

TOWN OF WELLS, MAINE
ZONING BOARD OF APPEALS
P. O. Box 398, Wells, Maine 04090
Website: www@wellstown.org

APPROVED

June 22, 2015

Brenda A. Piecuch
49 Drakes Island Rd.
Wells, Maine 04090

APPEAL:

On May 11, 2015, the Zoning Board of Appeals of Wells, Maine held a public hearing on a Variance Appeal in accordance with Land Use Chapter §145-67 A. (3). The Appellant is seeking a variance from the setback requirements of the Land Use Ordinance in order to replace the existing mobile home with a new modular home of different dimensions. The property is located in the RA District. The property is further identified as Tax Assessor's Map 111 Lot 21.

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

FINDINGS OF FACT:

1. The record owner of the subject property is Brenda A. Piecuch.
2. The property is known as 95 Elmere Rd. Wells, Maine and is further identified as Tax Assessor's Map 111 Lot 21.
3. Brenda A. Piecuch acquired ownership of the property on the date of June 20, 1995.
4. The Appellant filed a Variance Appeal on April 27, 2015.
5. Chapter §145-67 A. (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 setback requirements for zoning district RA are
Chapter §145-21 F. (7) [1] Fifteen Feet from any lot line
Chapter §145-21 F. (7) [3] Twenty-five feet from any lot line abutting any street right of way.
7. The lot abuts 2 street right of ways. 50.01 feet on Elmere Road and 201.66 feet on Grenier Lane.

DISCUSSION:

The District RA setback requirements when applied to this lot would allow for a building area of 10 feet by 170 feet.

The members discussed setback requirements based on Chapter §145-35 O, concerning "Lots abutting multiple street rights of way". It was agreed that the Elmere Road set back would require 15 feet and the Grenier Lane side would require a 25 foot setback.

The members discussed if this should be an appeal based on non conformity. It was decided no, as variances for changes in non conformity apply to relocation of buildings not replacement and that is not what was applied for.

Conditions of a variance were discussed, which would require the minimum set back requirement of 15 feet from the abutting lots, Tax Assessor's Map 111 Lot 20 and Tax Assessor's Map 111 Lot 22. This would require the removal and not replacing an existing approximate 10 foot by 10 foot shed currently in the setback. The placement of the new structure would not make any appreciable increase in the amount of non-conforming area when compared to the existing structure and shed.

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

- a) The members of the Board determined that the owner would not be able to yield a reasonable return (use) of the property without a variance.
- b) That the need for a variance is due to the unique circumstance of the property, which is a corner lot. The hardship is the result of setback requirements along two lot lines that abut two street right of ways and not the general conditions in the neighborhood.
- 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 RA District.
- d) The members agreed that the hardship was not the result of actions taken by the applicant or a prior owner.

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) was met and that the request for a Variance Appeal should therefore be granted.

DECISION:

Based on the above Findings of Fact and Conclusions, on June 22, 2015, the Wells Zoning Board of Appeals decided, by a vote of 5 to 0, that denial of the variance would result in a situation where the land in question cannot yield a reasonable return (use).

Based on the above Findings of Fact and Conclusions, on June 22, 2015, the Wells Zoning Board of Appeals 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;

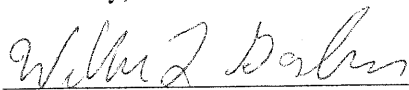
Based on the above Findings of Fact and Conclusions, on June 22, 2015, the Wells Zoning Board of Appeals decided, by a vote of 5 to 0, that granting of the variance would not alter the essential character of the neighborhood.

Based on the above Findings of Fact and Conclusions, on date June 22, 2015, the Wells Zoning Board of Appeals 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.

Therefore, based on the above Findings of Fact and Conclusions, on date June 22, 2015, the Wells Zoning Board of Appeals decided, by a vote of 5 to 0, to grant your request for a Variance Appeal as authorized in Chapter 145-67A.(3) of the Wells Land Use Ordinance subject to the following conditions.

1. Maintaining the minimum set back requirement of 15 feet from the abutting lots, Tax Assessor's Map 111 Lot 20 and Tax Assessor's Map 111 Lot 22.
2. Removal and not replacing an existing approximate 10 foot by 10 foot shed currently in the setback.
3. The placement of the new structure would not result in any appreciable increase in the amount of non-conforming area when compared to the existing structure and shed.

Sincerely,



Wilber L. Gosbee

Chairman Zoning Board of Appeals

Date

