

Zoning Board of Appeals Minutes – April 30, 2007-Page 1 of 6

Present: Chairman Murphy, Vice-Chairman DeLeo, Mr. Weyenberg, Mr. Evans, Ms. Higgins Staff: Ken Shupe, Code Enforcement Officer and Caroline Segalla, ZBA Clerk.	
Call to Order – Mr. Murphy	7:10 p.m.
ITEM 1: Variance: PRC Real Estate LLC, 51 Wesley Avenue, Map#311, Block#10, Lot#7, in the R-2 Zone, requests a relief from Section 78-145 in order to sell an existing non-conforming lot with a non-residential principal structure. Paul Callahan is the owner and agent.	ITEM #1
<p>Mr. Callahan, owner and agent would like to sell the 2-car garage at 51 Wesley Avenue to Mike Vallente.</p> <p>Mr. Murphy explained variance procedure adding that criteria for a variance is difficult; All four justifications must be answered and affirmed by the Board Members otherwise the item cannot be approved; Asked applicant to provide a background of the issue including what has taken place.</p> <p>Mr. Callahan provided an overview of the situation that led up to this request by reiterating the letter he submitted to the Board with his application (see Exhibit A);Garage was to store his old cars since he cannot do this at his Portland residence; La Course did tell him there were two separate deeds; Private capital required LLC status in order for him to get a loan at a lower rate; In June 2006, he recorded two deeds under PRC Real Estate and commenced construction; Rehab took six months since contractor dragged out and short cut project. The private construction loan was due payable 12/2006 and only option to pay it off was to get a regular mortgage with his name on it through OH Savings Bank; He was able to obtain a rental license for the unit through the Town; An \$1,000 engineering study was done on the house; In August, he sold the house to a first-time home buyer for \$133,500 but the final sale price was \$129,000 after commission; He decided to sell the garage since he found a convenient place in S. Portland to store his old cars; He advised Keller-Williams that if the home buyers wanted the garage, the sale price would be \$25,000-\$30,000 but they declined; He only found out there was a problem when he tried to sell the garage lot to Mr. Vallente who had visited the Code Office to discuss this particular lot. He was oblivious he was violating the ordinance and is aware that nothing can ever be built on this lot; The house was vinyl sided and the renovations improved the neighborhood compared to its condition in 2004; Mr. Vallente lives two streets over and would like to purchase it due to inadequate parking in this area.</p> <p>PUBLIC HEARING OPENED AT 7:27 P.M.</p> <p>Mike Vallente, resident of 11 Oakland Avenue, lives two streets and added that the rear of garage faces his property; Visited property when it was up for sale; Realtor said house was for sale with or without the garage and it was apparent that realtor was under the impression that these lots were two separate properties; The garage is nice and roomy with storage area above; Accumulation of several items during the last twenty years has created overcrowding which he considers a hardship therefore the garage would provide relief; Neighborhood was originally a campground area so a garage would be beneficial; He wanted to make an offer to purchase the garage but the realtor could not accept his offer since Mr. Callahan wanted to give the home buyers the first opportunity to purchase; Owners bought house and declined to buy garage; He drove by the garage lot and saw a "For Sale" sign and consequently entered into a purchase and sale agreement since he did not believe there were any issues; Garage was inspected within sixty days and he then called the Code Office to confirm with Mr Shupe, CEO, if there were any prior code issues with the garage; Mr. Shupe and Mrs. Fisk (Planning Coordinator) provided plot plans of each lot and explained that the lots were initially two separate properties but when one person takes ownership of both as was the case here, those lots must merge. Since the Assessor's office was sending separate property tax cards, the Zoning office probably thought it was not a separate property; The Assessor office probably thought it was a second property because it technically is an improved lot but Zoning does not consider a garage to be improved; Despite this, he was advised he might still be able to purchase the garage lot; He asked if he should get something in writing in case this went to court; Later that same day, the CEO advised him not to purchase the property because the Town was going to pursue this issue; The following week, he spoke with Mrs. Fisk who confirmed the Town was going to pursue this; His thoughts are that the ordinance was created to improve the quality of life for town residents; Mrs. Fisk suggested he file an appeal with the Zoning Board of Appeals; He received financing for the lot which he provided in writing to Mr. Callahan; Since then, he has incurred interest as well as attorney fees and wondered if he would be compensated.</p>	PUBLIC HEARING

James Collette, resident at 6 Maplewood Avenue said that the house was under a one income first time home buyer program which is why the garage was not affordable but now it was; Their yard immediately meets the rear door; Brush was removed to accommodate their dogs; While at work, they received a call from Mr. Callahan who indicated that they had to move everything out of that area since the garage lot was sold; They never noticed the “For Sale” sign due to the narrow street; They wanted to know who the buyer was since there is only 5ft of sidewalk between their house and the garage; There was a junction that connected the structures at one time; Electricity did run under the house but the electric line was severed sometime in 2004.

Mr. Shupe said he represented the Town but before presenting his information, he asked Chairman Murphy to read an abutter’s letter into the record.

Mr. Murphy read letter into the record. (See Exhibit B)

Mr. Shupe discussed photo of the garage (see Exhibit C) showing that the old roof was attached to the house like a breezeway but it was removed by Mr. Callahan during the house remodel; Confirmed there is approximately 5’6” between the house and garage; There is an inactive conduit near garage’s entrance door and a porch that comes right to the separation line of the two lots; The Town feels that the lot was combined and joined by this structure; The lots were originally owned by two separate people, husband and wife but the court would probably say that the lot was combined by the common roof; The lots were to be combined when purchased under the PRC name; The Town’s ordinance follows State Statutes pretty closely and read Section 78-145 (See Exhibit D); Town requested legal advice from the town’s attorney who confirmed that the lots were merged when they came under the same ownership back in 2004 therefore both lots were in violation; One solution was to re-attach the house to the garage and read the attorney’s email (See Exhibit E); Registry of Deeds in Alfred is simply a recording service for people filing documents that does not confirm the legality of any recordings so attorneys and/or town officials must confirm this; Notification to the Town’s Assessor is sometimes even more delayed if the court is very busy; These items are not sent to Zoning so it can take a while to get up-to-date information which is why Zoning did not discover this issue until Mr. Vallante inquired on the lot; Property cards prior to Mr. Callahan showed notes that 311-10-7 (51 Wesley Ave.) was attached to (311-10-5) 6 Maplewood Avenue and vice versa; The merger was done through the attachment and Assessing recognized this; This will not qualify under a variance without satisfying the four hardship questions; The sale is for financial gain and this situation was created by Mr. Callahan’s own action; In 2004, Mr. Callahan conducted Illegal remodeling with no permit; An initial inspection was done on September 2nd; Previous CEOs, Jim Nagle and Bruce Savoy advised me to issue Mr. Callahan a Stop Work Order since he was demolishing without a permit; The demolition was actually jeopardizing the house’s integrity and an engineer review was done to ensure everything was replaced properly; Contractor Al Joyce was not following the engineer’s instructions so another Stop Work Order was issued; It is in the town’s opinion that this is a flagrant violation against the ordinance that cannot stand as a variance.

Mr. Deleo asked if Assessor recognized these lots as one.

Mr. Shupe replied Assessing still sends bills out based on lot numbers; Many are combinations of lots that get assessed as one.

Ms. Higgins asked if the owner of the house is now the owner of the garage even if the structures were considered one unit in the past.

Mr. Deleo asked what Mr. Callahan’s options were since he now has a piece of land with a garage on it that is against zoning regulations that he cannot sell and technically, may not even own.

Mr. Shupe said Town will not recognize it.

Mr. Deleo asked if he could sell it to Mr. Vallente or would he have to talk to Mr. Kelley who bought the house and ask that he purchase the garage; If this went any further, the Superior Court would recognize it as one property.

Mr. Evans asked if this Board could even approve this request since it’s now violating the law.

Mr. Shupe confirmed the Board has the power to grant misc. appeals and variances but was unsure if this issue would pass the hardship rule.

Ms. Higgins asked if this would be different had Mr. Callahan initially come before the Board prior to selling the house.

Mr. Shupe said a full variance would still have been necessary.

Mr. Murphy said that Mr. Shupe’s statements are his opinion; It is ultimately the Board’s decision and proceeded to discuss variance requirements with the Board.

Mr. Shupe read Section. 78-93 regarding the Board's power:

Sec. 78-93. Variance appeals.(a) Generally. The board of appeals shall have the power and duty to grant variances when strict application of this chapter to the applicant's property would cause undue hardship, as defined in section 78-1. The board of appeals may attach conditions and safeguards and may limit the variance to the minimum relief necessary to relieve the hardship.

Mr. Callahan asked if he would even be here today had he placed the garage in his wife's name and the house under his name; The garage was previously under two names and the house was only in his name so up until he purchased it, they were considered separate lots; The house and garage were connected but the wood was so rotted he had to remove it; He did receive an occupancy permit and did what was required of him by the Town in order to receive a rental license and added that Mr. Shupe did observe this property over a six month period; Hoped the Board would take this into consideration and realize that the intent was not to deceive the Town; The house is a two bedroom house that has improved the neighborhood; He understood Mr. Knapp's concern and he and Mr. Vallente understand that nothing can ever be built on this property and that whatever is there must remain; He did give the home buyer the opportunity to purchase the garage so that fact was not hidden, but unfortunately, loan amounts under first-time home buyer programs are limited which is why they declined the offer; Rehab costs to the house were \$133,000 so this was not a wind-fall financial real estate gain; He did ask the new buyers to clean up the dog mess next to the garage but debris is still present today; This was a tough learning experience and unfortunately, the contractor was not the appropriate person.

Mr. Vallante said he did not imagine it would come to this; The garage that was being offered separately was refused and he has had interest from the very beginning; Hardship falls on him if he is not able to purchase it; The garage and house were used separately and his intent is to use it simply as a garage, place shutters around windows and paint it in tune with what the neighborhood looks like; The owner of the property, not the man present tonight (referring to Mr. Collette) said one concern is that they currently can use the rear entrance to get into the house and they both agreed it would still be alright since this is how it was when the area was just a campground; He would improve the structure, use it as it has been used and would not add on to it.

Mr. Murphy asked who the man present was (referring to Mr. Collette).

Mr. Collette said he occupies the property but is not on deed.

Mr. Deleo asked what the house owner could do with the garage.

Mr. Shupe said nothing due to lot coverage; In campground areas, most structures are considered existing legally non-conforming; Allowable lot coverage is 35% and these two structures exceed this.

Mr. Deleo asked if the garage could be converted into a residential use.

Me. Shupe said they cannot have two residential units on one lot; if owned by the same party, a breezeway (1st or second floor) could be constructed in order to add on vertically but it would have to remain a single-family residence; They could not do two units/rentals.

Mr. Murphy asked if the garage could be converted into housing if the lots were considered two separate lots.

Mr. Shupe said this would not be allowed since the principal structure is already the garage; The use is defined as a garage lot being the principal structure; They could add on to the top for a shop but they cannot convert it into a residential structure at this point.

Mr. Weyenberg asked what recourse of law the owner has if the variance is not granted.

Mr. Shupe said any ZBA decisions could be appealed to the Superior Court.

Ms. Higgins asked who owns the garage if the Board does not approve this variance.

Mr. Shupe replied this would have to be reviewed by a Superior Court.

Mr. Murphy said that in deference to Mr. Vallente, the Board should look at the property as it is and proceeded to discuss the Town's Ordinance on lot mergers and the four criteria that must be met under a Variance, the first being that "the land in question cannot yield a reasonable return..."; By his own words, Mr. Callahan signed a Purchase and Sale agreement and was told by the previous owner that there were two deeds, but he did combine them; The Ordinance affects the merge; Feels for applicant but the situation has occurred as a result of his own action; Explained that if the Board was to allow it to be sold as one lot and just granted everything that came before them, then there would be no need for ZBA; Mr. Callahan's letter of explanation mentioned there was a clerical error but normally these issues are discovered within months, not two years later; If a property owner commissions something to be done on their land, it is their responsibility to get it corrected; It is not a maximum

<p>financial return but there is some since the garage lot could be sold to the existing house lot owner. Mr. Murphy read the four justifications. A. Ms. Higgins disagreed; Mr. Weyenberg disagreed; Mr. Deleo disagreed; Mr Evans disagreed; Chairman Murphy disagreed. Mr. Murphy said there was no point in going on with the remaining justifications so the variance cannot be approved; Empathized with applicant but reminded applicant that the Board is in charge of following the ordinance. Mr. Murphy advised Mr. Callahan to contact an attorney or he could also appeal this Board's decision to the Superior Court. Mr. Callahan said that the separate addresses for each confused him and asked if he could still use the property with the garage. Mr. Shupe said Old Orchard Beach has many thru-lots and many times, they are separate lots; Suggested the Board respond to the last three justifications in case this item was appealed. Mr. Murphy continued to read the remaining justifications. B. Ms. Higgins disagreed; Mr. Weyenberg disagreed; Mr. Deleo disagreed and added that the applicant did not actually answer the question. Mr Evans disagreed; Chairman Murphy disagreed on the response to the question and added that the applicant was not necessarily answering the question properly. C. Ms. Higgins agreed; Mr. Weyenberg agreed; Mr. Deleo agreed; Mr. Evans agreed; Chairman Murphy agreed. D. Ms. Higgins disagreed; Mr. Weyenberg disagreed; Mr. Deleo disagreed and believed it was not malice just an error; Mr. Evans disagreed; Chairman Murphy disagreed but like Mr. Deleo, did not believe there was malice but it was a result of his actions or whomever set this for him. Mr. Deleo motioned to deny the variance request based on the four justifications Mr. Evans seconded the motion. Motion denied unanimously 5-0</p>	<p style="text-align: center;">MOTION</p> <p style="text-align: center;">VOTE</p>
<p>ITEM 2: Variance: King Weinstein, 198 Saco Avenue, Map#211, Block#11 Lot#3, in the GB-1 Zone, requests a relief from the space and bulk requirements of the required minimum lot area per unit from 5000sf to 2800sf in an area allowing Residential /Mixed Uses in order to convert 3000sf of office space into two condominiums each with a one-car garage.</p>	<p style="text-align: center;">ITEM #2</p>
<p>Mr. King, owner of property said a previous zoning ordinance allowed the existing use but now the use is considered legally non-conforming; His firm manages real estate properties in NH, MA, and ME and also facilitates a construction company; Office space is tight due to increased Staff; Owns property at 155 Saco Avenue across the police station and would like to stay in town; Discussed possible uses including retail; During the last two years, the unit has been used for office space but determined it's the least desirable real estate; Explained high vacancy rates of their other commercial properties; One unit would be upstairs and one would be downstairs each measuring 1500sf; There already are two separate heating systems, sufficient parking and no exterior changes would be necessary; Traffic generated by real estate on-site transactions would be reduced and no longer be a burden to the neighborhood; Residential units would conform to ordinance; Prior zoning allowed 1000sf per dwelling unit, then it was increased to 3,750sf and now it's 5000sf; Ideally, four units would be great but two is fine. Mr. Murphy asked if units would each have a one car garage. Mr. Weinstein said the plans reflect parking stalls in red and will stay within confines of existing footprint. Mr. Murphy asked if the existing office use is to be converted into residential condos. Mr. Weinstein replied yes. Mr. Weyenberg asked if it would be a problem to make them into rental properties. Mr. Weinstein said it could be converted into a hotel but that doesn't fit the area. Mr. Weyenberg asked what the total square footage was. Mr. Weinstein said according to the surveyor, the lot is approximately 17,040sf and it's legally non-conforming. Mr. Weyenberg said there are currently four condo units but isn't the minimum lot area 20,000sf? Mr. Shupe replied it's the use; He would only be allowed three units under the current requirements; It's an existing non-conforming structure with ample parking; Proposal would create fourteen spaces with four extra; The use, as stated by applicant, might be better because it would be a uniformed use</p>	

<p>for the building and create less traffic for those already living there and on the adjacent street. Mr. Weinstein said the first floor could house a commercial use but it would be difficult to get to second floor which would not be acceptable under ADA regulations. Mr. Evans asked about the 5,000sf requirement per unit. Mr. Shupe said this is a density figure and the house or lot would not have to be this size. Mr. Evans asked if this still applies to condos. Mr. Shupe said yes. PUBLIC HEARING OPENED AND CLOSED AT 8:47 P.M. WITH NO COMMENTS. Mr. Murphy provided examples of previous change of use applications that the Board has approved; Office space is not really desirable now; Proposed use fits the property; Location is at the beginning of a residential neighborhood. Mr. Evans added applicant would be able to utilize an existing building for housing and move offices to an empty space where there is plenty of parking. Ms. Higgins asked if the existing units are individually owned. Mr. Weinstein said yes. Mr. Weyenberg added he was unsure if parking or traffic was an issue. Mr. Chairman read justifications. A. Ms. Higgins agreed; Mr. Weyenberg said justifications are strict, asked what really is a reasonable return and disagreed; Mr. Deleo agreed; Mr. Evans agreed; Chairman Murphy agreed and added he was unsure if there would even be a buyer if applicant converted the office space into one 3,000sf condo since that is a lot of space. B. Ms. Higgins agreed; Mr. Weyenberg agreed; Mr. Deleo agreed; Mr Evans agreed; Chairman Murphy agreed. C. Ms. Higgins agreed; Mr. Weyenberg agreed; Mr. Deleo agreed; Mr Evans agreed; Chairman Murphy agreed based on percentages proposed in the application. D. Ms. Higgins agreed; Mr. Weyenberg agreed; Mr. Deleo agreed; Mr. Evans agreed; Chairman Murphy agreed. Ms. Higgins motioned to approve the request to reduce the minimum lot area per unit from 5,000sf to 2,800sf in order to convert 3,000sf of office space into two condominiums as proposed in the application. Mr. Deleo seconded the motion. Motion carried 5-0</p>	<p>PUBLIC HEARING</p> <p>MOTION</p> <p>VOTE</p>
<p>ITEM 3: Approval of Minutes January 29, 2007 February 26, 2007</p>	<p>ITEM #3</p>
<p>January 29 minutes Ms. Higgins abstained. Mr. Evans motioned to accept the January minutes. Mr. Weyenberg seconded the motion. Motion carried 4-0 February 26 minutes Ms. Higgins motioned to accept the minutes. Mr. Deleo seconded the motion. Mr. Murphy abstained. Mr. Weyenberg agreed. Motion carried 3-0</p>	<p>MOTION</p> <p>VOTE</p> <p>MOTION</p> <p>VOTE</p>
<p>GOOD & WELFARE</p>	
<p>Mr. Shupe discussed lot mergers and confirmed that the Registry of Deeds in Alfred only requires signed plans for subdivisions; In order to circumvent this, Zoning is now reviewing recorded deeds sent to the Assessor to confirm no illegal lot mergers have taken place. (Comment directed to Mr. Collette who was back in the audience) This is now a civil issue; Unsure what Mr. Callahan will do; Burden rests on homeowner; Neither this Board nor the Town can do anything else to enforce this action only ensure that Mr. Callahan does not rent or sell the garage lot to anyone including Mr. Vallente.</p>	
<p>Ms. Higgins motioned to adjourn the April 30, 2007 Zoning Board of Appeals meeting at 9:18 p.m.</p>	<p>Adjournment</p>

Mr. Deleo seconded the motion. Motion carried unanimously 5-0	9:18 p.m.
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I ,Caroline Roldan, Secretary to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of six(6) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting of April 30, 2007.
