

**ITEM 1 - ROLL CALL**

Present: Bill Hamilton - Chairman, Charles Rankie – Vice Chair, Ellen Lemire - Secretary, John Marshall, Cabot Trott, Jay Meyer – Alternate, and Rosanne Adams – Alternate

Also Present: Jeff Brubaker – Planner, Shelly Bishop – CEO.

Mr. Hamilton said that there were three re-appointments to the Board and I want to make sure that each Board member has been sworn in.

Re-appointed Board members confirmed that they had been sworn in.

**ITEM 2 –PUBLIC COMMENT PERIOD**

There was no public input.

**ITEM 3 – ELECTION OF OFFICERS**

**Mr. Rankie moved that the Board of Appeals elect Bill Hamilton as Chair, B. Cabot Trott as Vice Chair, and Ellen Lemire as Secretary.**

Mr. Rankie wanted to discuss points regarding our Charter and when members vote and do not vote because there may be some intimidating factor by me moving for a whole slate of officers. I would be grateful to do that if someone would just second my motion.

Mr. Hamilton said that a motion has been made to adopt a slate of officers. Is there a second to the motion.

**Mr. Marshall seconded the motion.**

**DISCUSSION**

Mr. Rankie said that, before I get into the meat of my why about it, I would like to review something that I think needs to be reviewed by all committees and commissions. And that is that all members must vote. I can cite our Charter (page 27). The only way that you cannot vote is if you have a conflict of interest or you perceive a conflict of interest and you're strong enough that you can perceive that conflict of interest. However, if you're not going to vote, you have to state what that conflict of interest is, it has to be part of the record and, thus, recorded. The other thing that I'm sure we are all aware of is that, for many years the Chair didn't vote, and I think we're clear that the Chair [now] votes in all cases.

Mr. Rankie said that I would like to explain the reasons why I nominated those individuals whom I've nominated. The reason is fairly simple, in my mind anyway. There are only five of us that are eligible for the three officer's positions. Of the five, Ellen

Lemire, in my mind, doesn't qualify for Chairman or Vice Chair simply because a conflict of interest could arise at any point in time if there is an item that we need to deal with that has been before the Planning Board. Although, she is very capable of either Chairman or Vice Chair, Secretary is the perfect spot.

Mr. Rankie continues by stating, our Chairman Mr. Bill Hamilton is perhaps the best Chairman anywhere around and he can teach the class. We are very fortunate in Eliot to have Bill as our Chairman. Cabot Trott is about 20 years younger than me and its time that he starts learning how to deal with all of this and I think he is very capable of being Vice Chair in the event that Bill can't be here. That leaves John and me and one thing that I would say about John is that he is a person who I wouldn't mind sharing a foxhole with any time. However, John likes to touch the gray on some of these issues so I don't think he's the best candidate for being Chairman or Vice Chair. Thank you.

Mr. Hamilton asks if there is any further discussion?

Mr. Trott said, obviously I would like to thank Charlie for the nomination and vote of confidence. I am not sure but if that what you folks choose, I will do my best. I am still learning. I'm just not sure, as much as I would do my best and be as thorough as I can. I am not ready to jump into the Chairman seat.

Mr. Rankie requests to follow up to Mr. Trott's comments. First, I am here for at least two more years and I am not going to be any less vocal, if I see something that I don't think is right or if I don't think we are following the Charter, than I am now. I stated when I first came on the Board of Appeals that I was very disappointed with how the prior Board of Appeals did business. I felt that the prior Board of Appeals was giving things the sniff test as opposed to looking at what the ordinances actually say and following the ordinances that the citizens put in place. I won't change anything as long as I am here, Cabot. If there is ever a need for you to fill in for Bill, the other members and I will pitch in as much as possible. But that said, if you are second in line it makes you pay a little more attention.

Mr. Hamilton asked if there was any further discussion.

There was no further discussion.

**VOTE**  
**5-0**  
**Motion passes**

#### **ITEM 4 – TOWN PLANNER ADDRESS TO BOA**

Mr. Brubaker said, pretty simple here. I trust that in your packet you received the draft of the updated variance application.

Mr. Hamilton replied, no we have not.

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94 Mr. Marshall stated that we did not have an Agenda in my box either.

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96 Mr. Brubaker stated, well that changes things a little bit.

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98 Mr. Hamilton said that, well maybe you could just go through it since you have a copy.

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100 Ms. Bishop asked, would you like me to make you all copies?

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102 Mr. Hamilton replied, would you please. Let's pause for a moment until the copies are  
103 made. He continues by asking when were these available?

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105 Mr. Brubaker replies, I emailed them to Shelly and Kearsten about a week ago.

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107 Mr. Hamilton said, no I haven't heard a thing about it.

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109 Mr. Rankie stated, just so you know if we were having an appeal and you wanted to give  
110 us a copy, right now, it wouldn't work.

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112 Mr. Brubaker said, well let me just verbally summarize it.

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114 Mr. Hamilton requested some background information on where this document came  
115 from and who has worked on it.

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117 Mr. Brubaker responded, as the Board is aware we changed and the voters approved  
118 some variance changes recommended by the Board of Appeals at the June Election. That  
119 did away with the waiver provision and kind of aligned the variance provisions with State  
120 Law. What previously was just considered a variance in Chapter 45 is now just the  
121 Hardship Variance. The new variance that has been introduced is the Practical Difficulty  
122 Variance. The Board recommended back in March of 2020 that there should be  
123 limitations on who could avail themselves of a Practical Difficulty Variance. That is just  
124 for non-conforming lots of record. This allows for up to a 50 percent relaxation as the old  
125 waiver did.

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127 Mr. Brubaker continues, that necessitated changes in the variance applications because  
128 we have an interest as staff in making sure that the Board of Appeals has the clearest  
129 information as possible on the different types of variance requests you may see in the  
130 future. So, what I did with Kearsten's help is created two new applications: Request for  
131 Hardship Variance and Request for Practical Difficulty Variance. For the future I would  
132 like to try to create a Request for Disability Variance. As you will recall, we did some  
133 changing and expanding of the disability variance language.

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135 Mr. Hamilton asked, what about the Application for an Administrative Appeal? Is that  
136 also being reviewed? I know it wasn't under this particular... notion of the wavier which  
137 we had discussed and recommended to the Planning Board as a change to the ordinance.

We didn't really get into the applications. I wonder if you would also be interested and willing to look at the application for an Administrative Appeal.

Mr. Brubaker stated, yes.

Mr. Hamilton said, that would be great. It seems a little rusty. Thank you. Might as well look at it while we are on a roll.

Mr. Brubaker stated that we would look at the disability variance and the administrative appeal applications in the future.

Mr. Hamilton continues, I assume you are presenting these applications as a draft for us to review?

Mr. Brubaker replied, so the anti-climatic part is that the request for Hardship Variance application will look very familiar to you. It doesn't make a whole lot of changes based on the previous one. But it does clean up some of the wording a little bit. It still has the introductory letter followed by a two-page actual application.

Mr. Rankie asked if Mr. Brubaker would be walking them through the application.

Mr. Hamilton stated let's give everyone a second just to read over it.

Ms. Lemire asked if we have a set of State Statutes here at the Town Office?

Mr. Hamilton said, yes online.

Ms. Lemire stated, yes, I know but a lot of people still don't use online.

Mr. Rankie said, they haven't had them in a long time.

Board members read through the application drafts.

Ms. Lemire stated that it is a much cleaner application.

Mr. Trott said that it needs to be clear that there can't be a yes or no answer. We need information and the applicant needs to sell us.

Mr. Hamilton agreed and said that there needs to be a part in the application where it shows that we need a thorough explanation not a yes or no answer.

Mr. Trott said just clarifying that somehow. Instead of just saying no it won't change, explain to us how it will not change. Give more of an explanation and not just one word.

Mr. Hamilton said here is a recommendation at the bottom of page three where it says justification of variance. In order for a variance to be granted the appellant must

demonstrate to the Board of Appeals that the strict application of the ordinance would cause hardship. There are four criteria that must be met before the Board can find that a hardship exists. Please explain in detail how your situation meets each of these criteria. Maybe adding in "as much detail that will cover your request" or something like that.

Ms. Lemire adds that we must keep in mind that a lot of people do not have the wealth of knowledge that we have and the practicality of filling out forms of all kinds like this. We do have to have some flexibility. I do agree that some people do not write much at all on there.

Mr. Trott said that somewhat of a detailed explanations to make it easier to understand the case before us.

Ms. Lemire said they need to expand on what they are trying to tell us.

Mr. Hamilton continued by asking would you object to placing the word "in detail."

Ms. Lemire stated that no she would not.

Mr. Trott said you are right; I don't think that most people have not read about this stuff as much as we have. They wouldn't be able to come up with that explanation. But at least a sentence that gives us the gist of what they are saying.

Mr. Hamilton asked, typically Jeff when someone comes to the Town Hall do they get the opportunity to speak with someone or are they just handed an application.

Ms. Bishop stated that they go through me. Any blank fields in the application must be filled out and I encourage them to give more information. Anything that could help you guys make a decision. They should give you that much information for you to base your decision on.

Mr. Hamilton said, so given that maybe just adding in detail but other than that but otherwise.

Ms. Bishop continued, as I review it, I will make sure that it's explained and if for some reason they need further information I will let them know.

Mr. Hamilton said and you can coach them by stating this is what you need or in your particular variance this is what is needed.

Ms. Bishop said well, yes except for administrative. Those are the ones I really can't jump into or help them finish an application.

Mr. Hamilton stated that it looks great.

Mr. Marshall said that this was more information than we've given to an appellant thus far. But I think on the discussion that we owe the appellant an interpreter when they come in for such things. The codes aren't written in English that most appellants would understand. The words sound similar but I don't know what he's saying.

Mr. Hamilton continued, when someone is coming to the Town Office, they must have some concept of what a variance is otherwise they wouldn't be here. So, they must know something.

Mr. Marshall stated, what they know is that they don't qualify.

Mr. Hamilton said, no what they know from the Code Enforcement Officer is that they don't meet the zoning requirements.

Mr. Marshall said they have been turned down and that is why they are here.

Mr. Hamilton said so she will explain or the Code Enforcement Officer should explain what the two types of variances are and whether the Practical Difficulty Variance applies or the Hardship Variance applies and how the Board usually handles these requests.

Ms. Bishop stated that's where you don't see too many Hardship Variances because they come in to talk about it and we don't get past the criteria for them to recognize that okay this really doesn't fit for me.

Ms. Lemire said I have a question, are the fees appropriate?

Ms. Bishop said that they are ordinance based. Should they be updated do you mean?

Ms. Lemire continued well there is a \$150.00 flat fee.

Ms. Bishop state that it probably just covers the newspaper advertisement.

Ms. Lemire said that's what I was thinking because we just have a \$175.00 for the public hearings.

Ms. Bishop said I can talk to the Town Manager about looking into that.

Mr. Meyer said he had a question about the form itself. Is it available as an editable pdf format so that people would not have to hand-write it out if they chose to?

Mr. Brubaker agreed that would be a good thing to do.

Mr. Hamilton asked if a fillable pdf could be created?

Ms. Bishop said that we should be able to do so.

Members go over the forms line by line. On the Hardship Variance, they agree that the examples and opening are good. Mr. Brubacker noted that much of this is the same from the original form.

Mr. Hamilton pointed to page two and at the end of the explanation where it talks about recording the variance within thirty days for the variance to be valid. He suggested changing the wording to state that the Board of Appeals will issue a Notice of Decision within seven days and that the Notice of Decision can be taken to the Registry of Deeds for recording. This way, Mr. Hamilton said, the applicant does not feel the need to come back to the Board for a note.

Mr. Brubaker asked if the Registry requires the Notice of Decision to be notarized.

Mr. Hamilton said it does. The Notice is notarized when he comes into the Eliot Town Hall to sign it.

Discussion turned to the next steps the appellant must take and it was made clear that the appellant must take the notarized, signed Notice of Decision to the Registry of Deeds for filing. The Registry does not keep the original document, the appellant keeps that but the Registry copies or takes a photo of it for the Registry's records.

Mr. Marshall said that each application should include criteria specific to each variance.

Mr. Brubaker pointed out the distinction between the language on each variance.

The members reviewed the documents.

Mr. Hamilton asked what about lots of record that are under 10,000 square feet?

Ms. Bishop said that an ordinance needs to be amended next year for those size properties.

Mr. Hamilton asked how do we currently approach those?

Ms. Bishop said she did not think we can until the ordinance is changed.

Mr. Hamilton asked so you would tell an applicant who came in for a less than 10,000 square feet variance that they cannot apply for a Practical Difficulty Variance?

Ms. Bishop said yes, unfortunately yes.

Mr. Trott said they have to apply for a regular variance.

Mr. Marshall asked if that covered most of the lots in Clay Village.

Ms. Bishop answered that there are a few out there but she was not sure what percentage were under 10,000 square feet.

Mr. Brubaker pointed out that there is another section that is for lots under 10,000 square feet but it does not speak to other dimensional standards.

Mr. Hamilton asked about the Practical Difficulty Variance's fourth paragraph where it talks about state law and the tests. He said when it comes to the Hardship Variance, you have to meet all four tests. When it comes to the Practical Difficulty Variance, I believe, these are just advisory tests. In other words, if they don't meet one of the tests that does not mean we cannot grant them a Practical Difficulty Variance.

Mr. Marshall said we need to consider all of them.

Mr. Rankie said if Jeff can take a look at the last two sentences...do a little research...

Mr. Hamilton said where it reads "you in turn must" and ends with "variance."

Mr. Rankie said anything we can have in black and white is good, as gray is bad.

Mr. Brubaker agreed to review the wording.

Mr. Hamilton said that in the Hardship Variance application they have to meet all four of the standards but in the Practical Difficulty Variance, they do not have to meet all six.

Mr. Brubaker said that the Practical Difficulty Variance is modelled on state law. The last item speaks to the property not being in shoreline. Technically, the wording of state law makes it such that they cannot avail themselves of a Practical Difficulty Variance, even if their property just clips the shoreline zone and their structure is far from it.

Mr. Hamilton asked that they can still apply for a Hardship Variance.

Mr. Brubaker said yes.

Mr. Hamilton said but you are absolutely right, that's the way that has to read.

Mr. Hamilton said to Mr. Brubaker so if you wouldn't mind making those changes and the section we talked about on paragraph number four on Practical Difficulty Variance and emailing that to us.

Mr. Brubaker agreed to do so.

Ms. Lemire asked if all six tests must be proved for the Practical Difficulty Variance.

Mr. Brubaker said he would look at that as well.



Mr. Hamilton directed everyone to page three and paragraph B where it states what must be met before the board can find for the Practical Difficulty Variance.

Mr. Hamilton asked if there was another discussion.

Ms. Bishop asked if after the changes were made did the Board want to have another meeting to meet and review the forms as she has a couple of people waiting to apply for variances.

Mr. Hamilton said yes, the Board will have a meeting next month to approve the final documents.

#### ITEM 5 – REVIEW AND APPROVE MINUTES

The members reviewed the Minutes of the April 15, 2021, Board of Appeals meeting.

**Mr. Rankie moved to accept the Minutes as amended. Mr. Marshall seconded the motion. All voted in favor. The motion passed.**

#### ITEM 6 – OTHER BUSINESS

Mr. Hamilton asked if there was any other business.

Mr. Rankie asked about the Board meeting remotely and checking with MMA for direction on that topic.

Mr. Hamilton read aloud wording from the Town's remote board meetings policy. The only thing the policy said about a board member requesting to participate remotely was to do so at your earliest opportunity.

The members discussed with the Town Planner use of the Owl (the Meeting Owl Pro, a smart video conferencing camera for remote participants), other boards that are using it, and in general, use of video and audio technology in Town meetings.

#### ADJOURNMENT

There was a motion and a second to adjourn the meeting at 8:43 p.m.

  
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Bill Hamilton, Chair

Date approved: 2/18/22

Respectfully submitted,  
Kearsten Metz, Interim Recording Secretary  
Ann Lukegord, Recording Secretary

