

**APPROVED**

**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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November 23, 2015

Pensco Trust Co.  
FBO Mark S. Hourihane -IRA  
P.O. Box 173859  
Denver Colorado 80217

**APPEAL:**

On November 9, 2015, the Zoning Board of Appeals (ZBA) of Wells, Maine held a public hearing on a Variance Appeal in accordance with Land Use Ordinance Article §145-67. A. (3). The Appellant Mark Hourihane is seeking a variance from the requirements of the Land Use Ordinance to construct an exterior deck onto a nonconforming property. The property is located in the General Business District and is identified as Tax Assessor's Map 123 Lot 81-15.

Deliberations and discussion took place following the close of the public hearing on November 9, 2015.

**FINDINGS OF FACT:**

1. The ZBA has jurisdiction under Article IX § 145-67.A. (3). No members of the board have conflicts of interest in this case.
2. The record owner of the subject property is Mark Hourihane, who acquired ownership of the property on August 28, 2014.
3. The property is known as Ocean Haven Condo #15, 1085 Post Road, Wells, Maine and is further identified as Tax Assessor's Map 123 Lot 81-15.
4. The entire proposed external deck would contribute to increasing the extent of nonconformity.
5. The Appellant filed a Variance Appeal on October 9, 2015.
6. 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.*

**DISCUSSION:**

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

- a) The subject property has been used prior to 1981. The current owner has used the property since 2014. The members of the Board determined that the owner would be able to yield a reasonable return by continuing to utilize the property as a residence or by sale of the property.
- b) The need for a variance is due to the unique circumstance of this property being one of the few condos in the neighborhood without an external deck. Most of the condos have an external deck.
- c) The members agreed that adding the proposed deck would not alter the essential character of the neighborhood.
- d) The hardship was not the result of action taken by the owner 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 criterion described under §145-67 A. (3) (a) was *not* met and that the request for a Variance Appeal should therefore be denied.

**DECISION:**

Based on the above Findings of Fact and Conclusions, on November 23, 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 Fact and Conclusions, on November 23, 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 November 23, 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.

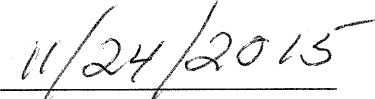
Based on the above Findings of Fact and Conclusions, on November 23, 2015, the Wells Zoning Board of Appeals decided, by a vote of 5 to 0, that the hardship was not the result of the action taken by the applicant or a prior owner.

Therefore, based on the above Findings of Fact and Conclusions, on November 23, 2015, the Wells Zoning Board of Appeals decided, by a vote of 5 to 0, to *deny* your request for a Variance Appeal as authorized in Chapter 145-67A.(3) of the Wells Land Use Ordinance.

Sincerely,



Wilber L. Gosbee  
Chairman Zoning Board of Appeals



Date