



**APPROVED**

**TOWN OF WELLS, MAINE  
ZONING BOARD OF APPEALS**

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September 29, 2014

Crescent Beach Realty Trust  
c/o Neil J. Rapoza  
Civil Consultants  
PO Box 100  
South Berwick, ME 03908

**APPEAL:**

On September 29, 2014 the Zoning Board of Appeals (ZBA) of Wells, Maine held a public hearing to hear an appeal by Crescent Beach Realty Trust for a variance from the height requirement according to Article III, Section 145-22.F.(5). The Property is located at 257 Webhannet Drive in the Residential B and Shoreland Overlay Districts and further identified as Tax Assessor's Map 119 Lot 8-1, 8-2, 8-3 & 8-4. Mr. Neil J. Rapoza of Civil Consultants of South Berwick, Maine was the representative for Crescent Beach Realty Trust, owner.

Deliberations and discussion took place following the close of the public hearing.

**FINDINGS OF FACT:**

1. The ZBA has jurisdiction over this appeal under Land Use Chapter §145-67 A. (3).  
"Variance appeals. To hear and decide, upon appeal, in specific cases such variance from the dimensional requirements of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the dimensional requirements of this chapter would result in undue hardship. A variance may be granted by the Board only where the strict application of the requirements of this chapter to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this chapter shall mean:
  - (a) That the land in question cannot yield a reasonable return (use) unless a variance is granted;
  - (b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

- (c) That the granting of a variance will not alter the essential character of the locality;  
and
- (d) That the hardship is not due to the result of action by the applicant or a prior owner.
2. §145-22. F. (5). states "Maximum building height: 30 feet, not to exceed three stories. (See §145-35. I.)"
  3. §145-35. I. states "No floor of a building higher than 30 feet above the average finished grade shall be designed as habitable space. The maximum building height may be increased by the amount required to comply with Chapter 115, Floodplain Management, §115-6, Development standards, but not to exceed five additional feet provided the building shall not exceed three stories, be covered with a pitched, shingled roof, and be constructed on a foundation used for parking or storage only and not living space.
  4. The building located at 257 Webhannet Drive is a three-story timber framed structure built in the mid-1900's with typical construction methods of the time. The roof is a pitched, shingled roof; the uppermost section is used as attic storage space. The foundation is comprised of loose stone walls supporting 2 x 6 joists and 6 x 6 beams. In recent years, the foundation walls have shown signs of significant deterioration. The proposed renovations to replace the deteriorating foundation with a new foundation that meets DEP requirements and is raised to bring the first floor 1 foot above the flood elevation will involve moving the building approximately 9 feet to the rear of its present location on the lot.
  5. The current height of the building is 34.5 feet above average grade. In order to bring the building into compliance with the flood standards, the building will need to be raised by 1.2 feet; the new height will be 35.7 feet.
  6. Civil Consultants' sketch SK1, Project #14-226.00 dated 9/16/14 Project Scope Note 1 states that the building height will increase to 37.2' which is incorrect in accordance with testimony tonight. The existing height should be 34.5' raised to 35.7'. This is 0.7' above the maximum building height.
  7. The building as it exists today is suffering significant structural deterioration with respect to both the foundation and first floor framing and is in a condition that would not allow for sale or rental of the property until the work requiring the variance is

completed. In order to have any return or use of the property, it is necessary to obtain the variance.

8. The need for the variance is due to a failing foundation and frame and is unique to this house and property. The original construction of this specific structure is not associated with any other buildings in the neighborhood.

9. The proposed work will not involve any expansion or modification to the structure beyond relocating the building and rebuilding existing decks. For this reason, it will not alter the character of the locality.

10. The hardship is the result of construction of the building approximately 100 years ago. The actions required to remedy the shortcomings of the aging structure and bring the building into compliance with the flood zone ordinance requirements are not a result of the current or prior owners.

#### **DISCUSSION:**

This old building was built in a location where it became nonconforming with the establishment of requirements in Land Use Chapter §145. The front of the building is within the street right-of-way. The old stone foundation has eroded to the extent that the building's habitability is in question. Efforts to replace the deteriorating foundation include moving the building on the lot. Moving the building to the rear by approximately 9 feet and placing it on support beams in compliance with DEP requirements will raise the building 1.2 feet above the current height of 34.5 feet. The new height is 0.7 feet in excess of the maximum height authorized in §145-35. I. The building cannot be safely inhabited as is.

#### **CONCLUSION:**

The Zoning Board of Appeals concluded that the strict application of the requirements of this chapter to the petitioner and his property is not warranted; therefore, all four criteria for approval of a variance have been met.

#### **DECISION:**

Based on the Findings of Fact and the Conclusions, the Wells Zoning Board of Appeals determined on September 29, 2014

- (a) decided by a vote of 4 to 0, that the land in question *CANNOT* yield a reasonable return (use);

- (b) decided by a vote of 4 to 0, that the need for a variance *IS* due to the unique circumstances of the property;
- (c) decided by a vote of 4 to 0, that the granting of a variance *WILL NOT ALTER* the essential character of the locality;
- (d) decided by a vote of 4 to 0, that the hardship *IS NOT* the result of action taken by the applicant or a prior owner;

Based on the Findings of Fact and the Conclusions, the Wells Zoning Board of Appeals decided on September 29, 2014 by a vote of 4 to 0 to *GRANT* your request for a variance subject to revising Civil Consultants' drawing SK1 dated 9/16/14 for Project 14-226.00 to note the current building height and proposed building height as presented at the public hearing.

Sincerely,



Wilber L. Gosbee

10/1/2014  
Date

Chairman Zoning Board of Appeals

