

ITEM 1 – ROLL CALL

Chair Bill Hamilton called the regular meeting of the Town of Eliot Board of Appeals to order 7:00pm.

Present: Bill Hamilton, Jennifer Himmer, John Marshall, and Charles Rankie, Jr. Also in attendance was Shelly Bishop, code enforcement officer for the Town of Eliot.

Absent: Donna Knox, excused; Jay Meyer, excused.

There were ten members of the public in person and three members of the public online.

ITEM 2 – PUBLIC COMMENT PERIOD

There was no public comment unrelated to the hearings scheduled for the meeting.

ITEM 3 - PUBLIC HEARINGS

The Chair explained the Town's OWL communications system which broadcasts and tapes the meeting and that the video of the meeting will be available on the Town website at www.eliotme.org. The Chair introduced himself and the members and stated that all four members present will serve as voting members. The Chair asked if any members had a conflict of interest with either scheduled hearing, no members did. The Chair stated that both hearings will be *de novo* and as such, the Board's decision will be based solely on the information presented during the hearing. The Chair explained the hearing procedures and when each party will have an opportunity to speak and ask questions. The Chair asked if there were any questions and there were none. A representative of Braley Designs attending the meeting via Zoom said she could not hear the meeting. The audio was adjusted, and she said she could then hear the meeting.

Request for a Practical Difficulty Variance by Randy Townsend/Oracle Industries LLC, DBA Auraz, for property located at 32 Brook Rd., Map 37, lot 2/3, 5.2 ac. in the Commercial/Industrial Zone to allow for construction of an off-site sign to be located within the right-of-way of Brook Rd. at the intersection of Rte. 236.

The Chair opened the floor to Randy Townsend to present his request for a practical difficulty variance. Ken Wood, 284 State Road, addressed the Board on behalf of Mr. Townsend.

Due to audio issues in the recording of the meeting, testimony could not be captured verbatim and is presented in summary.

Mr. Wood said he had been involved in the engineering of sites along Route 236 since 1995 when the first subdivision was built. He said he has known Randy Townsend since 2000 when Mr. Townsend began operating the Island Seafood business on Brook Road, which has been approved by the Planning Board for a change-of-use to an Adult-Use Marijuana Cultivation facility. Mr. Wood said the request before the Board of Appeals was to install a sign which meets sign and setback requirements on Route 236 to direct motorists to the business on 32 Brook Road. Paul and Helen Goransson, the owners of the property where the sign would be installed, have given Randy Townsend/Oracle Industries LLC permission to install the sign on the property. Mr. Wood noted that the sign on Route 236 is required as the business itself is not visible from Route 236 as it is at the end of a dead-end road, Brook Road, off Route 239. Mr. Wood went over all the required information and documents the appellant had presented to the Board and offered to provide additional information about the sign and its size if the Board would like that information. He said he was

41 available to answer any questions the Board might have. Chair Hamilton thanked Mr. Wood for his
42 presentation.

43 Mr. Hamilton asked members if they had any questions for the applicant.

44 The recording secretary interrupted proceedings to inform the Chair that a message had been
45 received via Zoom from Braley Designs that the audio was working but the voices were not clear.
46 The Chair asked that everyone speak clearly.

47 Mr. Marshall asked the applicant if he had documentation of permission from the property owner
48 where the sign would be displayed. Mr. Rankie responded that the Board has that documentation in
49 the file.

50 The Chair asked members if they had other questions. No one did.

51 Mr. Hamilton asked Mr. Wood if the property was a backlot.

52 Mr. Wood answered that as he understood things per the definition of the ordinance, it was not a
53 backlot but a subdivision. He said, "It is at the end of a dead end."

54 Mr. Hamilton asked Mr. Wood how the property qualifies as a nonconforming lot. Mr. Wood
55 responded by describing the lot. Mr. Hamilton asked, "So, it is not a nonconforming lot."

56 Mr. Wood's response was not able to be recorded verbatim due to difficulty with the audio recording.
57 In general, Mr. Wood responded that he could not say how the lot would be defined and provided
58 information about the lot's history going back to 1995. The Chair pointed out that the application
59 filed was for a legally nonconforming lot of record.

60 Ms. Bishop, the Town's code enforcement officer, spoke about the property and how it was defined
61 as conforming or nonconforming. She said the ordinance does not speak to the lot being
62 nonconforming and referenced Section 45-529, saying that that section allows for requesting an off-
63 site sign. She was not sure if that tied into the lot being nonconforming or not. The Chair responded
64 that the Practical Difficulty Variance application applies only to nonconforming lots of record.

65 Greg Braun, an attorney with Bergen Parkinson Attorneys, 62 Portland Road, Kennebunk, Maine,
66 asked to be heard and said he was in attendance to assist Mr. Townsend if needed. Mr. Braun said,
67 "As the code enforcement officer has pointed out and as I would express it (unclear) to the Board
68 here, the only determination you need to make pursuant to the ordinance is whether or not the
69 placement of the sign and the change (unclear) away from the lot in question is appropriate, is
70 whether or not it is necessary to protect the interest of use, in this case that is commercial. That is
71 explicitly stated in Article 11, 45-529. And so, the practical use variance test, and the hardship
72 standard that you are referencing, is not actually relevant to the application. I recognize that the
73 application which is a standard format and I believe it was provided directly from the Town. If you
74 look in the packet you will find an email correspondence there that indicated that it provided the
75 (unclear). It is a standard form, right? But a standard form, in fact if you look through it, the only
76 statue or code that is explicitly identified is the Town's ordinance Section 45-529. There is no other
77 reference made to a Title 30A, 4353, which is where you find that undue hardship test. So, I would
78 argue that while the title of the application is standard, it may be modestly misleading in its context.
79 Really what we are doing here, (unclear) the application consistently indicates that we're just
80 passing, seeking that waiver that is indicated as necessary in Section 45. I thought I might just make
81 the additional comment for the public hearing portion, I will just note besides that while all the

applicant has to show, and what we are asking for the Board of Appeals to determine, is whether or not this allowance for an off-site sign is necessary to protect this commercial use. I think is pretty clear in the application, why that is given, the fact that you can't see the site and there's no real obvious indication that it exists back there. There's also another important public interest and that is safety. Of all things, while preparing to come in and assist today, in looking through our legal files, I found that we actually represented Christian Life Church here in Town, which is located around 236, in 2008. And our firm assisted them with a variance for a side sign that they have out in the road. While there were some arguments made as they related to religious freedom, in the end, following some administrative appeals in Superior Court, what the Town agreed with the applicant to find, and in fact what I think is a reasonable and appropriate (unclear) to this situation, is that where you have a business enterprise that is difficult to see or identify, what you end up causing are unnecessary U-turns and stops-and-turns, and you create more congestion and traffic within that area than what might otherwise naturally occur. And so, by allowing this sign (unclear) we're not only protecting a commercial enterprise on that backlot but we're also speaking to public interest of safety by making it more visible to passers-by and making it more likely that someone driving down that road is not going to have to necessarily pull a U-turn. So, that's the point I wanted to make as far as public safety and that would be my response to your question about the standard (unclear)."

Mr. Hamilton said, "I guess my problem is that I don't have a standard to go by." Mr. Hamilton's full comment could not be recorded verbatim due to difficulty with the audio recording.

Mr. Braun said, "What I will point out to you, in fact, is that the standard that is cited in question is stated both in the narrative letter and then also explicitly in Section A where it says, nature of variance: describe the nature generally. And there you can see it says exclusively and right off the bat that the applicant cites Section 45-529 as the basis of this request for (unclear) the Board of Appeals to make this decision." Mr. Braun added that no other statutes had been cited by the applicant.

The Chair asked if members had any other questions.

Mr. Rankie said that while Brook Road has been represented by the applicant as a dead-end road and that the owner of the right of way of record has stated he has plans for an extension to Brook Road. He said that while the road is a dead-end road, the owners may have plans as soon as next year to add an extension to the road. Mr. Marshall asked the Chair if it is appropriate for the Board to consider what might happen in the future. The Chair asked Mr. Rankie for his response to Mr. Marshall's question and Mr. Rankie said that he would argue it is relevant and that the Board should consider it.

The Chair asked the Code Enforcement Officer had she received his email of August 17, 2023. He then read the email which concerned written authorization of ownership of Brook Road and documents including the deed. Mr. Wood addressed the Board on behalf of the applicant and said Mr. Goransson owns the property and that there may be some plans for an over-55 residential development on a Central Maine Power (CMP) piece of property. Mr. Wood confirmed for Mr. Hamilton that it is a 50-foot right of way.

The Chair directed the meeting to look at Section 45-405, Dimensional standards. He read, "Lots and structures in all districts shall meet or exceed the following minimum requirements." He read from the chart that the minimum standard for frontage under the Commercial/Industrial column is 300 feet. The Chair asked Mr. Wood if Mr. Goransson's property met this standard. Mr. Wood said he

does not believe the property does and added that the roads were laid out with frontages of 50-60 feet. Mr. Hamilton said, "But we don't have the 300 feet."

Members and the Code Enforcement Officer then reviewed and discussed Section 45-405, specifically the sub-section required for Signs and requirements for commercial lots and signs. Mr. Rankie said that he was concerned the Board was not looking at the issue correctly and that the site was outside the Route 236 right of way and was within the easement. He added that they should not look at this as it the limits of the 236 right of way and having a sign installed. Mr. Marshall said he did not think the issue of frontage was relevant in this situation. Mr. Hamilton said he was stuck on the 300-foot requirement. Mr. Marshall said the sign will not be installed at the commercial site and that is why the issue is before the Board of Appeals.

The Chair asked if members had any additional questions for the applicant. He then asked if there were any abutters or interested parties who would like to be heard; there were none. The Chair asked members again if they had questions, they had none. He then gave the final word to the applicant. Mr. Wood addressed the Board briefly to reiterate the applicant's request.

The Chair closed the hearing and opened deliberations by the members. Mr. Rankie suggested that the Chair go through the six criteria for a practical difficulty variance. The Chair explained the six criteria and the Board's need to ensure they are met to grant a variance. Mr. Marshall said the Board does not have to ensure that the six criteria are met as the Board is only giving the applicant permission to put up a sign. The Chair agreed, stating that this situation was unusual for the Board's proceedings.

Mr. Rankie said the Town has a sign ordinance that serves to maintain the character of the Town. He commended the people who wrote the Town's sign ordinance. Mr. Rankie added that there is no need for the proposed sign as the roadway breaks off from Route 236 and with modern GPS, there would be no safety issue as GPS would direct someone to the site. He said the only thing a sign would do is bring people to the business who were driving down the road. For these reasons, Mr. Rankie said he could not vote in favor of the sign.

Mr. Marshall commented that he drove down Route 236 recently and does not think another sign going up will make a difference as this is a commercial/industrial zone. He added that if the Town approves a business operating then the Town should allow everything that goes with operating that business, including a request for a sign to help people find it.

Mr. Marshall moved, and Ms. Himmer seconded that the Board accept the application. The Chair asked for further discussion, there was none. The motion passed by a roll-call vote of 3-1. Mr. Rankie was the dissenting vote.

The Chair explained to the applicant the next steps in the process, including receiving a Notice of Decision from the Board of Appeals within seven days. He also said it is important for the applicant to record the decision with the Registry of Deeds.

The Chair asked members if they needed a break before the next hearing, members did not.

Request for a Practical Difficulty Variance by Jessica Mason and Lisa Couture for property located at 480 Main Street, Map 79, .28 acres, in the Village zone for a 50% reduction in size setback to build a garage.

164 The Chair read the request aloud and reviewed the procedures for the hearing that would allow the
165 applicant, abutters, and interested parties to address the Board and answer questions from the Board
166 prior to Board's deliberations and decision. Linda Braley, architect with Braley Designs LLC, 44
167 Edwards Street, Portland, Maine, presented the request for a Practical Difficulty Variance to the
168 Board via Zoom.

169 Ms. Braley: "My name is Linda Braley. I'm actually on Zoom. I will start by sharing that I can hear
170 you but I'm not making out a lot of what you're saying but I did hear that you introduced the project
171 at 480 Main Street and that the application is looking for a 50% reduction inside setback. I'm
172 assuming that you can hear me."

173 The Chair: "Yes, very clearly."

174 Ms. Braley: "Okay, great. So, I think quite simply that it is exactly what they are doing. They would
175 like to build a garage on their property, an existing nonconforming lot. And so, the only way really to
176 get a garage adjacent to their home would be to get this reduction inside setback from ten feet to five
177 feet in the direction of Pickering. There is a stretch of land between their properties and Pickering
178 which is owned by a neighbor. The existing topography in the site plan that was submitted, there is
179 topography on that site plan, and there is an existing level area where they currently park their cars,
180 so the garage is going to be in that same location where a level area is already present. So, it really
181 isn't necessarily going to change the relationship of their property to their neighbor's property along
182 that property line. So, it's just wanting to have a structure where they are currently parking their cars,
183 liking to have a structure, living in Maine it's nice to be able to put your belongings and your vehicle
184 out of the snow and rain. I don't know that there's more to add, it's a fairly simple request, but I will
185 leave it up to you to see if there are additional questions."

186 The Chair: "Okay, thank you very much. Questions to the appellant?"

187 Ms. Himmer: "I don't see the dimensions but, in the picture, it looks like the garage, the proposed
188 garage is not attached to the home?"

189 Ms. Braley: "That is correct."

190 Ms. Himmer: "What is that space near the garage?"

191 Ms. Braley: "It is approximately five feet. (Pause) Five foot, one inches."

192 Ms. Himmer: "Thank you."

193 Mr. Rankie asked if considerations were made for the large amounts of water coming into that area,
194 especially considering the high amount of rain experienced this year. Ms. Braley could not hear Mr.
195 Rankie's question. Mr. Rankie withdrew his question.

196 The Chair: "Are you saying the driveway will have (unclear). Correct?"

197 Ms. Braley: "Can you repeat that?"

198 The Chair: "Yes, you said in your presentation that the garage is going to be on a level area, does that
199 mean where it is currently drawn or does that mean it will be closer to the (unclear)."

200 Ms. Braley: "No, the driveway is really not going to be modified. It's a level area that allows them to
201 drive in and essentially park their cars pretty much exactly where the garage will be. The topography
202 is largely going to be what's there now."

203 The Chair: "So, the drawing is correct?"

204 Ms. Braley: "Correct."

205 The Chair, Mr. Marshall, and Ms. Bishop have a brief side conversation about difficulty in reading
206 the representation of Lot 79 of Map 4 in the packet. Members were finding it difficult to read the
207 numbers on the drawing. This issue was resolved.

208 The Chair asked if members had any other questions. Mr. Marshall asked if five feet was in the
209 purview of the Board to approve a variance. The Chair said yes, it was, and stated the required
210 measurements in this instance. The Chair asked any abutters to the property if they would like to
211 testify.

212 Richard Foerster, 488 Lynn Street, spoke to the Board. Mr. Foerster said, "I just want to say they are
213 wonderful neighbors." Mr. Foerster said he had seen the map and the proposed location of the
214 garage, and he has no objection. The Chair thanked Mr. Foerster and asked members if they had
215 questions for him. There were no questions. The Chair asked if there were any other abutters, they
216 were none. The Chair asked if there were any interested parties who would like to address the Board.

217 William Selsberg, 17 Pickering Drive, spoke on behalf of himself and his wife Carol. Mr. Selsberg
218 introduced himself and his wife and spoke about the applicants being wonderful neighbors. He spoke
219 about the applicant's beautiful garden, their hard work in taking care of their property and improving
220 it as needed, even shingling their roof themselves. To highlight the positive neighborliness of Ms.
221 Mason and Ms. Couture, he shared a story from this past February when a tree had fallen onto the
222 Selsbergs' property during a storm while the Selsbergs were away in Florida for the winter. He
223 shared that Ms. Mason and Ms. Couture made a point to call the Selsbergs in Florida and tell them
224 about the fallen tree and the danger it posed on the Selsbergs' property. He said, "It was one of the
225 nicest things" he's ever had happened to him. He added that it was a remarkable gesture and spoke to
226 their caring for others. He ended his comments, stating that given that his neighbors' request
227 complies with the standards, that their request for a practical difficulty variance be granted.

228 The Chair asked if members had any questions to ask Mr. Selsberg, they did not. He asked if there
229 were any other interested parties who would like to speak. At this time, no one spoke. The Chair
230 gave the appellant the last word. Ms. Braley, speaking for the appellant, said she had nothing else to
231 add.

232 The Chair read three letters of support for the project into the record. The letters were from Suzanne
233 Schepis-Gray and Richard Gray, 14 Pickering Drive; Shannon Darr, 465 Main Street; and Darlene
234 Olson, 16 Pickering Drive.

235 Suzanne Schepis-Gray and Richard Gray, 14 Pickering Drive, wrote:

236 "Hi Shelly, I hope you are well. I have known you since opening my restaurant when you were a
237 code officer in Kittery over 10 years ago, and I have worked with you since on several properties in
238 Eliot. I am familiar with codes and variances, both residential and commercial. I am writing this note
239 to you (and the board of appeals) on behalf of Jessica Mason and Lisa Couture, residents of our
240 neighborhood who have a practical variance being heard on Thursday August 17th. While my
241 husband and I cannot attend the hearing in person, we want to express strong support of our
242 neighbors! We believe the garage will pose absolutely no issues whatsoever for any of the neighbors,
243 the land, or the town of Eliot itself. Jess and Lisa have proven to be excellent neighbors of the

highest character. Their home, surrounding property and beautiful gardens are by far the best maintained in our neighborhood. They truly know how to beautify and enhance the area--they care! It is for these reasons that I urge you include our letter to the board of appeals hearing (in lieu of our absence) recognizing our first-hand knowledge of said residents and officially approve the requested variance. Much Thanks Always, Suzanne Schepis-Gray and Richard Gray, MD 14 Pickering Drive Eliot"

Shannon Darr, 465 Main Street, wrote:

"Hello Shelly, I received the registered letter regarding input on the proposed garage at the home of Lisa Renee Couture and Jessica Mason, 480 Main Street, to be considered at the August 17 planning board meeting. Due to my work schedule, I cannot attend the meeting but would like to submit my support in writing. I live caddy corner to Jess and Lisa and have observed the wonderful improvements they have made to their property over the years. The proposed garage plans would seem to be an excellent addition to the property and would in no way infringe on the abutting neighbors or those across Pickering Drive or Main Street. I sincerely hope this project will be approved. Thank you. Shannon Darr 465 Main Street Eliot, ME 03903"

Darlene Olson, 16 Pickering Drive, wrote:

"Dear Shelly and The Eliot Board of Appeals; I'm writing on behalf of my neighbors, Jessica Mason & Lisa Couture in their request to put a garage on their property. You have been at my house before-I live at 16 Pickering Drive and I had to have a bunch of trees removed that had fallen into the water and some others that were about to go over. Jess & Lisa have lived in this neighborhood almost as long as I have-which is coming up on 20 years. They keep their property immaculate and they have spectacular gardens-far better than anyone else in the neighborhood. Furthermore, I'm a full time Realtor and have been in the business for over 35 years. This addition will be a boon to everyone. Not only will it add value to their home, it will help our neighborhood as well. They are the first property you see when you enter Pickering Drive. They are looking to add a garage and only asking for a 50% reduction in the setback. They border a small strip of land owned by another neighbor and the street. It is not intruding on anyone, nor harming anyone. Not having a garage in this area is a hardship-we have terrible winters and being able to protect at least 1 car will help them tremendously. I wish they would be allowed to build the 2 car garage that they really need. That would also add even more value to them and our neighborhood. I don't think I can attend the meeting but I wanted to be sure to show my support for them and hoping this request will be approved. Regards, Darlene Olson"

Adam Brickett, 15 Pickering Drive, an abutter to the appellant, asked the Chair if he may address the board. Mr. Brickett shared that he had no objection to the approval of the Practical Difficulty Variance for Ms. Mason and Ms. Couture, stating" "Basically, I'm cool with it."

The Chair asked if there were any other comments, there were none. He closed the hearing.

Mr. Marshall moved, and Mr. Rankie seconded, that the Board of Appeals approve the request for a Practical Difficulty Variance on 480 Main Street to reduce the setback from ten feet to five feet. The motion passed unanimously by a roll-call vote of 4-0.

The Chair informed the appellants of the next steps in the process and thanked everyone for participating in the hearing.

285 **ITEM 4 – REVIEW AND APPROVE PREVIOUS MINUTES**

286 The Board reviewed the Minutes from the July 20, 2023, meeting. **Mr. Marshall motioned, and**
287 **Ms. Himmer seconded, that the minutes be approved as amended. The motion passed**
288 **unanimously by a roll-call vote of 4-0.**

289 The Chair noted that he had not compiled the Findings of Fact for the decisions of both applications
290 that evening as he likes to do for the Notice of Decision, and he would do so now.

291 **ITEM 5 – OTHER BUSINESS**

292 Mr. Rankie returned to the discussion he led at the previous meeting about ensuring the Chair's
293 authority. Mr. Hamilton responded, saying he had no issue with contacting the Maine Municipal
294 Authority (MMA) as needed for Board of Appeals business. Mr. Rankie asked why Mr. Hamilton
295 opposed having a motion and vote on the issue at the last meeting. Mr. Hamilton said he found
296 doing so to be redundant. Discussion about MMA ensued between the members.

297 Mr. Rankie noted that the members had again not received a printed copy of the advertisement in
298 the local newspaper in the packet for tonight's meeting and hearings. Members discussed this. Mr.
299 Rankie also noted the unreadable, small font in the property maps. Mr. Rankie asked that something
300 be done to improve the scale, so that it is readable for future appeals.

301 Mr. Rankie noted that Ms. Himmer needs a name plate. Ms. Bishop added that Ms. Knox needs
302 one, too. The Chair asked if there was anything else to be discussed. Members discussed Findings
303 of Fact again briefly.

304 **ITEM 6 - ADJOURNMENT**

305 **Mr. Rankie moved, and Mr. Marshall seconded that the meeting be adjourned. The motion**
306 **passed unanimously. The meeting was adjourned at 8:25pm.**

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Bill Hamilton, Chair

Date approved: 10/25/23

Respectfully submitted,
Ann Lukejord, Recording Secretary

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