

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, Charles Rankie, Jr., Jay Meyer, and John Marshall. Also in attendance was Shelly Bishop, code enforcement officer for the Town of Eliot.

Absent: Donna Knox; Jennifer Himmer, excused.

ITEM 2 – PUBLIC COMMENT PERIOD

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

ITEM 3 - PUBLIC HEARINGS

The Chair summarized the process for the public hearing. He asked if any members of the board had a conflict of interest with the application they are about to hear, and no one did. The Chair gave alternate member Mr. Meyer voting privileges for the evening's meeting, bringing the Board to four voting members. The Chair said the standing of the appellant had been met and that there was no timeliness standard. He said the Board's decision would be *de novo*, meaning all testimony will be new testimony on which the Board will make its decision. He explained that following the Board's decision, the applicant would receive a Notice of Decision from the Board of Appeals within seven days as required and the decision could be appealed within 45 days to Superior Court. The Chair added that if the variance is approved, the applicant has 90 days to record the variance with the Registry of Deeds and the Code Enforcement Officer.

Request for a Practical Difficulty Variance by Bruce Turgeon for property located at 22 Boyce Rd., Map 70, lot 30, .67 ac. in the Rural zone to allow for a reduction of side setback requirements from 20' to 12' for garage expansion.

The Chair opened the floor to the applicant Bruce Turgeon to present his request for a practical difficulty variance.

Mr. Turgeon told the Board he has lived in Eliot for 23 years, plans to stay in Eliot, and is planning for his future. He said his home is too big for him but as he wants to stay in Eliot, he is looking to rent out his home and build a 1,000 square foot addition to create an apartment in which he would live. Mr. Turgeon explained that his plan requires removing his existing two-car garage and building in the footprint of the garage. He is requesting a practical difficulty variance as his plan requires a 24' garage footprint instead of the existing 22' garage footprint.

Based on his calculations, Mr. Turgeon said that it is sixteen feet from the existing garage foundation to the existing fence and that two of those feet are his neighbor's property. Mr. Turgeon said he knows the fence is on his neighbor's property as it was constructed one to two feet onto the neighbor's property. He said by eliminating those two feet, he would have fourteen feet remaining. Mr. Turgeon said that out of the fourteen feet he was asking for an additional two feet to not exceed 50% reduction. Mr. Turgeon added that it is just the side property that does not work for his proposed addition.

Mr. Rankie asked Mr. Turgeon to explain the fifteen-foot wide right of way easement with the abutter. Mr. Turgeon said that he had a survey done when he first purchased the house and that the survey indicated that the right of way provided access to his neighbor for access to the pool the

neighbor had installed. Mr. Rankie asked if that easement was exclusive to Mr. Turgeon's property. Mr. Turgeon was not sure about that. Mr. Rankie asked to look at the other deeds in the applicant's packet. Mr. Turgeon directed Mr. Rankie and members to the 2004 document in his packet, page 307, with the deed for William and Nancy Boyce in which the right of way is described.

Mr. Rankie asked Mr. Turgeon if he were aware that if the new building were not attached to his main building that the setback would only need to be ten feet as it would be an accessory building. Mr. Turgeon did not know this. Ms. Bishop stated that the ten-foot setback was a recent change to the Accessory Dwelling Ordinance (ADU) and that the setback for the principal residence was twenty feet. Mr. Rankie pointed out that if Mr. Turgeon's request were denied, he might want to consider having the buildings disconnected to meet the setback requirements.

Mr. Meyer asked about the right of way and who owned it. Mr. Turgeon answered that he assumed the right of way was his with the property and that there is language that others can use as well. Mr. Meyer asked if the right of way provides access to the property behind Mr. Turgeon's property. Mr. Turgeon answered no as the right of way only goes up part of the way. Mr. Turgeon answered that the right of way was clear in response to Mr. Meyer's question about the right of way being clear or wooded.

Mr. Hamilton asked Mr. Turgeon if he had considered not adding the two feet to his construction to then not need a variance. Mr. Turgeon said that was a consideration but not an ideal solution as the 24' X 40' size would give him the desired one thousand square feet.

Mr. Hamilton directed members and Mr. Turgeon to the six criteria required for a Justification for Variance to review them and further discussion with Mr. Turgeon if needed.

The six criteria were as follows:

1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood. Mr. Turgeon answered: "The narrow shape of my property combined with placement of the house and garage limits my options to expand the garage. Can only build out to the right and front of garage."
2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use of market value of abutting properties. Mr. Turgeon answered: "Proposed project will only minimally expand the width of the current garage (by two feet) as well as the length (by sixteen feet). Presents no change to the neighborhood and health & safety concerns. Project will only enhance market values."

Mr. Rankie asked Mr. Turgeon how improvement to his property would benefit others and not just Mr. Turgeon's property. Mr. Turgeon said he saw improving his property value would have a positive effect on neighboring properties.

3. The practical difficulty is not the result of action taken by the applicant or a prior owner. Mr. Turgeon answered that the property was "built in 1973 by then standards." He added that he purchased the property in 2000.
4. No other feasible alternative to a variance is available to the applicant. Mr. Turgeon answered: "No other reasonable alternative options as those would either be not feasible due to well location, septic location, or would require even further variance requests."

5. The granting of a variance will not unreasonably adversely affect the natural environment. Mr. Turgeon answered: "No impact to natural environment but will correct current issue with water drainage when building new structure."
6. The property is not located in whole or in part within shoreland areas as described in title 38, M.R.S.A. section 435. Mr. Turgeon answered: "The property is not located in shoreland zone."

The Chair asked if any member had additional questions. Mr. Meyer asked Mr. Turgeon if his plan was based on an ADU or the garage and if the goal was to maximize the size to the 1,000 square feet allowed for an ADU. Mr. Turgeon explained that the living unit would be on the second floor above the two-car garage and that he was trying to meet the maximum of 1,000 square feet allowed for an ADU. The Chair asked if any other members had questions and they did not.

The Chair opened the floor to comments from abutters to the property. Vernon and Heidi Warner, who own and reside at 10 Boyce Road in Eliot, identified themselves as abutters to Mr. Turgeon and stated that they have no issue with Mr. Turgeon's proposed project and that Mr. Turgeon is a great neighbor.

The Chair opened the floor to comments from interested parties. There were no interested parties who wanted to speak.

The Chair gave the last word to Mr. Turgeon. Mr. Turgeon said he had information concerning the property pins and calculations to share with the Board if needed, as well as photographs he took that day showing the sixteen-foot area and that he had sent the photographs to the Code Enforcement Officer to further prove his calculations. Mr. Rankie said the Board did not need the pins as the Board believed the information Mr. Turgeon provided but that information would be valuable to the Code Enforcement Officer. Mr. Rankie added that photographs are not admissible. Mr. Warner said that Atari had done all the engineering in the area of Boyce Road. The Chair said that the information provided by Mr. Turgeon, particularly the data from Jay Realty, was all valuable to the Board's purposes.

The Chair declared the public hearing closed. He outlined the Findings of Facts as follows:

1. The applicant is Bruce Turgeon.
2. The Board of Appeals meeting date is October 19, 2023.
3. The property in question is 22 Boyce Road, Eliot, Maine, Tax Map 70, Lot 30, .67 acres in the Rural Zone.
4. The appellant has met the standard of standing, and timeliness is not an issue.
5. The Board of Appeals standing of review is *de novo*.
6. This is a request for a Practical Difficulty Variance under Section 45-194 (c) (2), Nonconforming Lots.
7. The property is a nonconforming lot of record.
8. The current setback according to the applicant's information is fourteen feet, and the applicant is requesting the setback be 12 feet. There is a certified 2011 survey of the adjacent abutting property by Jay Realty which establishes the 14-foot setback.

Mr. Marshall asked if the Board also needed to discuss the length at the front of the garage and be specific about that aspect of the proposal. The Chair said the Board did not need to discuss that aspect of the project. The Chair asked if there was any further discussion and there was none.

Mr. Rankie moved, and Mr. Marshall seconded that the Board of Appeals approve the appeal. The motion passed by a roll call vote of 4-0.

The Chair congratulated Mr. Turgeon. The Chair also told Mr. Turgeon the he will receive a Notice of Decision from the Board of Appeals in seven days which he must register with the Registry of Deeds and the Code Enforcement Officer and that anyone who may want to do so has 45 days to appeal.

ITEM 4 – REVIEW AND APPROVE PREVIOUS MINUTES

The Board reviewed the Minutes from the August 17, 2023, meeting. **Mr. Rankie motioned, and Mr. Marshall seconded, that the minutes be approved as amended. The motion passed unanimously by a roll-call vote of 4-0.**

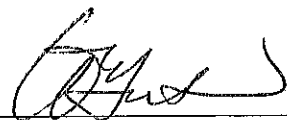
ITEM 5 – OTHER BUSINESS

The Chair opened the floor to Other Business. Mr. Rankie said members did not receive recent Notices of Decision as they should. The Chair said there was also some incorrect information in the public notice in the newspaper and this was indicative of some wrinkles in the process with the new administration assistant which were getting worked out. The Chair said he needs to review the application before it is posted to make sure the information is correct, and the application needs to be complete. He added that he thought that had been corrected and the Code Enforcement Officer said it had been.

Mr. Rankie noted that the Board is two members short, Mr. Trott who was now a member of the Select Board and Ms. Knox who is serving as the Board of Appeals' Secretary. Mr. Hamilton said that both members have resigned, Mr. Trott, because as a member of the Select Board he cannot sit on another board, and Ms. Knox, as her travel schedule does not allow her to participate on the Board as she thought she could have. The Chair reminded members to encourage interested parties to apply for the open positions.

ITEM 6 - ADJOURNMENT

Mr. Marshall moved, and Mr. Meyer seconded that the meeting be adjourned. The motion passed unanimously. The meeting was adjourned at 7:51 pm.



Bill Hamilton, Chair

Date approved: 4/23/24

**Respectfully submitted,
Ann Lukegord, Recording Secretary**