

APPROVED

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

P. O. Box 398, Wells, Maine 04090

Website: www@wellstown.org

April 13, 2015

Mr. Philip Giorgetti, 952 Post Rd. LLC.
952 Post Rd. Box 4
Wells, Maine 04090

APPEAL:

On April 13, 2015, the Zoning Board of Appeals of Wells, Maine held a public hearing on a Variance Appeal in accordance with Land Use Chapter §145-48 A.(1) & (3). The Appellant is seeking a variance from the requirements of the Land Use Ordinance to change the use from a commercial office unit to a residential unit. The property is located in the General Business District and is further identified as Tax Assessor's Map 120 Lot 012 / 1 / 7.

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

FINDINGS OF FACT:

1. The record owner of the subject properties is Ciampa Leasing Company.
2. The property is known as 952 Post Road Building 1 Unit 7 Wells, Maine and is further identified as Tax Assessor's Map 120 Lot 012 / 1 / 7.
3. Ciampa Leasing Company acquired ownership of the property on September 16, 1985.
4. The Appellant filed a Variance Appeal on March 25, 2015.
5. Chapter §145-67A. (3) outlines the criteria that must be met in order for a Variance Appeal to be granted.

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 reasonable return (use) unless a variance is granted;*

- b) *That the need for a variance is due to the unique circumstance of the property and not the general conditions in the neighborhood;*
 - c) *That the granting of the variance will not alter the essential character of the neighborhood; and*
 - d) *That the hardship is not the result of action taken by the applicant or a prior owner.*
6. The subject lot is located in General Business District. §145-26 B (5) indicates Multi Family Use is allowed in GB District.
 7. There are two residential units in the lot, which previously converted from a commercial use to a residential use. Having more than three residential units in a single lot qualifies as a multifamily development and subject to follow a performance standard noted in §145-48.
 8. The subject building is located in 1.97 acre lot. Based on §145-26 F Dimensional Requirements (1), the subject lot can support a maximum of 4 residential units.
 9. Land Use Chapter §145-48 A (1) states *“A landscaped buffer at least 25 feet in width along all lot boundaries shall be required. The buffer strip shall not contain parking areas or structures, but may contain a perpendicular access driveway(s) or road(s) to connect with existing streets.”*
 10. The site plan indicated the fence along the boundaries, located approximately 11 feet away from the subject building.
 11. Land Use Chapter §145-48 A (3) states *“Buildings shall be separated by at least 30 feet.”*
 12. The site plan indicated Building Number 1 and Building Number 2 are separated by 11 feet and 6 inches. Building number 1 and 2 are vinyl sided.
 13. The vacancy rate has been 90 percent since the appellant acquired the unit in 1985. Unit 7 has been vacant for nearly 10 years. Cost of renovation to meet current ADA standards is high and prohibitive to yield reasonable return. The estimated cost to install an elevator tower is \$250,000 to \$300,000. Current ADA regulation took place in 1991, after the appellant purchased the units.
 14. Change in use from a commercial to a residential use does not require structural alteration. Change of use will not alter essential character of the locality.
 15. The need for a variance is due to the fact that the property was developed 30 years ago and the intended use for the second floor is not viable for today’s regulations and market condition.
 16. The hardship is not due to the present and previous owners who had no control over its boundary lines and separation of buildings. The property was developed accordance with the regulation and the ordinance at the time of development.

DISCUSSION:

The members of the Board discussed each element of “undue hardship” test.

- a) The subject property has been used by the owner since 1985. The current tax assessed value of the property is \$50,530. Considering the occupancy rate of 10% and cost to renovate to meet current ADA standard is more than current tax assessed value, the members of the Board determined that the owner would not be able to yield a reasonable return by continuing to utilize the property as a commercial unit or by sale of the property.
- b) That the need for a variance is due to the unique circumstance of the property and not the general conditions in the neighborhood. The development was created 30 years ago and the current use as a commercial unit is not viable for current regulation and market conditions without costly alteration.
- c) The members agreed that the subject property would not alter the essential character of the neighborhood, which consists of development in accordance with the requirements of the General Business District.
- d) The hardship was the result of the fact that the property was developed 30 years ago. The building was in compliance with the code at the time of development. The members agreed that the hardship was not the result of actions taken by the appellant or a prior owner.

The members of the Board discussed conditions for approval per §145-68.

- a) Due to the fact that the buildings are located 11'-6" apart, the Board requested replacement of exterior siding material from the vinyl to a fire retardant material equal or similar to the Hardiplank board.
- b) The mixed use occupancy requires fire separations between different use occupancies. The Board requested residential unit 7 to be equipped with a sprinkler system as a method of fire suppression.
- c) Unit 7 is to maintain two means of egress.
- d) The site plan is to be amended to indicate the residential unit on the property.

CONCLUSIONS:

In order for the Board to find that an "undue hardship" exists, Chapter §145-67 A. (3) of the Land Use Ordinance requires that *all four* of the hardship criteria be met. The members of the Board believe that the hardship criteria described under §145-67 A. (3) (a) was met and that the request for a Variance Appeal should therefore be granted with four conditions.

DECISION:

Based on the above Findings of Fact and Conclusions, on April 13, 2015, the Wells Zoning Board of Appeals

- a) decided by a vote of 5 to 0, that the land in question cannot yield reasonable return (use) unless a variance is granted.

- b) decided by a vote of 5 to 0, that the need for a variance *is* due to the unique circumstance of the property and not the general conditions in the neighborhood;
- c) decided by a vote of 5 to 0, that granting of the variance would not alter the essential character of the neighborhood.
- d) decided by a vote of 5 to 0, that the hardship was not the result of the action taken by the applicant or a prior owner.

Based on the above Findings of Fact and Conclusions, on April 13, 2015, the Wells Zoning Board of Appeals voted on four conditions for the variance approval. The Board

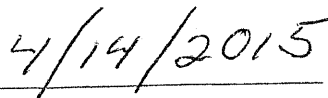
- e) decided by a vote of 5 to 0, that where buildings 1 and 2 are within less than 30' from each other, the exterior vinyl siding is to be replaced with a fire retardant material.
- f) decided by a vote of 5 to 0, that a fire sprinkler system is to be installed in Unit 7.
- g) decided by a vote of 5 to 0, that Unit 7 is to maintain two means of egress.
- h) decided by a vote of 5 to 0, that the site plan be amended indicating the location of the residential unit.

Therefore, based on the above Findings of Fact and Conclusions, on April 13, 2015, the Wells Zoning Board of Appeals decided, by a vote of 5 to 0, to grant your request for a Variance Appeal subject to the above conditions as authorized in Chapter 145-67A.(3) of the Wells Land Use Ordinance.

Sincerely,



Wilber L. Gosbee
Chairman Zoning Board of Appeals



Date