

**TOWN OF WELLS, MAINE**  
**ZONING BOARD OF APPEALS**  
P. O. Box 398, Wells, Maine 04090  
Website: [www@wellstown.org](http://www@wellstown.org)

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September 21, 2015

Kristen & Vikram Mansharamani  
23 Douglas Rd.  
Lexington, MA 02420

**APPEAL:**

On August 24, 2015, the Zoning Board of Appeals of Wells, Maine opened a public hearing on a Variance Appeal in accordance with Land Use Chapter §145-67 A. (3). The Appellant is seeking a variance in order to reconfigure lot boundaries for two lots via an equal area land swap to restore reasonable use to one of the two lots. The property is located in the RA District. The property is further identified as Tax Assessor's Map 105 Lot 65. The public hearing was continued to September 21, 2015 in order to seek a legal opinion on jurisdiction.

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

**FINDINGS OF FACT:**

1. The record owner of the subject property is Kristen & Vikram Mansharamani.
2. The property is known as 11 Cable St. Wells, Maine and is further identified as Tax Assessor's Map 105 Lot 65.
3. The subject property is comprised of two (2) separately deeded lots, which are further identified as Lots 23 and 24 in the Bourne Pines Subdivision Plan, as recorded in the York County Registry of Deeds on December 13, 1950, Book 22 Page 77.
4. The Bourne Pines Subdivision was established prior to the adoption of the Wells Land Use Ordinance and features lots that are smaller than the minimum permitted under the Ordinance.
5. Kristen & Vikram Mansharamani acquired ownership of the property on December 23, 2003.
6. The Appellant filed a Variance Appeal on July 22, 2015 requesting reconfiguration of the lot boundaries between Lots 23 and 24 through an equal area land swap. The purpose of the land swap would be to create a second buildable lot to facilitate the construction of a second residence without having to move the existing residence.
7. 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.*
8. The house and garage were built straddling both Lot 23 and Lot 24, so both Lot 23 and Lot 24 are occupied and being used as a residence.
  9. Town counsel determined that the ZBA does have jurisdiction to hear this appeal since the development plan which created Lots 23 and 24, as well as the surrounding neighborhood, was established in the 1950's, before the Town Of Wells Planning Board was established.

#### **DISCUSSION:**

The members of the Board discussed the nature of the appeal and the remedy requested by the appellants. The members of the Board agreed that the purpose of §145-67 A. (3) was to hear and grant or deny *variances from the dimensional requirements* of the Land Use Ordinance [italics added]. With this appeal, the appellants are requesting an equal area land swap between two separately deeded lots of an existing Subdivision Plan in order to create a second buildable lot. The members believe the Board's authority is limited to the ability to grant or deny variances from the dimensional requirements of the Ordinance (minimum lot sizes, setbacks from lot lines, etc.).

A prior owner built the house and garage straddling the 2 adjoining lots, effectively using Lots 23 and 24 as one lot. This situation created the need for the variance.

The neighborhood is comprised of lots approximately the same size as lots 23 and 24.

#### **CONCLUSIONS:**

The members of the Board find that the Board does have jurisdiction to hear this appeal.

The land in question, Lots 23 and 24, are in use as a residence, so is currently yielding a reasonable return.

The need for the variance is due to the unique circumstance of the house and garage being situated on 2 adjacent lots.

Granting the variance would not appreciably alter the general conditions of the neighborhood. The house and garage were built straddling Lots 23 and 24, so the hardship is the result of action taken by a prior owner.

**DECISION:**

Based on the above Findings of Fact and Conclusions, on September 21, 2015 the Wells Zoning Board of Appeals decided, by a vote of 5 to 0, that it does have jurisdiction to hear this appeal.

Based on the above Findings of Facts and Conclusions, on September 21, 2015, the Wells Zoning Board of Appeals decided; by a vote of 5 to 0 that denial of the variance would not result in a situation where the land in question cannot yield a reasonable return.

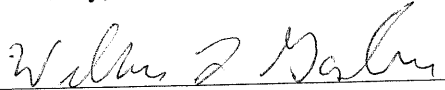
Based on the above Findings of Facts and Conclusions, on September 21, 2015, the Wells Zoning Board of Appeals decided; by a vote of 5 to 0 that the need for the variance was due to the unique circumstances of the property and not to the general conditions in the neighborhood.

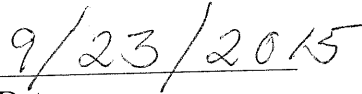
Based on the above Findings of Facts and Conclusions, on September 21, 2015, the Wells Zoning Board of Appeals decided; by a vote of 5 to 0 that the granting of a variance will not alter the essential character of the locality.

Based on the above Findings of Facts and Conclusions, on September 21, 2015, the Wells Zoning Board of Appeals decided; by a vote of 5 to 0 that the hardship was the result of action taken by the applicant or a prior owner.

Therefore, based on the above Findings of Facts and Conclusions, on September 21, 2015, the Wells Zoning Board of Appeals decided; by a vote of 5 to 0 to **DENY** your request for a Variance Appeal to reconfigure the lot lines at 11 Cable Street between Lots 23 and 24.

Sincerely,

  
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Wilber L. Gosbee  
Chairman Zoning Board of Appeals

  
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Date