

DRAFT

APPEALS BOARD MEETING
Newcastle, Maine
February 15, 2013

Members Present

Louis Rector, Chairperson
Kensell Krah
Richard Simon
Stephanie Stephenson

Members Absent

Glenn Paye

This Appeals Board meeting is a continuation of the February 1, 2013 meeting.

The meeting of the Appeals Board was called to order by Chairperson Rector at 5:02 PM at the Newcastle Town Office. **A motion was made by Stephanie Stephenson, seconded by Kensell Krah and unanimously approved to approve (4 yes – 0 no) the minutes of February 1, 2013, with no changes.** Town Attorney Peter Drum addressed the members regarding an after the fact variance. He said Juliana, Inc. cannot be granted a retroactive variance by the Appeals Board. Town Attorney Drum said the State of Maryland allows such but there is no Maine precedence. He also said there is no language in the Newcastle ordinance or Maine case law regarding a retroactive variance. He said the Appeals Board has to grant a variance as of today and not as of years ago.

At 5:18 PM a motion was made by Stephanie Stephenson, seconded by Kensell Krah and unanimously approved (4 yes - 0 no) to go into executive session to get advice from the town attorney. Members came out of executive session at 5:56 PM.

Chairperson Louis Rector asked Attorney Richard Salewski for Julian, Inc. if he wished to present any additional information to the Appeals Board. Attorney Salewski said a retroactive variance has been allowed in the states of Illinois, Maryland, Alaska and Florida. Attorney Salewski said three of the four were upheld. He said his argument is that a retroactive variance is allowed in some of the states. Attorney Salewski said the State of Maine and the Town of Newcastle are silent on the issue so the Appeals Board can make the variance retroactive.

Attorney Salewski and President Paul Sidelinger of Juliana, Inc. handed out to members the current floor plan of the apartment complex labeled 2/15/13/A.

Richard Simon read a prepared statement labeled 2/15/13/B. Attorney Salewski said after the fact variances are plentiful and Town Attorney Drum concurred. Richard Simon said he was referring in his prepared statement to retroactive variances.

Chairperson Rector asked Paul Sidelinger and Debra Sidelinger if they wished to say anything. Both said no.

A motion was made by Stephanie Stephenson and seconded by Kensell Krah for the Appeals Board to consider it as a retroactive variance. Opposed 4. For 0.

Stephanie Stephenson stated "Does the merits of the application meet the criteria of variance of undue hardship?" **A motion was made by Stephanie Stephenson and seconded by Louis Rector that the land and or building cannot yield a reasonable return unless a variance is granted.** Attorney Salewski said yes. Full occupancy is needed for a reasonable return. Paul Sidelinger said they are not breaking even. Stephanie Stephenson said the Appeals Board is concerned with the property and not Paul Sidelinger's personal property. Paul Sidelinger said they are one in the same. **Opposed – 4, For 0.**

A motion was made by Stephanie Stephenson and seconded by Louis Rector that the need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood. For – 4, Opposed 0.

A motion was made by Stephanie Stephenson and seconded by Louis Rector that it will not alter the general character of the locality. For 4, Opposed 0

A motion was made by Stephanie Stephenson and seconded by Kensell Krah that the hardship is not the result of action taken by the applicant or a prior owner. Members discussed the amount of units and taxes. Debra Sidelinger said all plumbing permit are present in town records but past tax cards by the town have been lost prior to computerization. Paul Sidelinger said there is a 2007 mystery building permit which has a question mark behind it. Town Attorney Drum said he is unsure what that permit is for. Stephanie Stevenson said there is a need for low income housing in Newcastle. Debra Sidelinger said 12 plumbing permits were issued by the Town of Newcastle without building permits examined. Town Attorney Drum said he will not provide rebuttal on those comments. **For 2 (Kensell Krah and Richard Simon), Opposed 2 (Louis Rector and Stephanie Stephenson).** All members requested a call for a second vote due to a need for clarification of the motion. Discussion by members and Town Attorney Drum ensued. **For 1 (Kensell Krah), Opposed 2 (Louis Rector and Stephanie Stephenson), Abstained (Richard Simon)**

Town Attorney said the Appeals Board has denied the variance.

Chairman Rector asked if there was any other discussion. No one replied.

At 6:45 PM a motion was made by Stephanie Stephenson, seconded by Kensell Krah and unanimously approved (4-0) to adjourn the meeting of the Appeals Board.

Dr. Edmée Déjean, Recording Secretary