

**TOWN OF ELIOT BOARD OF APPEALS  
REGULAR MEETING  
APRIL 19, 2018  
MINUTES**

**1. Roll call:**

Present: Chairman Bill Hamilton; Vice-Chair Peter Billipp; Ellen Lemire; John Marshall, Alternate and Kate Hanson, Alternate

Absent: Jeffrey Cutting and Charles Rankie – excused

Chairman Hamilton called the meeting to order at 7:00 p.m. The Board members introduced themselves. He said the two regular voting members are excused and the alternate members will be voting tonight so there will be a full 5 on board.

Chairman Hamilton said they have one public hearing this evening and we are video streaming the meeting. He read the public hearing request:

*"Request from Garrett Robinson and Tarsia Robinson (Kenny), 63 Greenbriar Drive (Map 78, Lot 107) for a Waiver of dimensional standards: a reduction in side yard setback from 20 ft. to 10 ft., per sec.45-194c, "Nonconforming lots of Record," in order to construct an addition on their home."*

Chairman Hamilton asked if any board member had a conflict of interest? Hearing none, he said he would address the issue of timeliness and standing. He told the appellants that they are not under any time constraints with a request for a waiver but if the Code Enforcement Officer or the Planning Board had made a decision they wanted to appeal, it would have to be done within 30 days.

Chairman Hamilton addressed the appellants and told them that, in order to prove standing, that the appellants own the property as presented in their application, then they need to submit a deed. He said there is some confusion as to the deed versus the number on your application and asked if the appellants can explain that?

Ms. Ross said there has been confusion with several of them there, after they were sold, there have been some issues with the Water Site Edge property deeds.

Ms. Lemire said the warranty deed says "21 Greenwood Street" so it is an incorrect deed.

Chairman Hamilton asked the Code Enforcement Officer who pulls the deeds.

Ms. Ross replied that Ms. Lower usually does, but it is incorrect and she said she would make copies of the correct deed for the board.

Mr. Robinson said he was glad it is nothing they submitted.

Ms. Ross distributed copies of the correct deed to the board members and the Recorder.

Chairman Hamilton asked if it is Ms. Lower's task to pull the deeds?

Ms. Ross responded yes, that is one of her job responsibilities.

Chairman Hamilton asked Ms. Ross to point out that (the incorrect deed was pulled) to her.

Ms. Ross answered yes, she would.

Chairman Hamilton asked if there were any questions on the deed? He wanted to know if the appellants bought the property in June of 2016.

Mr. and Mrs. Robinson both replied that is correct.

Chairman Hamilton said that standing has been met and timeliness does not apply. He explained there are two methods of review – de novo where the Board looks at the record as presented, with no history, and the appellate review, where the appellants would have to go through the CEO or the Planning Board, based on what they decide. He told the appellants this would be a de novo review and the board would hear testimony.

## **2. Public Hearing:**

Request from Garrett Robinson and Tarsia Robinson (Kenny), 63 Greenbriar Drive (Map 78, Lot 107) for a Waiver of dimensional standards: a reduction in side yard setback from 20 ft. to 10 ft., per sec.45-194c, "Nonconforming lots of Record," in order to construct an addition on their home.

Chairman Hamilton opened the public hearing at 7:10 p.m. and reviewed the procedure: he would open the public hearing, allow the appellants an opportunity to present their case, and once they are satisfied they have given the Board their information, the Board will ask questions. He said they will then receive testimony from interested parties or abutters and will ask questions. He said they will then hear from the Code Enforcement Officer and ask questions, and finally, the appellants will have an opportunity to have the last word or to reply to any questions, if anything comes up, or make any statements before he closes the public hearing. He explained that after he closes the public hearing, the board will enter deliberations, state findings of fact and come to a decision.

Chairman Hamilton said the Board will hear their testimony.

Garrett Robinson, 63 Greenbriar Drive, said they would like to add on to their home in two different places, which is why they are here tonight, to add a room on the right side of the house. He said they would like to go out 16 ft. and back 32 ft. He said that would bring them to 10 ft. of their actual boundary. He said he took an accurate measurement from marker to marker and essentially that is what they would like to do, to put on a great room.

Mr. Robinson said he has included more detailed drawings in his application, showing the front and side. He said he has also included drawings of what the garage addition looks like, but that is not why they are here, and a letter signed by the neighbors stating they are okay with the proposed additions. He said they also have a plan which shows the property boundaries from the existing home.

Mr. Robinson said he would answer any questions the board may have.

Chairman Hamilton wanted to know if Mr. Robinson had given the Board the answers to the questions on the application.

Mr. Robinson replied yes.

Mr. Billipp noticed that there is a fireplace that bumps out and asked if it gets closer?

Mr. Robinson said they are changing the location to the corner of the living room and it will not bump out on that wall.

Mr. Marshall said on their plan it shows the front corner and back corner are 10 ft. from the property line.

Mr. Robinson said he took an accurate measure – it turns out it is much squarer than he thought. He said he went to each corner of the house and it is 10 ft. from where he wanted it to be with the addition. He said it is not perfect and is not accurate to scale.

Mr. Billipp wanted to know if Mr. Robinson knew exactly where their property line is, and how do they know that.

Mr. Robinson replied it is staked out with markers and he drew a straight line all the way through.

Mr. Billipp said that Mr. Robinson used the front and rear pins on those lines and it seems to be a straight line and asked is it?

Mr. Robinson responded yes.

Ms. Lemire asked if they were adding a great room.

Mr. Robinson replied yes.

Ms. Lemire said she did not see a (written) reason to add a room. She said she did not see a (written) reason to look at the criteria and asked if they use that criteria, is that deemed necessary?

Chairman Hamilton replied yes.

Ms. Lemire said that the appellants did not fill in the area of the summary on the application and that the first criterion asks if this is deemed necessary. She said it is not for increasing the value of the home or making it easier to live in. She said this is a "gray" area and asked if Mr. Robinson could give her more detail on why it is needed?

Mr. Robinson answered they need more space for family time, we are planning on expanding our family and the living room is small. He said if they add two or three kids, and they are trying to plan for the future, he thinks it will be awfully cramped and they would like to have their families over.

Ms. Lemire said they plan on having kids and asked if they had any yet?

Mr. Robinson replied no, not yet.

Ms. Lemire asked how big is the house and how many bedrooms do you have.

Mr. Robinson answered three.

Ms. Lemire asked if Mr. Robinson knew how many square feet?

Mr. Robinson replied about 1800.

Chairman Hamilton asked if there was anything else?

Ms. Hanson wanted to know if it is a great room and a bedroom?

Mr. Robinson replied yes.

Mr. Billipp asked Mr. Robinson if they looked at putting the great room/bedroom in a different location, maybe on the back side of the house?

Mr. Robinson replied yes, but there is no other good spot to come off the house, the way the house is laid out. He said there is no better place to add the great room. He said it would impact the flow of the house, what we would like it to be and this is the best location.

Mr. Billipp asked if the kitchen is on the back side of the house?

Mr. Robinson replied right, that is where it is.

Chairman Hamilton asked when they filled out the request for a waiver, they did read the introductory paragraph that they must present a reason to the board for the waiver and if they can make reasonable use of their land without a waiver to comply with the ordinance, which is essentially why there are five questions. He said they are advisory in nature, to help the Board make a determination.

Chairman Hamilton said if the appellants were applying for a variance, they would have to meet the four criteria. He said he sees some issues in their application.

Chairman Hamilton said they are in a subdivision where they bought property and all the lots are similar and all are non-conforming lots. He said they must have been aware of the 30 ft. setback on both sides. He said he does not want to start an avalanche of building permits from that area for additions.

Chairman Hamilton asked the first question – does it seem like your property is unique compared to the rest of the properties in the neighborhood? He did not think their property is unique. He said your lot is fairly similar to everyone else's and it is hard for us to believe that you have unique circumstances.

Mrs. Robinson said their lot is long and narrow.

Mr. Robinson said given the way they built the house to begin with, that is why we want to add an attached garage.

Chairman Hamilton asked if they built the house.

Mr. Robinson said they had it built.

Ms. Hanson asked if they had it designed?

Mr. Robinson answered yes.

Chairman Hamilton asked if they would answer the second question - if granting a waiver will alter the essential character of the neighborhood? He said that Mr. Robinson had answered no, the property matches the existing style of the neighborhood and will improve the value. He asked if that is correct.

Mr. Robinson replied that is right.

Ms. Lemire asked if most of the homes have additions?

Mr. Robinson said a few are starting to and one has added a great room.

Ms. Lemire said those obviously did not come before us. She wanted to know if the neighbors had enough room to build?

Mr. Robinson replied yes, they did not have attached garages.

Ms. Lemire asked if most of them have garages under the house.

Mr. Robinson replied there are a few.

Chairman Hamilton said number 3 asks if the hardship is a result of an action taken by the applicant or a prior owner. He wanted to know if the applicant is creating a hardship by his own actions.

Mr. Robinson replied no, he did not think so.

Mr. Billipp said they are asking for a reduction, and that is the hardship.

Chairman Hamilton wanted to know if Mr. Billipp could explain why he thought the waiver was necessary so he understood.

Mr. Billipp said the hardship is it is a non-conforming lot which makes it difficult for them to expand without the waiver in the direction the applicant would like to go.

Mr. Robinson said he wanted to make sure he understood and asked if he answered the question correctly.

Chairman Hamilton said the application is confusing.

Chairman Hamilton asked question number 4: "Will the granting of the waiver substantially reduce or impair the use of the abutting property" and Mr. Robinson replied no.

Chairman Hamilton said number 5, "there is no other feasible alternative available..."and asked if there is no other place to add?

Mr. Robinson answered that he did not think so, there was no other place to make the house work functionally for them.

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

Ms. Lemire asked if I were to walk into their house, where would I be, could he explain?

Mr. Robinson replied when you walk in, you are in a hallway, the stairs are in the middle and to the left is the dining room.

Ms. Lemire asked if the kitchen is behind the dining room.

Mr. Robinson replied yes.

Ms. Lemire asked if all the bedrooms are upstairs.

Mr. Robinson replied yes.

Ms. Hanson said it is difficult to enforce the hardship, because, from what she heard, it is a result of your action. She said it is their choice to put in a garage, which has created the hardship in terms of expanding of your home.

Mr. Robinson replied that our situation is not like other people who have an attached garage, but that is what he and Tarsia can afford. He said this will create a more functional space for them to live in.

Ms. Lemire asked if it was more expensive to have a garage underneath your house than next to it.

Mr. Robinson said it is less expensive to have a garage underneath.

Mrs. Robinson said their home is laid out differently and on paper it looked like it would work, but it did not come out as we thought it would. She said the house is too small and we want to make it more functional to live in.

Chairman Hamilton asked if there were any other questions.

Mr. Billipp said that on the diagram behind the existing garage, it shows another addition. He wanted to know what Mr. Robinson was expecting to put there?

Mr. Robinson replied it is just the garage, and he would be continuing the garage space to add a workshop. He said he is a builder and likes to build things. He asked if the Board heard of Bill Robinson and Son? He said he is the son.

Ms. Lemire asked if Mr. Robinson considered the addition on top of the garage.

Mr. Robinson replied they have a room on top of the garage now and there is no way to access it unless we go through the bedroom.

Mr. Billipp said it really is unfortunate that Mr. and Mrs. Robinson have a narrow lot, and the property goes up in the back. He wished there was some way they could put all of this in the back and there would not be any trouble at all.

Mr. Robinson said they wish they did.

Chairman Hamilton asked if any abutters or interested parties would like to make any comments on the application?

Hearing none, Chairman Hamilton asked Mr. Robinson if he had anything else he would like to say.

Mr. Robinson said that he did not.

Chairman Hamilton said the Board will now hear from the Code Enforcement Officer.

Ms. Ross said this is a non-conforming lot of record with a conforming structure in the Rural district. She said Mr. and Mrs. Robinson are proposing an addition which will be 10 ft. from the property line, but the Rural District requires a minimum of 20-ft. side property line setback.

Ms. Ross said, according to Sec. 45-194, subsection c- 2 states:

*"the code enforcement officer is authorized to permit a 25 percent reduction in frontage, setback and yard requirements only."*

Ms. Ross said this is how some of those other lots got variances.

Ms. Hanson wanted to know if Ms. Ross had already granted them a 25% reduction?

Ms. Ross replied yes, most of the lots in that subdivision have already received a 25% reduction.

Ms. Ross said subsection c-2 goes on to say: *"any other deviation in frontage, setback or yard requirements to a maximum 50 percent reduction may be permitted as a waiver after public hearing by the board of appeals."*

Ms. Ross said that she has highlighted the section of Chapter 5, from the Maine Municipal Handbook for Local Appeals Boards, the paragraph highlighted for their reference and read: *"Oftentimes a subdivision or site plan review ordinance gives the planning board the authority to 'waive' certain requirements of the ordinance if they would cause 'hardship' to the applicant. The definition of 'hardship' in that context is not necessarily the same as the definition of 'undue hardship' in section 4353, unless the ordinance expressly refers to the statutory definition. Although the municipality may give the authority to grant these waivers to the board of appeals, there is no conflict with section 4353 if the ordinance empowers the planning board to grant waivers. In any case, a non-zoning ordinance which authorizes either board to waive certain requirements should set out standards for the board to use in determining whether an applicant will suffer a hardship without a waiver."*

Ms. Ross said the Town of Eliot zoning ordinance does not expressly refer to the Statutory definition of undue hardship – only allows for a waiver – but this would not apply to a waiver application. She said it does not define a waiver or hardship or what constitutes a waiver or any requirements for the Board of Appeals to decide to allow a waiver.

Chairman Hamilton said it is very clear, in the Town of Eliot's application request for a waiver, that the applicant is responsible to prove that a waiver is necessary and read "(the applicant) must present evidence to the Board of Appeals that the applicant(s) cannot make reasonable use of their land without the waiver. "

Chairman Hamilton said he understands the MMA Handbook offers guidelines, and they usually refer to it. He said but it is very specific in the application created by the Town of Eliot and he thought supersedes what the MMA has stated. He said also the application is confusing. He said it refers to Sec. 305 and he could not find it.

Ms. Ross said that was one of the first things, when she came to Eliot, was redo the application, but the Board was not happy with it. She said there are a lot of requirements that do not constitute any requirements of the ordinance. She said if the Board denied the request and the applicant chose to take it to court, the Town could have a case because it would be overturned by the court.

Chairman Hamilton asked where is section 305?

Ms. Ross said she has no idea.

Chairman Hamilton said the Board is authorized under Sec. 404.3.2, but it refers to the main section.

Ms. Lemire asked where is that?

Chairman Hamilton replied Sec. 45.

Ms. Lemire said so it is Sec. 45.404.

Chairman Hamilton said Sec. 404, basically complies with Sec. 45 so that is relevant

Mr. Billipp asked where is Sec. 404.3.2?

Chairman Hamilton said it basically says Sec. 404.

Ms. Lemire said that it does not apply because it is not there anymore.

Chairman Hamilton said the application cover sheet definitely needs to be re-done.

Ms. Ross asked if the Board would like to see her revised one.

Chairman Hamilton answered we will for sure.

Ms. Hanson asked what was Ms. Ross's reasoning to grant the 25% waiver?

Ms. Ross replied there is no requirement for any reason in that section of the ordinance. She said it specifically says that the CEO can authorize to permit a 25% reduction. She said it does not state there is any need for a 50% reduction from the Board of Appeals.

Chairman Hamilton said, other than the application, there are no guidelines for the Board of Appeals in the ordinance regarding waiver standards.



Ms. Ross said she did a search of the ordinance on waivers and there was nothing.

Chairman Hamilton said so did I, yet the application for a request for a waiver seems very clear. He said the applicant is tasked with 5 parts of additional information.

Ms. Lemire said that is actually from State legislature and is actually 4 variance questions.

Chairman Hamilton said variances are a little different.

Ms. Lemire said there are several forms of variances and this is actually one of them.

Chairman Hamilton asked if Ms. Ross had found that somewhere.

Ms. Ross said she did find that earlier today.

Ms. Lemire said it is on page 125, 4b Setback Variances of the 2017 Maine Land Use Law booklet.

Mr. Billipp said he did not have one.

Ms. Lemire asked him if he got a new one?

Ms. Hanson said she didn't have one either and wanted to know if that replaced the binder.

Ms. Lemire said no, it doesn't.

Ms. Ross said they were supposed to be in your boxes.

Mr. Marshall said he did not have one.

Chairman Hamilton asked if Ms. Lemire would care to illuminate us?

Ms. Lemire said this is State law and read from the 2017 Maine Land Use Law Booklet, page 125, §4353 4-B. Setback Variance for Single Family Dwellings: *"A municipality may adopt an ordinance to permit the Board to grant a setback variance for a single-family-dwellings. An ordinance adopted under this subsection may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship"* and lists the 5 questions from the town's application. She said the Board is dealing with a waiver, but the State says this a variance and she does not know how the five questions got included on the town's application.

Ms. Lemire said the criteria is the only guidance and this is not in the town's ordinance, but at this point, this is the only thing they can use to make a decision.

Ms. Ross said she did a Title 38 search and could not find anything dealing with waivers.

Chairman Hamilton said he was looking as well and cannot find it. He said it looks like the town needs to come up with guidelines.

Mr. Marshall said what seems to him, when first reading the cover sheet of our application, the statements or questions were overrun and very out of line.

Chairman Hamilton said that is the only thing the Board of Appeals has to work with.

Mr. Marshall said it may be what we are working with, but it does not match what we have got to deal with.

Chairman Hamilton said the zoning ordinance grants the Board of Appeals, under Sec. 45.194, c-2 authority to grant waivers for non-conforming lots, but...

Ms. Lemire said nothing in the shoreland.

Chairman Hamilton said right, but it does not give the Board any standards other than the application which the Town of Eliot has been using. He said he would think that the applicant is willing to fill out the application and the Board uses it as guidelines as part of their determination to grant a waiver.

Mr. Marshall said they were given the application to fill out, what else were they supposed to do? He said they're damned if they do and damned if they don't.

Ms. Lemire said they never had a discussion about waivers and she has a bugaboo about waiver requests because of this. She said her view is this should not hamper their decision but there needs to be some criteria written and why they should grant a waiver.

Chairman Hamilton said there needs to be more explicit guidelines as to what the waiver is and why they should grant it.

Chairman Hamilton said the State legislation for municipalities talks about variances and waivers, which is part of one subsection but a variance is what we deal with the most. He said waivers are not like this at all. He said under the same subject, it allows for interpretation but no requirements for any according to our code. He said that anyone who asks for a waiver should get one.

Ms. Hanson said that is exactly what Ms. Ross is saying.

Ms. Ross said the lots are the same size and shape and pre-dates zoning.

Ms. Hanson wanted to know if there is any consultation with the neighbors for that.

Ms. Ross said not for 25%.

Ms. Hanson said there is no requirement for input. She said she understands, that for 25% there is not, but at 50% they would have to have a public hearing.

Chairman Hamilton asked where does that leave us?

Mr. Marshall replied five questions that are guidelines, not requirements.

Mr. Billipp wanted to know if they are the same on the variance form?

Ms. Ross responded they are similar.

Ms. Lemire said four questions are the same, it is the last one, #5 that is different.

Ms. Ross said the fourth question is written a little differently.

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

Hearing none, he asked if there were any last-minute comments?

Hearing none, Chairman Hamilton closed the public hearing at 7:45 p.m. and stated the Findings of Fact:

- The appellants are Garrett and Tarsia Robinson (Kenny);
- The property is located at 63 Greenbriar Drive, Eliot, Maine, and is identified as Tax Map 78, Lot 107;
- The lot is a non-conforming lot of record and is an under-sized lot in the Rural Zone, which requires three acres, and the lot is less than one acre;
- The Board of Appeals is granted jurisdiction to review this request for a waiver under Sec. 45-194, c, 2, of the Eliot Town Code;
- The home was built on the property, which was purchased in June, 2016, is 1800 sq. ft. and has three bedrooms;
- The property is located in a subdivision where lots are basically similar in size and shape and all are non-conforming to current zoning standards.

Chairman Hamilton asked if anyone else had any findings of fact?

Ms. Hanson replied the applicant said they will be eliminating the fire place to insure it is 10 ft. and they have been guided by the property markers along the property.

Ms. Hanson wanted to know if they could add that the Code Enforcement Officer issued a 25% waiver to the other property owners?

Chairman Hamilton responded no, it is not a finding of fact in this case.

Chairman Hamilton said the deed issue has been resolved by the submission of the correct warranty deed (recorded in the York County Registry of Deeds as book number 17266, pages 464-466). He asked if there were any other findings of fact?

Ms. Lemire asked if they should add the reason why they wanted to expand their home?

Chairman Hamilton said it is in order to construct an addition to the home.

Ms. Lemire wanted to know if they should go further than that?

Chairman Hamilton answered he did not think so. He said, again, this is a waiver to the property, which goes with the land, and is not just for the current owner. He said the waiver pertains to future owners of the property as well as to any future abutters.

Chairman Hamilton asked if there were any more findings of fact? Hearing none, he said the Board will now enter deliberations.

Mr. Marshall said what they are looking at is there are a bunch of lots, designed a long time ago, before zoning, that are long and spaghetti-ish and difficult to deal with, which they need to take

into consideration. He said they have a letter from their neighbors, which is the main criterion they have and wanted to know if the neighbors are not unhappy with it, why should we?

Mr. Billipp said he can see the sentiment, but when he looked at the list of the five questions, in his opinion, the applicants are not meeting three of them, 3 out of 5. He said the lots are long with not much frontage, probably a half acre or so, and from the get-go, the house could have been sited in a different fashion, any number of things could have been done without seeking a waiver. He said in his mind, the conflict is the applicants have not met all of these guidelines.

Ms. Lemire said she agreed with Mr. Marshall, considering the age of the sub-division, and created before zoning, the neighbors' letter, the applicants spoke with the neighbors and described what they wanted to do, and that they have no criteria to use and these are just guidelines, they are not written in stone.

Ms. Hanson said that she agreed with Ms. Lemire and Mr. Marshall, they are just guidelines and are not backed up by the ordinance. She said the Board has the ability to grant a 50% reduction, but there are no criteria given anywhere on how to deny it, except for a public hearing where people could come and protest. She said that would have given the Board something to consider. She said it seems to her that the ordinance is written in such a way that they can say yes to 50% but there is nothing to tell the Board otherwise.

Ms. Lemire said that many homeowners had to expand their homes since it is my sense they are not super big homes. She said she has not been down there.

Mrs. Robinson said most are small homes.

Ms. Lemire said technically the Board is only giving them 25% because the CEO allowed 25% anyway.

Chairman Hamilton said the CEO is limited to 25%, the Board of Appeals can grant a 50% waiver.

Chairman Hamilton said it is not part of the zoning ordinance and it is not clear what the requirements are. He said they received testimony from the abutters, who wrote a letter, saying they are fine with the addition, but the next people to own the property may not think it is a great idea and will be annoyed with the Board of Appeals for granting it. He said although it is important and a determining factor in his opinion, what we are granting is a change of future use to the property.

Mr. Marshall said it is in the future, but the Board is giving them permission to build an addition, we have not given them a 10 ft. strip along the side. He said it is for the addition, that is it. He thought that someone building a house with the town's convoluted ordinances would not understand the problems coming down the road and might change their lifestyle is an undue hardship.

Chairman Hamilton said what is in front of the Board is granting a waiver but essentially it says the 20-ft. setback is no longer applicable to this lot.

Mr. Marshall said it is only for the addition. He said the Board is giving them permission to build the addition.

Chairman Hamilton said tonight we are deciding that and it goes with the property.  
Mr. Marshall said it goes with the land, that is the way it is.

Ms. Ross mentioned that for any sheds, one-story garages, or detached structures on nonconforming lots, only typically have a 10 ft. setback anyway, but if there are other things that they want, they would have to come back before the Board.

Mr. Marshall said the screwy thing is, if they had built a detached garage, they could have come to the CEO for 10 ft. and Ms. Ross could have done that.

Ms. Ross replied, yes, she could have reduced the setback for 25%.

Mr. Marshall said they have a difficult ordinance to deal with to say the least.

Mr. Billipp asked if they chose to approve this, could we say that the setback is limited to the new construction of the addition only or would it apply to all the setback?

Ms. Ross replied it applies to just what is before the Board tonight. She said the ordinance allows the CEO to permit additions to be built onto homes that are there already.

Ms. Hanson said someone needs to re-write this.

Ms. Ross said the ordinance does give leeway and there are no strict requirements but something has to be done and they should have thought about it beforehand.

Ms. Hanson said if someone has a reason to care about it, he/she needs to articulate the reasons why he/she has to go through it.

Chairman Hamilton said nothing in the ordinance could be contested.

Ms. Ross said Greenbriar abutters took it to court and the court said you can go back to what was approved and this was in the 60's. She said the owner tried to make the lots larger and the court said no.

Mr. Marshall said if five abutters came in to object, we would have to listen, but the Board only has this one letter.

Chairman Hamilton said this request is for a waiver of dimensional standards, a reduction in the side yard setback from 20 ft. to 10 ft. to construct an addition to their home.

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

Mr. Marshall moved to approve the request from Garrett and Tarsia Robinson Kenny, 63 Greenbriar Drive, for a waiver, seconded by Ms. Lemire.

Chairman Hamilton asked if there was any discussion. Hearing none, he asked for a vote on the motion. Vote was taken by a show of hands, 3-2, with Chairman Hamilton and Mr. Billipp voting in opposition. Motion carries.

Chairman Hamilton told the applicants they will receive a Notice of Decision letter within 7 days. He reminded them that a waiver has to be filed within 90 days and be recorded at the York County Registry of Deeds or it will not be valid.

Ms. Ross said the applicants will need a Certificate of Waiver from the Board of Appeals.

Chairman Hamilton said he believed that will be acceptable.

### **3. Review and Approve Minutes as Needed:**

The Board reviewed the November 16<sup>th</sup>, 2017 draft minutes page by page and some corrections were noted by the Board members.

Mr. Marshall moved that the minutes of November 16, 2017 be accepted as amended, seconded by Ms. Lemire. All were in favor by a voice vote, 5-0. Motion carries.

### **4. Additional Review of Comments from Select Board on BOA by-laws.**

Chairman Hamilton said they previously approved the by-laws in September 2017, and the Select Board has made some additional recommendations on the language for the Board to review. The Board discussed the suggestions and agreed to the following:

Page 1 – I. General Provisions, E. #2 – remove “s” from “Ordinance” – agreed to change.

Page 2 – II. Appointments, C: Last sentence was amended to read: The Select Board shall act expediently to appoint a person to serve for the unexpired term.

III. B, Chairperson, the last sentence was amended to read: The Chairperson shall see that the Town’s Land Use Administrative Assistant arranges proper and legal notice of hearings, and attends to other materials of the Board, if needed.

III. D, Board Secretary, last sentence suggested wording was “any pending” – Board of Appeals agreed to strike the word “the” and the suggested word “pending” so that it reads “...and ensure that any Notice of Decision is prepared in a timely manner to be reviewed by the Chair and sent to the applicant, as required.

Page 3 - III. E, Recording Secretary, last sentence. The Board agreed to strike the word “the” and the suggested word “pending” so that it will now read: The Recording Secretary shall also prepare any Notice of Decision letter, to be signed by the Chair and sent to the appellant on any appeals within seven (7) days of the meeting date.

IV. Powers and Limitations, first paragraph, last sentence, comma was eliminated after the word “members” and before the word, “except.” The Board agreed not to include the suggestion “announce that a conflict exists and” as that is already being done.

Page 5, VI. Voting: (A) The Board agreed to strike the rest of the first sentence after “members” as recommended by the Select Board.

Mr. Marshall moved to accept the annotated version of the Board of Appeals by-laws, as amended tonight, second by Ms. Lemire. All were in favor by a voice vote, 5-0. Motion carries.

Chairman Hamilton asked the Recording Secretary to send the corrected by-laws to him and he will e-mail them out.

**5. Other Business as Needed:**

Ms. Hanson thought they needed to take out criteria to be attached to the waiver decision and be explicit on the application to use as a guideline, determining standards, or to do standards, but something needs to be done and she does not know how to move forward.

Chairman Hamilton agreed with Ms. Hanson.

Mr. Marshall said they do have standards, but the cover letter needs to be brought into agreement with the standards. He said you need to think about it and apply these things and use your brain.

Ms. Hanson said they need something more concrete. She said the people going through this do not think so and let's put it in writing. She said right now we really have nothing.

Ms. Lemire said the cover letter is not accurate. She said she liked what they did before.

Ms. Hanson said there is nothing behind us in the ordinance.

Chairman Hamilton said what concerns him about a possible appeal, is if someone will ask what we are using to determine our decision, if the Board denies the application for a waiver.

Mr. Marshall said we would only deny it if an audience comes out and complains or they have an attorney with them.

Chairman Hamilton said we would have to testify why we came to that decision, if they appealed our decision.

Ms. Lemire said they are good questions.

Mr. Billipp said especially since we were undecided.

Ms. Hanson said she liked those questions, but if we have issues with 25% or 50% there should be a reason to make it an issue and we should know what that is so we be asked to make a decision. She said the CEO and the Board do not have a reason to say "yes" because we had no reason to say "no."

Mr. Marshall said that is the criteria and there is no reason for us to say "no."

Ms. Lemire asked then why are we here?

Mr. Billipp said if there is no reason to say "no" then there should be no reason for a waiver.

Mr. Marshall said he would agree to that.

Ms. Ross said it may just have been that they wanted to bring awareness to something that was close (to the boundary line) in case of any controversy.

MS. Hanson said something should be written down in case a neighbor objects.

Ms. Lemire asked the CEO if she knew when that portion was enacted?

Ms. Ross replied she did not.

Ms. Lemire asked if it was enacted in the beginning before zoning? She said Greenbriar was there, it is the oldest subdivision.

Ms. Ross said she would ask the Town Clerk and it seems to make sense for non-conforming lots of record. She said there should have been some built-in flexibility when the zoning was enacted.

Mr. Marshall said he could see if it is a new sub-division under our present laws and someone wanted to build something.

Ms. Lemire said the only thing the waiver applies to is non-conforming lots.

Ms. Hanson said if the Board needs to make a decision, we need some criteria or vote "yes."

Chairman Hamilton said we need to make a change to the ordinance or have the ordinance cite the application or there needs to be some co-relation between the two.

Chairman Hamilton said if the room was filled with people who said "no, we do not want this" that is not useful for us. He said the Board of Appeals still has to follow the ordinance, and not make a decision based on the sentiment of the room tonight. He said they need something in the ordinance because chances are, it will get appealed.

Ms. Lemire said they have the authority in the ordinance, but no criteria.

Chairman Hamilton said the way the ordinance is written is that they have the authority to do something with a waiver request, but no criteria on how to do that.

Ms. Ross said she does not know of any other communities that have waivers and it is truly unique to Eliot.

Mr. Billipp wanted to know that there are no other towns in the Maine that have waivers?

Chairman Hamilton said he has been doing some research too and it does not mention waivers at all.

Ms. Lemire said it is not a State statute.

Ms. Ross said they could define a waiver and, in that definition, have some criteria.

Ms. Lemire said that is a good idea.

Ms. Ross said it goes back to how "hardship" was defined and it may be better and the first thing that should be done.

Mr. Marshall said that is a fuzzy word.



Ms. Lemire said the Planning Board may be working on definitions.

Chairman Hamilton said let's think about this before our next meeting. He said the intent of the ordinance clearly says we give everyone a waiver who comes before us.

Ms. Lemire said it only applies to non-conforming lots of record.

Mr. Billipp thought the intent is for non-conforming, smaller lots in some way.

Chairman Hamilton said they should consider what we can do if it is not a variance. He said there is a difference between a waiver and variance, as the variance is pretty strict. He asked does it mean that a waiver and variance are somewhat the same.

Ms. Lemire said no.

Ms. Ross said they have non-conforming lots created before zoning and conforming lots were created after zoning.

Mr. Marshall said even some of the older lots in town, 50-100 years ago, the houses may have been built on the boundary line or are on the road and there was no reason for them to do anything.

Ms. Ross said she has provisions that allow her to increase the area so they can build on a lot that already exists.

Chairman Hamilton asked where they would get guidelines that constitutes a waiver.

Ms. Lemire asked Ms. Ross where would she start?

Ms. Ross answered maybe they could ask other communities.

Ms. Lemire said it does not apply to all the lots in town only non-conforming lots of record. She did not know how unique some of the properties are in town.

Ms. Ross said that they should go through Maine Municipal Association.

Ms. Lemire said part of it is the application, that is what triggered it for her.

Ms. Hanson said they have no reason to deny the request for a waiver.

Mr. Marshall said it is a very unfortunate situation and the Town created it.

Ms. Ross said that is why she has given leeway to some properties, and they are granted a reduction to the setbacks when their homes are built because the lots are very narrow.

Chairman Hamilton said the change in zoning created it. He said could you envision what if everyone came in and asked for a waiver.

Mr. Marshall asked what is the problem?

Chairman Hamilton asked what if everyone from Greenbriar came in tomorrow and wanted to get a waiver, if the people who bought lots in Greenbriar wanted their property lines to be reduced?

Mr. Billipp said they would be 10 ft. closer.

Chairman Hamilton asked what about the people who are already there, do you think the people who bought the property would want to see that change? He said they would have to ask them.

Mr. Billipp wanted to know if the CEO gives them a 25% reduction right off the bat.

Ms. Ross said yes, some setbacks are reduced when their homes are built, or there is not enough frontage.

Chairman Hamilton said he would contact the Legal Dept. of MMA to see if they have any advice for us.

Chairman Hamilton asked if anyone else had any questions for the Code Enforcement Officer, because he had one question. He said a few meetings ago, he brought up that the Board would like to see the building permits published on a weekly basis and asked what progress has been made on that request.

Ms. Ross said she has been out for several weeks with surgery and has been working part-time. She said there is no requirement through State law, her job description or the ordinance to do that and it takes a significant amount of time to post them. She said she has appointments every half-hour to an hour all throughout the day.

Ms. Ross explained she has to enter them into the computer, then convert the program to Excel, which is not quick.

Chairman Hamilton said that anybody who would like to make an appeal does not have the ability to do so because it is not published.

Ms. Ross said there have not been too many people coming forward, because she does her job well. She said she makes a case that she can stand behind.

Chairman Hamilton commented that Ms. Ross is putting the Board of Appeals out of work.

Ms. Ross said that after 18 years of doing this same work, if she cannot approve an application, even with the Robinsons, she talked about shifting locations or switching corners, she offers the applicant different options or alternatives and that is the best service that she can apply to the people in town.

Chairman Hamilton asked if she filled out the first part of Mr. and Mrs. Robinson's application.

Ms. Ross replied she did after she spoke with Chairman Hamilton.

Chairman Hamilton said when the application first came in, there was no justification at all. He said that Ms. Lower had sent him two applications, one for a variance request and the other a request for a waiver. He asked what happened?

Ms. Ross apologized and said they had a lot of applications coming in and, since it was the last day, and he had requested that she advise him as soon as possible, if any appeals came in, she scanned the documents and sent them out, with the variance attached to it. She said Ms. Lower is new to the process and they are working on it.

Chairman Hamilton said he was not able to access the website for 2018 building permits and he was required to have a password. He asked if Ms. Ross could look into it.

Ms. Ross said she will check with Mr. Lee.

Chairman Hamilton said there is nowhere on the site for him to login.

Ms. Ross said she was out a long time and she will ask Dana.

Chairman Hamilton asked if Ms. Ross could work with Ms. Lower.

Ms. Ross said that is what she has been talking about, after Ms. Lower was hired, the town lost Kate Pelletier and she been working with the Planning Dept. She said she is not having as much access to Ms. Lower as she really needs her assistance at this point.

Chairman Hamilton said from his standpoint, someone has 30 days in which to file an appeal and when the CEO makes a decision, no one knows about it. He said it is the issue of transparency.

Ms. Ross said it is time-consuming and Ms. Lower is normally working with people, but she hoped that their assistant's time gets freed up so she can help out.

Chairman Hamilton said that some people have been asking him about it and he wanted to bring this up.

## **6. Adjournment:**

Mr. Marshall moved to adjourn the meeting at 8:59 p.m. seconded by Ms. Lemire. All were in favor by a voice vote, aye. Meeting adjourned.

Respectfully submitted,

Barbara Boggiano  
Recording Secretary

Approved by: 

William Hamilton, Chairman, BOA

Date approved: May 17, 2018

