

FINAL**APPEALS BOARD MEETING****Newcastle, Maine****February 1, 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 January 17, 2013 meeting.

The meeting of the Appeals Board was called to order by Chairperson Rector at 5:01 PM at the Newcastle Town Office. Richard Salewski, attorney for Juloania, Inc. submitted two affidavits. One was from Debra Sidelinger dated February 1, 2013 and notarized and the other from Paul Sidelinger, undated and not notarized. Attorney Salewski also submitted a packet of information regarding the apartment complex labeled 2/1/13/A.

Attorney Salewski said key points are set forth in the affidavits themselves and the number of variances they are requesting does not change. He said his arguments will be oral.

President of Juloania, Inc., Paul Sidelinger read a statement from him and his wife, Debra Sidelinger. He said clearly they were not the only ones at fault in this situation. He said town record keeping is also at fault and the Code Enforcement Officer (CEO) should have made sure there were building permits to go along with the plumbing permits issued by the town. Mr. Sidelinger said if only six permits were allowed, why did the CEO not address this issue? The property assessments went up almost 75% in 2005 showing improvements to the property but tax card cannot be found for it has been lost by the town. Many of the town officials are aware of such. The former town CEO visited the apartment building many times and town has issued a rent check for a tenant. From 1999 to 2008 Lincoln Academy rented apartment space in the building and had necessary inspections performed. Mr. Sidelinger said he has owned the building since 1996 and was allowed by the town to create apartments and commercial space. The town had a drawing of such. He has replaced the hand rails, fire alarms and carbon monoxide detectors in all apartments. The State Fire Marshall inspected the apartments and commercial units voluntarily and not through a complaint. Mr. Sidelinger said an error was discovered from a routine inspection by a bank appraiser. They were in need of refinancing their loan and explained to the Board of Appeals the finance of the building. He said they need to have all units rented to sustain the building financially. Mr. Sidelinger said no one was sneaky and he does not think the town wants to shut the apartments and commercial units down. He has paid taxes to town for 16 years. The sprinkler alarm system will be installed when they have monies, which will be a loan from the bank, but the bank will not finance/refinance their loan till they get a variance from the Town of Newcastle.

Chairperson Rector asked if there were people in the audience who wished to make a comment(s). Leanna Libby of Great Salt Bay Sanitary District said Paul Sidelinger called her about impact fees. He told her he would have come in and had the impact fees financed.

Attorney Salewski said, on behalf of Juloania, Inc and Debra and Paul Sidelinger, he wants the Appeals Board to see the path to vote yes on the variance. He does not disagree with Town Attorney Peter Drum's legal standard as set forth in the Land Use Ordinance in a letter to appeals board between 1st and 2nd meeting. Strict application would create undue hardship to his client. The general condition of the neighborhood is an industrial building next door, a boat yard in the back and Lincoln Academy classrooms next door. Attorney Salewski said the variance will not alter the condition of the neighborhood and fits in with the neighborhood. Attorney Drum conceded this to be true. Attorney Drum said if you have a dwelling house for 6 and need variance for 13 does it change the neighborhood? Attorney Salewski said it will not alter the character. Attorney Drum said he agreed.

Attorney Salewski said without the variance, an undue hardship will be placed on his clients. They cannot yield an undue return. He asked the Appeals Board to refer to the affidavits submitted today. The loan payment and building rent/tax payment are just about even. The building does not generate enough revenue so that is why the Sidelingers wants to refinance the building, which also includes the house in the back of the apartment building. Attorney Salewski said a reduction of apartments would make it economically impossible.

Richard Simon said the Appeals Board has to look at this from beginning of time and not look at present day finances. Attorney Salewski said the Appeals Board can look at where the Sidelingers are today.

Attorney Salewski said the town has a major role in this problem. Richard Simon said the Appeals Board cannot take guilt for the town. They cannot make judgment regarding the town's actions. Stephanie Stephenson agreed. Attorney Salewski said he is arguing otherwise.

Attorney Salewski said the hardship is not a result of action taken by the owner. Juloania, Inc. is a corporation owned by Sidelingers. He said the Appeals Board needs to look at the town's complicity and the bank's negligence in continuing to loan money to the Sidelingers. Each time Juloania, Inc. added a unit they acquired a plumbing permit. The town tax records and the property data assessment records show plumbing permits for 12 plus 1 unit. One unit has no bathroom. The hair salon unit has no bathroom but hair salon has permit for such that the owner of the hair salon acquired from the town. Attorney Salewski said 99-507 is a mystery permit. Code Enforcement Officer Stan Waltz said 07 is the year the permit was issued. Attorney Salewski said he is arguing that this was a joint effort of town, bank and Sidelinger.

Town Attorney Drum said in 1999 when Lincoln Academy moved into the building, occupying some space, there should have been a change of use and when they left there should have been another change of use. Paul Sidelinger said when Lincoln Academy left the only revision to the building space they occupied was the removal of a sink because, since he paid the water, he did not want two sinks in a unit. Paul Sidelinger said before Lincoln Academy rented a unit it was an apartment and after they left the unit was an apartment.

Attorney Salewski said in April, 2011 CEO Waltz signed a plumbing permit for the hair salon. Kensell Krah said if one changes just one item in a unit, a plumbing permit is needed. CEO Waltz said on the plumbing application it will state whether it is new plumbing or relocation plumbing project.

Attorney Drum said Julioania, Inc. is missing building, subdivision and growth permits. Attorney Salewski said his client had no intention of skirting the law. Paul Sidelinger said the previous CEO went into apartments 30 to 50 times.

Attorney Salewski said if the Appeals Board allows a variance then their next step is to go to the Planning Board for permits. If there is a no vote then they will go to the Town Board of Selectmen. Attorney Salewski said when the town reaches a point of complicity and then tries to say no this is equitable estoppels. Town Attorney Drum explained when equitable estoppel applies.

At 6:15 PM an outburst from a female audience member occurred. Town Attorney Drum informed her that if she was not silent then the Lincoln County Sheriff's Department would be called and asked to remove her from the meeting.

Town Attorney Drum said the Appeals Board has discretion to grant or not grant the variance and their decision is appealable. Attorney Salewski said that he has concluded his arguments.

Town Attorney Drum asked what was owed on the property/building. Attorney Salewski said the principal owed on the property is \$355,000 but the present bank holding the loan is willing to take \$315,000 if the payoff is early. The total loan is \$355,000. His client has an incentive to refinance the loan with another bank and payoff the existing loan. The monthly mortgage payment is \$4,025 a month. It is a commercial loan with a term of 4 years dating back to Sept, 2011. Damariscotta Bank and Trust is willing to refinance the loan for 20 years plus pay all back taxes and the cost of a sprinkler alarm system.

Paul Sidelinger said the plow truck used on the property is owned by Julioania, Inc and is also used to plow his personal driveway. He said he has legal fees that only apply to Julioania, Inc. When Chapter 11 was filed, it was only for Julioania, Inc.

Town Attorney Drum asked what was the purpose of the letter dated March 1, 2010 that was included in the packet (labeled 2/1/13/A) given to the Appeals Board. Paul Sidelinger said it was in the file so he included it.

Paul Sidelinger said the plans/drawing was given to the town and the town gave them their blessing. He said the bank lent them money in phases. He said they were to "do" 6 apartments then as they correctly managed such the bank would loan them additional funds. He said Jim Murphy gave him the plans he has submitted to the Appeals Board which were drawn up by Mr. Parker. Paul Sidelinger said the Planning Board approved 6 apartments. Today there are 13 apartments and 2 commercial units for a total of 15 units. There were 5 existing commercial units when they bought the building. Town Attorney Drum said their application to the Planning Board was to modify the building to 6 residential units and that is what was granted by the Planning Board. Paul Sidelinger said he added 6 residential units and modified some existing commercial units to residential use. Paul Sidelinger said he did not get a change of use permit when Lincoln Academy occupied a unit and when it was converted back to a residential unit because it was always a residential unit. Paul Sidelinger said the CEO at the time visited the site and said there was no infrastructure change and there was no mention of a change of use permit.

Paul Sidelinger said all units have always had smoke detectors, contrary to what has been printed in the local newspaper. All units are currently occupied.

Town Attorney Drum asked representatives of Juloanai, Inc. regarding complicity if they believe a town official knew and did not enforce the Land Use Ordinance. Attorney Salewski said the town issued plumbing permits while watching changes to the building occur. Attorney Salewski said complicity runs into negligence arguments so he is making both arguments.

Town Attorney Drum said he has completed his questions at this time as did Attorney Salewski.

A motion was made by Richard Simon, seconded by Kensell Krah and unanimously approved (4-0) to go into executive session at 6:40 PM.

A motion was made by Louis Rector Simon, seconded by Kensell Krah and unanimously approved (4-0) to go come out of executive session at 7:15 PM.

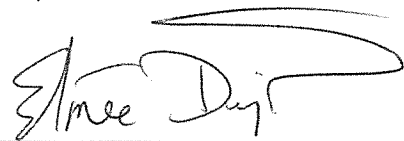
A motion was made by Louis Rector, seconded by Kensell Krah and unanimously approved (4-0) to approve the minutes of January 17, 2011 with no amendments.

Town Attorney Drum asked Attorney Salewski if they wish a retroactive variance or variance today. Attorney Salewski said he was not expecting that question. Attorney Salewski said a retroactive variance is preferred. Town Attorney Drum said there is no legal precedence that he is aware of that the Appeals Board can or cannot issue a retroactive variance. Attorney Salewski said the Appeals Board has discretion. Town Attorney Drum said Attorney Salewski may want to look at case law in state and out of state.

Paul Sidelinger said the 1999 building perimeter is the same but the plans are different. He said he added doors instead of a sprinkler system. He said there are currently 8 units on the 1st floor of which 2 are commercial and 7 units on the 2nd floor.

The Appeals Board requested from Town Attorney Drum a formal analysis. Town Attorney Drum said he would look at retroactive and test of standards.

At 7:45 PM a motion was made by Stephanie Stephenson, seconded by Kensell Krah and unanimously approved (4-0) to continue the meeting of the Appeals Board on February 15, 2013 at 5:00 PM at the Newcastle Town Office.



Dr. Edmée Déjean, Recording Secretary