan-Dolleman and Lloyd Dolleman:

*Dear Eliot Board of Appeals:*

> *We, Deborah Ryan-Dolleman and Lloyd Dolleman of 1 Dixon Ave., as abutters to 160 Pleasant Street, give our approval to the granting of the waiver from rear setback requirements.*
>
> *Thank you,*
>
> *(Signed) Deborah Ryan-Dolleman and Lloyd Dolleman*

Chairman Hamilton read the second letter, which was received via e-mail from Susan Crothers:

> *For the Board of Appeals Hearing:*
>
> *I am not able to attend the meeting tonight, but I would like to share my concerns regarding the appeal for Andrea Bristol. I have no problem with the business issue, however, the concern is for parking. In the summer especially, there is overflow parking in the front of the house and often the people use my driveway as a turn-around which is not welcomed. Adding more vehicles for a business would add greatly to the problem.*
>
> *Perhaps widening the driveway and adding a turn around on the property would solve this issue.*
>
> *Sincerely,*
> *(Signed) Susan Crothers*

Mr. Trott wanted to know what is the overflow traffic in the summer that Ms. Crothers mentioned.

Ms. Bristol replied she has three kids with friends and did not realize it was a problem. She said she will apologize to her.

Chairman Hamilton asked Ms. Bristol if there is a way to mitigate that.

Ms. Bristol answered she has asked them to go around Pleasant Street. She said one has moved out, so they are down to two, but they have cars. She said they also had construction over the summer on the barn, so there could've been trucks parked in front of the house.

Chairman Hamilton asked if there were any other questions. Hearing none, he closed the public hearing on this application at 7:37 p.m.

Chairman Hamilton stated the Findings of Fact:

- Application is a request for a waiver of the dimensional standards by owner Andrea Bristol;
- The property is identified as Tax Map 1, Lot 20 and is in the Village Zone;
- The sections of the ordinance that apply are: 45-405; 45-456.1.b and 45-194c;
- The property is located at 160 Pleasant Street, Eliot;
- The purpose of the request for the waiver is for the construction of a Yoga studio and Reiki practice on the second floor of an existing barn;
- There will be no additional structures;
- Applicant has an appearance before the Planning Board on October 15, 2019 and needs approximately a 12-ft. waiver in order to meet the required 30-ft. standards of the rear setback of the property. Currently, applicant has 18.3 ft. of the required 30-ft. rear setback;

Chairman Hamilton asked if there was anything anyone wanted to add.

Ms. Lemire said the property is not in the Shoreland District and is a non-conforming lot of record.

Chairman Hamilton said the Board of Appeals has the authority to grant a waiver up to 50% of dimensional standards;

Chairman Hamilton said the Board will begin deliberations with Mr. Rankie.

Mr. Rankie said he could not vote in favor of this waiver, part of the reason is the property is in the residential zone and the abutting property owners purchased their property, knowing they were safe and secure in a residential zone.

Chairman Hamilton countered by saying that there is a provision in our code to allow home occupations and businesses, despite the zone, to exist.

Mr. Rankie said he understood that, but once the waiver has been established, nothing could prevent a wood-working business operating at that location, and part of the next use would be additional noise and traffic on a small, quiet street. He said that is something, he thought, that all citizens should change in the ordinance if that is what they want in that part of town.

Chairman Hamilton said any change of use, such as a wood-working shop, would have to go to the Planning Board, who would determine if it was appropriate in that zone.

Mr. Rankie said there is an issue with parking alone – there would be additional traffic in the neighborhood and the applicant has a sketch for nine additional cars. He said the cars would be turning in the neighbor's driveway. He said the average car is 15 ft. long and 6 ½ ft. wide and this is a small, congested neighborhood.

Ms. Lemire said that she understood where Mr. Rankie is coming from, and agreed with him to some degree; however, the ordinance allows this kind of use in this area. She said, as Chairman Hamilton has stated, the Planning Board has control over the behavior of whatever business goes in there and can disallow parking there if they choose. She said she is leaning toward granting the waiver at this point.

Chairman Hamilton said he will skip himself at this point.

Mr. Trott said if there was a change in business is a minor issue and he understands kids and parking that comes with them. He said he has kids of his own, but wanted to know how many people will be in the studio at a time.

Ms. Bristol said there are 7 people and she and her family have 7 of their own vehicles.

Mr. Trott said the applicant testified she just came up with this thought this winter and has not shown us that she has taken all steps to go ahead, like if she could expand the lot lines. He did not think she met the standards and has a concern on that end. He said he is interested in what the rest of the Board has to say.

Mr. Marshall said his biggest concern is the parking. He said that it is a dangerous situation with people backing out onto a main road and hopes the Planning Board would require some kind of a suitable turn-around beside the driveway.

Mr. Rankie asked, through the Chair, if he could respond to the parking.

Chairman Hamilton agreed.

Mr. Rankie said by adding this in a residential neighborhood, you are turning a quiet driveway into something else, a turn-around and parking area and it would be depriving the other neighbors in the area who thought they were buying property in a residential area.

Chairman Hamilton reminded the Board that the BOA's charge is not to determine the appropriateness of a business, but to decide if a waiver should be granted to dimensional standards on the rear setback, based on the five questions answered. He said that is up to the Planning Board to determine the appropriateness of the business or the parking if it makes sense.

Mr. Trott said he disagrees with that – it will alter the essential character of the locality, the way the questions were answered. He believes this does that with parking and traffic. He said the way the questions were answered, she has not exhausted avenues with her business in general.

Chairman Hamilton said these questions are not for the Board to allow the waiver, they are to flush out the nature of the request and he agreed with Mr. Trott, that one, traffic, is troubling, but again, but it is not a requirement for the Board like a variance.

Mr. Rankie said a waiver is more subjective than a variance, but he is hanging on to the fact that the residents of the town are empowering us to keep the zoning residential areas as much as we can. He said he cannot help but think that expanding the parking will change the look of Pleasant Street.

Chairman Hamilton said that their duty is to try to preserve the various zones outlined by ordinance but the ordinance also allows waivers and it is a double-edged sword.

Ms. Lemire said the townspeople voted to have home businesses and used very strict criteria because the town wants to support low-impact businesses. She said that was their intent., to move away from large, box-type businesses.

Mr. Trott said the discussion is what the impact will be on the business changing the lot lines. He felt there should be steps taken first before granting a waiver.

Chairman Hamilton said he thought Mr. Trott is right, it would be great if the Planning Board could rule first but the Board of Appeals has to take that leap.

Ms. Lemire said the applicant did testify that she approached the owners to purchase the land and was turned down.

Chairman Hamilton said that was years ago.

Mr. Rankie said that can't be done anyway, but he assumed that lot is also non-conforming and someone cannot sell their land to make it more non-conforming.

Mr. Marshall said usually they make a swap along the line and there would not have to be changed in either lot size necessarily.

Chairman Hamilton said he will add that as another Finding of Fact: that the appellant approached the abutter and was denied purchase.

Chairman Hamilton said, unless there was any more discussion, he would entertain a motion.

Mr. Rankie moved to deny the application for a waiver from the rear setback requirements, requested by Andrea Bristol for property located at 160 Pleasant Street, seconded by Mr. Trott. Vote was taken by a show of hands, 2-3 (Chairman Hamilton, Ms. Lemire and Mr. Marshall voted in opposition). Motion was defeated.

Chairman Hamilton said they have not voted to approve the waiver.

Ms. Lemire moved that the Board of Appeals grant a waiver up to the minimum needed to meet the required 30 ft. rear setback, seconded by Mr. Marshall.

Chairman Hamilton asked the Code Enforcement Officer what is the minimum to allow them the waiver.

Ms. Bishop replied 11 feet 9 inches.

Chairman Hamilton asked the maker of the motion, Ms. Lemire, if she was willing to amend her motion to state 11 feet, 9 inches for the setback and she responded yes.

Mr. Marshall also agreed to the amendment to the motion as the seconder.

Chairman Hamilton said the minimum necessary requirement allowed is 11 ft., 9 inches.

Ms. Lemire amended her motion and moved to approve the application request by Andrea Bristol to grant a waiver of 11 ft. 9 inches, to meet the required 30-ft. rear setback, for property located at 160 Pleasant Street, Map 1, Lot 20, seconded by Mr. Marshall.

Vote was taken by a show of hands, 3-2 (Mr. Trott and Mr. Rankie voting in opposition) and motion carries.

Chairman Hamilton told the applicant that she will have 90 days to file the waiver with the York County Registry of Deeds and the Code Enforcement Officer. He said any appeal to the Board's decision must be made within 45 days to Superior Court.

Chairman Hamilton said that the applicant will receive a Notice of Decision letter within seven days.

At 7:58 p.m., Chairman Hamilton announced that the Board will take a five-minute break before hearing the next case.

**B. Gregory Crosby, Map 4, Lot 9, Village Zone, requesting a variance from the side setback requirements, Sec. 45-505 and 45-194c, for property located at 240 Pleasant Street, in order to add a garage and Accessory Dwelling Unit.**

Chairman Hamilton opened the meeting at 8:03 p.m. and said the same members will be voting.

Chairman Hamilton asked if the appellant was present.

Mr. Crosby replied yes.

Chairman Hamilton asked the Board members if anyone had a conflict of interest.

Mr. Trott replied he has known Greg for a number of years. He said they went to school together many years ago.

Chairman Hamilton asked Mr. Trott if knowing Mr. Crosby would prevent him from being able to act in an impartial way?

Mr. Trott responded that he did not believe it will.

Chairman Hamilton wanted to know if anyone on the Board has an issue with this disclosure.

The members answered no.

Chairman Hamilton said to Mr. Crosby the floor is yours.

Mr. Crosby said he has a very skinny lot, only 24 ft. wide and has a second story on it that was added 15 years ago. He said, prior to purchasing the house, there was a garage out back. He said it was in disrepair and was torn down.

Mr. Crosby said he is looking to add a structure within the confines of the house and would take off one bedroom upstairs for an accessory dwelling unit up there. He said he is looking for space.

Mr. Crosby said the garage is 16 ft. deep and is used for storage. He said he doesn't keep any cars in it.

Mr. Crosby said he is requesting relief from the sidesetback. He said he went to each house and spoke to his neighbors on both sides and no one had any issues with his proposal. He said they told him that they would supply a letter for the Board if they wanted something in writing.

Mr. Crosby said all the houses have a garage and it will not be seen from the street. He said the addition will be attached and behind the house and will be 24 ft. up and no lower than the house.

Chairman Hamilton asked if Mr. Crosby could address the four requirements and said he would have to meet each one of them.

Mr. Crosby said he did not have a copy of his packet.

Ms. Bishop handed him a packet of information.

Mr. Crosby said, for the first part, the land in question cannot yield a reasonable return unless the variance is granted, he wants to add an ADU and will keep the house relatively set so he will still have two bedrooms in the house.

#2, due to the unique circumstances of the property…, he said the property is so thin, he cannot do anything else on the lot.

#3 – He said it will not alter the character of the locality because, as stated, all the houses have a garage.

#4 – Mr. Crosby said no, it is not the result of a prior action taken by himself or anyone else, it is how thin and skinny the property is.

Mr. Crosby said if there are any other questions, he can answer it.

Chairman Hamilton asked if there were any questions from the Board.

Mr. Rankie said there seems to be conflicts in the packet that the Board has. He said the lot is 24 ft wide, looking at Mr. Crosby's survey, but it needs to be corrected on the tax map and it shows the house as 19 ft. wide and Mr. Crosby says it is 18 ft. wide. He wanted to know if the house is centered on the 24 ft.

Mr. Crosby replied yes.

Mr. Rankie asked how does Mr. Crosby get back to the garage?

Mr. Crosby replied he uses the right-of-way on the side, the driveway, that leads to the back of the property.

Ms. Lemire wanted to know if the foundation still exists from the old garage.

Mr. Crosby replied no, it was taken down, it's gone.

Ms. Lemire asked how long ago was that.

Mr. Crosby responded 15 or 16 years ago.

Chairman Hamilton asked if there were other questions.

Ms. Adams said Mr. Crosby mentioned he will be utilizing part of the other bedroom and wanted to know is that one bedroom.

Mr. Crosby replied yes.

Ms. Adams said it is 10 ft. by 18 ft.

Mr. Crosby said he would lose that bedroom and the 400 sq. ft. is the other bedroom.

Ms. Adams said, on the diagram, it shows that the ADU is taking only ½ of that room.

Mr. Crosby said that is showing downstairs and showed her on the diagram, saying that is upstairs.

Ms. Adams asked so it is inside.

Mr. Crosby answered it will be set inside the corners of the house, it will be within the confines of the house.

Ms. Adams wanted to know why are they looking to put in an Accessory Dwelling Unit when Mr. Crosby has 3 bedrooms already.

Mr. Crosby answered that he would like to get that Accessory Dwelling Unit as a rental or for his wife and himself. He said he still has kids and they will probably take over the front of the house.

Mr. Trott said the area does not do it justice. He wanted to know how many feet are left on the side.

Mr. Crosby responded 2-3 feet.

Mr. Trott asked Mr. Crosby if he intended to go beyond the house?

Mr. Crosby replied no.

Chairman Hamilton asked the Board if they had any questions. He wanted to know what is the square footage of what Mr. Crosby is proposing to add on to the property.

Mr. Crosby replied it is 24 x 18 ft.

Chairman Hamilton said okay.

Mr. Crosby said upstairs, and he thinks he has 432 square feet. He said, essentially., it will be 15 or 17 ft. by 24 ft.

Chairman Hamilton said it will be 24 x 16 ft. and 24 x 18 ft.

Ms. Lemire wanted to know where does Mr. Crosby park the vehicles now.

Mr. Crosby responded in the driveway.

Ms. Lemire asked in the right-of-way and wanted to know if that is his driveway.

Mr. Crosby replied yes, some cars are there and some are in the back of the house.

Ms. Lemire said if Mr. Crosby builds the addition, she wanted to know where would he park then.

Mr. Crosby answered in the same area, the driveway.

Mr. Trott asked Mr. Crosby if he had any problem with going up with the structure.

Mr. Crosby said he had a waiver and a variance.

Mr. Trott said okay, and asked if he had a full variance and a waiver?

Mr. Crosby replied yes, when he went up to the second floor.

Chairman Hamilton asked if there were any other questions.

Mr. Meyer said, looking at timeliness, the application for this request came in early July and he was curious why the Board was hearing this now?

Chairman Hamilton asked Mr. Crosby if he can answer that.

Mr. Crosby said he came back in April and got a re-printed receipt in July. He said he spoke with Kristina Goodwin, Land Use Admin. Assistant, but when he came in to submit his packet, she had taken a vacation day. He said he spoke with Dana Lee who told him to come back on Monday and he paid for the waiver then.

Chairman Hamilton asked Ms. Bishop if she could clarify that.

Ms. Bishop said that she determined the application was not complete and he needed two variances and she asked him to come in and talk about it. She said that Mr. Crosby showed her, in the ordinance, that the CEO is allowed to grant up to 2,000 sq. ft. on any lot less than 4,000 sq. ft., which she was not aware of that section, so she determined the application to be complete at that point.

Chairman Hamilton said that Ms. Bishop sent Mr. Crosby a letter dated August 26th, which essentially stated that he needs to apply for a variance, so there isn't an issue with timeliness or standing. He said those conditions have been met and asked Mr. Meyer if that answered his question.

Mr. Meyer responded yes.

Chairman Hamilton said, according to the tax record, under notes, it states that Mr. Crosby has a home business entitled "In Stitches."

Mr. Crosby responded yes, his wife sews clothes.

Chairman Hamilton asked if there were any other questions.

Mr. Crosby said along those lines, she has started collecting (Social Security) and is retiring, hopefully, within the next two years.

Chairman Hamilton wanted to know if this is an approved home business from the town.

Mr. Crosby replied yes.

Ms. Lemire wanted to know if Mr. Crosby had investigated any feasible alternatives.

Mr. Crosby asked such as? He said that there is not much there, 24 feet wide. He said he did not want to go to a third story because it would not be in keeping with the neighborhood.

Mr. Trott asked if the right-of-way goes to a back lot.

Mr. Crosby answered it is all one big lot, not necessarily a back lot.

Ms. Adams asked if the right-of-way goes to more of Mr. Crosby's property or someone else's.

Mr. Crosby replied someone else's property, it stayed with the Laura Dame School. He said there is a 29-ft. walkway to get back.

Chairman Hamilton asked if there were other questions.

Mr. Meyer wanted to know if Mr. Crosby could talk about the right-of way, Map 4, Lot 34, as the copy is a little dark.

Ms. Lemire showed him on the map where Mr. Crosby's house is, and asked if it is the house to the right.

Mr. Crosby answered yes.

Mr. Meyer wanted to know if Mr. Crosby has permission to park there.

Mr. Crosby replied yes.

Mr. Rankie said it is a deeded right-of-way.

Ms. Lemire said it is a deeded right-of-way and wanted to know how many homes does the right-of-way serve?

Mr. Crosby replied none, the Laura Dame School is on the back lot.

Ms. Lemire asked if that is historically preserved.

Ms. Adams said the School was privately sold.

Ms. Lemire said never mind, it is like a conservation easement.

Chairman Hamilton said he did not see the right-of-way noted on Mr. Crosby's Warranty Deed.

Mr. Crosby said he isn't sure how that worked out with Everett Hall. He said Mr. Hall has a 29-ft. right-of-way and, when he bought the property, he called Mr. Hall. He said that Mr. Hall told him the right-of-way is shown on his deed and Mr. Crosby had permission to use it.

Chairman Hamilton said okay.

Ms. Adams asked, even if Mr. Crosby were able to buy the land adjacent to the Laura Dame School, he would still need a variance because of the other side.

Chairman Hamilton replied yes.

Ms. Adams said Mr. Crosby would still need a variance if he was able to make the lot go further.

Mr. Crosby said he wouldn't be able to do it now. He said he spoke with Mr. Hall and he has several apartment units in the Laura Dame School and needs that property for now.

Chairman Hamilton asked if there were any more questions for the Code Enforcement Officer.

Ms. Bishop said the property is a non-conforming lot with a non-conforming structure on it. She said everything else is in the Board's packets.

Chairman Hamilton asked Ms. Bishop if she had any other thoughts.

Ms. Bishop responded no.

Mr. Trott said granting this would not change anything because it is already a non-conforming change in the footprint and he was already granted a variance. He wanted to know if that is correct.

Ms. Bishop replied yes.

Mr. Trott asked the CEO if she had any issues with the setbacks or the percent of coverage on the property.

Ms. Bishop answered with the setbacks, yes, but there is no issue with the coverage.

Ms. Lemire said the lot coverage is acceptable.

Ms. Bishop said yes.

Mr. Rankie asked what is the setback required, 20 feet?

Ms. Bishop replied 20 ft. on each side.

Mr. Rankie said this is a 24-ft. wide lot.

Chairman Hamilton said he would read Sec. 45-194, (1) (c) from the ordinance, regarding non-conforming lots of record:

*All setback, yard, residential density, lot coverage, height, use, and other basic requirements shall apply to nonconforming lots. In cases where it is not possible to comply with these and other zoning requirements, the following rules shall apply:*

*(1) On lots smaller than 10,000 square feet, permitted lot coverage shall be at least 2,000 square feet or a maximum of 25 percent, whichever is greater in applicable cases.*

Chairman Hamilton said Mr. Crosby's lot is 6,660 sq. ft on the tax record. He said he is permitted 2,000 sq. ft. or the maximum of 25%, whichever is greater. He wanted to know what Ms. Bishop thought about that?

Ms. Bishop responded as it is written – it says at least 2,000 square feet, or should be up to 2,000 sq. ft.

Chairman Hamilton asked her so you are thinking "up to" instead of "at least"?

Ms. Bishop replied yes, that makes sense.

Chairman Hamilton asked what is the coverage on the lot with additions?

Ms. Bishop replied 23% or 16,122 sq. ft.

Ms. Lemire asked if we were to grant a variance, what would be the exact amount of the setback that Mr. Crosby would need?

Ms. Bishop replied 2-3 feet from each side setback.

Chairman Hamilton said this would be granting a variance in a non-conforming situation that does not meet any minimal standards in terms of the zone requirements.

Ms. Lemire asked what about #2.

Chairman Hamilton asked Mr. Rankie if he had a question.

Mr. Rankie said he is looking at this side setback of 20 ft., and wanted to know if this lot was vacant, it would be a non-buildable lot, would it not?

Ms. Bishop responded not necessarily so, there are lots that may be built upon and requires Board of Appeals approval.

Mr. Rankie said, in extenuating circumstances, if they looked at this lot without anything, this lot is non-buildable.

Ms. Bishop said she would say it is doubtful, without review. She would see if there was an option to build on it.

Ms. Bishop said that a non-conforming lot of record can go to the Board of Appeals, but they have to meet dimensional standards. She said that question can go in either direction, depending upon what it is.

Chairman Hamilton said it would be going to the Board of Appeals.

Ms. Bishop said this cannot meet dimensional standards. She said to the Board of Appeals, it is a non-conforming lot of record. She said the land coverage does not need to be brought to the Board of Appeals. She said they can take it to the Board of Appeals if the dimensional standards cannot be met.

Chairman Hamilton said let's apply this to the specific situation, this lot next to Mr. Crosby's, and wanted to know if this would have to go to the Board of Appeals, given it is 29 ft.

Ms. Bishop replied absolutely.

Mr. Rankie said the front setback is what the Code Enforcement Officer can handle at her level.

Ms. Bishop answered no, in that zone, it is different from the front setback.

Ms. Lemire said the percentage of reduction allowed by the CEO is 25% and the Board of Appeals can grant up to 50%.

Ms. Bishop stated for a waiver, more than 50% is a variance.

Ms. Lemire wanted to know what is the percentage that they need in order to grant a variance.

Ms. Bishop answered for a specific lot - 17-18 ft. setback.

Chairman Hamilton asked what about the right-of-way to this property? He said it is not in Mr. Crosby's warranty deed and that troubles him. He addressed Mr. Crosby and said that he may have an agreement with the neighbor to use his property, but once he moved, or sold the property, the next neighbor may not have the same agreement unless it is part of the deed.

Mr. Crosby responded that he has had conversations with Mr. Hall and thought that it is in his deed. He said there was a conversation between them and he knew that Mr. Hall had it in is deed.

Ms. Lemire said that the right-of-way is not specified in his deed. She said Mr. Crosby may have had conversations with Mr. Hall and whether or not it is in Mr. Hall's deed, it is not in Mr. Crosby's and he should put that in his deed.

Chairman Hamilton said no, it is not in his deed and that would be a problem for Mr. Crosby.

Ms. Bishop said Mr. Crosby should have the right-of-way or easement in his deed.

Mr. Crosby said he thought it was all taken care of before he bought his house and did not think it would be an issue.

Ms. Lemire told Mr. Crosby that this should be in his deed.

Mr. Marshall had a question for the CEO and asked, through the Chair, if that right-of-way is in his neighbor's deed, how durable is that for Mr. Crosby.

Ms. Bishop answered verbally, it is OK for him, but he should have it in his deed.

Mr. Marshall said we are all getting older and wanted to know what about the next owners, would it be durable for them?

Ms. Bishop replied no, Mr. Hall owns the right-of-way.

Ms. Lemire asked if Mr. Crosby was to sell his house to someone else, they would not be able to use the right-of-way if it were not in his deed.

Ms. Bishop replied she did not believe so. She said if Mr. Crosby sells the property, they would not be able to use it legally, and without it being in writing, there is no other way.

Mr. Marshall told Mr. Crosby that he needs to establish this as it would benefit him. He added that Mr. Crosby's lot is screwy enough.

Mr. Trott said that Mr. Crosby is trying to get this other waiver and variance and wanted to know if it was for the specific structure going up. He said he did not find anything.

Chairman Hamilton asked if that is in Mr. Crosby's record.

Ms. Bishop replied she did not have a recollection but it may be in Kate's files. She wanted to know how long ago was it granted.

Mr. Crosby responded 14-15 years ago.

Ms. Lemire wanted to know if there was a limitation on it.

Mr. Crosby replied he did not know.

Ms. Lemire wanted to know what is the height of the house.

Mr. Crosby answered he did not know, but the waiver was for going straight up.

Chairman Hamilton read Sec. 45-459, c (6), Home Occupation: *"A home occupation or home business may be conducted, subject to existing regulations, as an accessory use to either the ADU or the principal dwelling unit, but not both."* He wanted to know how did the CEO interpret that.

Ms. Bishop said she thought it pertains to home business, but only to one of them, not both.

Chairman Hamilton asked it doesn't prevent having both, a home business and an accessory dwelling unit, is that correct.

Ms. Bishop replied that is correct.

Chairman Hamilton read from Sec. 45-192, Expansion or Extension of Non-Conforming Use, Accessory Uses and Structures, under Functions, Sec. "A": *"Application for extension or expansion of area or function shall be filed with the planning board in the same manner as for a conditional use permit. A nonconforming use may be expanded in area or function by building horizontally or vertically, adding to the volume of business, or increasing the range of goods or services by not more than 25 percent over any ten-year period. The planning board shall grant or deny such application for extension or expansion of a nonconforming use, with or without conditions, only after holding a public hearing on the matter. Such application, hearing and conditions shall be as set forth in article IV of this chapter."*

Chairman Hamilton wanted to know how did Ms. Bishop interpret that regarding application since Mr. Crosby has put in more than 20% over a 10-year period.

Ms. Bishop responded that it applies to home businesses and not accessory dwelling units.

**Chairman Hamilton asked if the ADU could also be an extension of a non-conforming use, couldn't it, since it is a non-conforming use in a non-conforming lot. He wanted to know if an Accessory Dwelling Unit could also be considered for that use.**

Ms. Bishop replied it could be, but he was talking about an approved business by the Planning Board and her feeling was it did not change that.

Chairman Hamilton said it could be an expansion or a function.

Ms. Bishop answered it could be a function.

Chairman Hamilton asked if there were any more questions of the CEO.

Hearing none, Chairman Hamilton asked if there was any testimony from abutters to the property.

Kevin McCoole, 244 Pleasant St., said he lived next door to Red Mabey and did not have a problem, as far as he was concerned, with the setback. He said he was there to observe.

Chairman Hamilton asked if there were any other questions of the last testifier. Hearing none, he asked if there were any interested parties who wanted to speak.

Hearing none, Chairman Hamilton asked Mr. Crosby if he would like to give his last word.

Mr. Crosby replied he was all set.

Chairman Hamilton said before he closes the public hearing, he would like to hear from the Associate members on this case. He said he then wanted each Board member to address the four criteria before they approve this application.

Ms. Adams said that her questions had been answered.

Mr. Meyer said he is concerned about the right-of-way as it appears to be an extension of Mr. Crosby's property, rather than a true right-of-way to pass and re-pass.

Ms. Lemire asked what district this property was in.

Ms. Bishop replied Village.

Ms. Lemire asked if it is in the Shoreland Overlay district.

Ms. Bishop replied no it is not.

Chairman Hamilton closed the public hearing at 8:47 p.m.

Chairman Hamilton stated the Findings of Fact:

- The application is a request for a variance to dimensional standards for a reduction of side yard setbacks.
- The applicant is Gregory Crosby.
- The property is in the Village zone.
- The property is located at 240 Pleasant St, Tax Map 4, Lot 9.
- The property is owned by Gregory and Dorenda Crosby.
- Sec. 45-194c (2) of the ordinance states the Board of Appeals has the authority to grant a variance for over 50% reduction of dimensional standards.
- Current side yard setbacks are 3 feet on each side, where 20 ft. on each side is required by the ordinance.
- The property is a non-conforming lot of record with non-conforming use
- Other sections of the Eliot Code applicable include: 45-405, 45-459(c) 6,14; 45-195(c), 45-192(a).
- Applicant proposes to construct an 18' x 24' garage with an ADU above.
- Proposed lot coverage, with proposed addition, would be 23.30%;
- An access right-of-way to the property (lot 4, 34) was cited by the applicant but was not recorded in the applicant's deed as presented to the board in the application.
- The appellant is asking for 756+ sq. ft. of additional construction;
- It was testified that the applicant already has a home business on the property - "In Stitches".
- Non-conforming lot with non-conforming use totals 6,960 sq. ft.
- Sec. 45-192 may also apply with regard to Planning Board approval.

Chairman Hamilton asked the Board members if there was anything else they wanted to add. Hearing none, he said let's review each of the criteria and he wanted a response from each Board member:

(#1) "*The land in question cannot yield a reasonable return unless the variance is granted.*"
Mr. Rankie, Ms. Lemire, Mr. Trott and Chairman Hamilton each responded "no." Mr. Marshall at first answered "no" because he believed that with the size of the lot, the applicant cannot do anything without a variance, or some help from the BOA, but changed his response to "yes". Initially, there was consensus by the board: none in the affirmative, 5 in the negative, this criterion was not met.

Mr. Marshall changed his statement because he believed the applicant needed the variance, but four members agreed that the applicant did not meet this standard and that the property can yield a

reasonable return without the variance being granted. Amended: 1 in the affirmative (Mr. Marshall); 4 in the negative (Mr. Rankie, Mr. Trott, Ms. Lemire and Chairman Hamilton agreed that this criterion had not been met.)

(#2) *"The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood."* Consensus by the board that the applicant met this standard.

(#3) *"The granting of a variance will not alter the essential character of the locality."* Consensus by the Board that the applicant met this standard.

(#4) *"The hardship is not the result of action taken by the appellant or a prior owner."* Consensus by the Board that the applicant met this standard.

Chairman Hamilton asked if there was any other discussion. Hearing none, he asked for a motion.

Mr. Rankie moved to deny the request of Gregory Crosby for a variance to the side setbacks for his property located at 240 Pleasant Street, Map 4, Lot 9, seconded by Mr. Trott.

Chairman Hamilton asked if there was any discussion.

Mr. Rankie said that the applicant has not met all four of the criteria; he has met #2, #3, and #4 but not #1.

Chairman Hamilton read from the Maine Municipal Association, MRSA 4963, repealed and replaced with M.R.S.A., 30-A, §4353 Appeals, that a variance may be granted only if it meets all four requirements under State law and any other variance standard found in the town's ordinance.and also read the section of the ordinance pertaining to "undue hardship."

Vote was taken by a show of hands and voice and voted 4-1, with Mr. Marshall voting in the negative. Motion carried.

Chairman Hamilton told Mr. Crosby that his application was denied and that he had 45 days in which to appeal the Board's decision to Superior Court. He said that he will be receiving a Notice of Decision Letter within the next seven days. He said that a variance is hard to meet.

## 4. REVIEW AND APPROVE MINUTES AS NEEDED:

Chairman Hamilton said they have no minutes to approve and he didn't know why.

Mr. Rankie said he had a problem with not having the minutes and wanted to talk about it. He said if the Board looks at the Charter, Sec. 8.7, A.2E regarding Chairperson "*shall provide for recorded minutes and review and approve minutes regularly*". He asked who knows how long it will be until we meet again and they will be in arrears with their minutes.

Mr. Rankie said the August meeting involved the election of officers and here they are tonight with two hearings and they do not have a live person here. He said their budget calls for a live secretary to record the minutes, and he is not blaming the Town Manager. He said his feeling is they should have a qualified secretary and they should have a back-up plan.

Mr. Rankie said that someone needs to tell the Town Manager that if the regular recording secretary is not showing up and they should have someone available to record their meeting. He said that the

Recording Secretary was not here for our last meeting and maybe they needed a new secretary. He wanted to know what did the other members think?
Chairman Hamilton agreed with Mr. Rankie and said that the Recording Secretary did contact him earlier on and said she would transcribe the meeting from the livestream upon her return. He said he contacted Ms. Lemire and asked her to record the meeting tonight.

Mr. Rankie said that he strongly feels that the Chair should meet with the Town Manager to let him know that we want a back-up plan if the Recording Secretary is not going to be present at the meeting. He wanted to know if someone from the Town's administrative staff could cover?

Chairman Hamilton said he is surprised they did not have the minutes from the August meeting, and that annoys him, but he thought that by having the livestream, and the recording, it will satisfy their requirements at this time. He said he will talk to the Town Manager.

Mr. Rankie said on a positive note, Kristina has been doing a good job on getting notices and correspondence to the Board.

Chairman Hamilton said he would like to thank Kristina Goodwin and Shelly Bishop for their diligence in this process. He said there is a learning curve and they will have to be patient.

## 5. OTHER BUSINESS AS NEEDED:

Ms. Lemire said they ought to discuss what process would be used to revise the ordinances.

Chairman Hamilton responded typically that is a Planning Board function, but we could offer suggestions.

Mr. Rankie said side lots was suggested and corrected.

Ms. Lemire said the front yard setback issue was resolved.

Chairman Hamilton said he would like criteria for the approval of waivers. He said they have received opinions from the Town Attorney and Maine Municipal Association and there are no criteria in the town's ordinance for the actual approval of waivers. He said they have five questions, but they do not have to be met, like a variance. He said the Board should think about what they need and give their recommendations to the Planning Board regarding changing the zoning ordinance regarding waivers.

Ms. Lemire said she has minutes from May 2017 from Atty. Saucier.

Mr. Rankie asked if they were online.

Ms. Bishop replied they were.

Ms. Lemire said the Board of Appeals has no authority to grant anything dimensionally in the Shoreland zone, which is why she kept asking that question. She said Mr. Crosby's property was close to it.

Chairman Hamilton said he would like to schedule a meeting in October to not only have the minutes to approve but also discuss what the Board needs to revise in the ordinances and send the recommendations to the Planning Board. The Board members agreed.

## 6. ADJOURN:

Mr. Marshall moved to adjourn the Board of Appeals meeting at 9:13 p.m., seconded by Ms. Lemire and voted unanimously, by a voice vote, aye, 7-0. Motion carries. Meeting adjourned.

Respectfully submitted,

Barbara Boggiano
Recording Secretary

Approved by: _____
Bill Hamilton, Chairman, BOA

Date Approved: October 17, 2019