



Appeals Board

Richard W. Perkins – Chair
Stephen L. Malcolm- Vice Chair
Scott G. Adams
Jeanne Fuller
James Tonan
Martin Page – Alternate
David Steinmetz - Alternate

**Town of Boothbay Appeals Board
Tuesday, April 28, 2015
Minutes**

1. **CALL MEETING TO ORDER:** *Vice Chair Stephen Malcolm called the meeting to order at 7:00PM.*
2. **ROLL CALL OF MEMBERS:** Stephen Malcolm, Scott Adams, Jeanne Fuller, James Tonan, Martin Page, David Steinmetz and Dan Bryer.

It was voted 4-0 that David Steinmetz would be voting member for this application.

4. **NEW BUSINESS:**

George Bourette was present to ask for a variance for his property located at 388 Ocean Point Road, also identified as Tax map/lot R04/036-001. The requested variance is for a non-conforming use.

Steve Malcolm first reviewed the application to determine if it was complete. The taxes are paid to date, all applicable fees have been paid, the property is in good legal standing and the owner has shown Right, Title or Interest on the property. *Scott Adams made a motion that the application is complete and James Tonan seconded the motion. Vote: 5-0 in favor.*

Mr. Bourette said he bought the property with a restaurant on it and he would like to sell the property. He would like to sell the property as a restaurant and wants to know if he can. The property has been for sale for a long time.

Jeanne Fuller commented it has been for sale as a restaurant; it was built as a restaurant and has always been a restaurant.

Rosemary Bourette said they would like it to remain a restaurant. It was operated as a restaurant from 1987-2007 and has been on the market for sale since 2008, has mostly been advertised as a restaurant. The only people who have shown an interest in the property want it as a restaurant and lost interest when told it could no longer be a restaurant.

Scott Adams talked about the ordinance needing to be changed to allow the Planning Board to hear this type of application. Mr. Adams said the Planning Board can allow as an accessory use and he thinks the Planning Board needs to hear this application first. He feels this board's hands are tied. The ordinance allows a business to be grand-fathered for two years and then they have to start the application use process over again. Mr. Adams said he would like to see this happen.

Dan Bryer said the Planning Board cannot hear this application. They could not approve it unless the ordinance was changed first.

Jeanne Fuller said for a change to be made to that district would take a lot of time.

James Tonan asked if the board could do a variance as in interim measure to get through until the ordinance could be changed.

The board next decided to review the criteria for a variance and try to determine if this application meets it.

A. The land in question cannot yield a reasonable return unless a variance is granted.

Mr. Bourette said it cannot be a restaurant without a variance and that is all it can be, it is all it ever has been. Real Estate sales are down and it would be a hardship if this cannot be sold as a restaurant. Mr. Bourette said it has been insured and taxed as a restaurant.

Scott Adams said he is not sure this test is met as it is not tied to a specific activity such as a restaurant but applies to the land.

Dan Bryer said the board can make a decision that it is still a restaurant if that is how they feel. Each board can make its own determination.

Scott Adams said if it is still a restaurant then the application could go before the Planning Board. He thinks if the restaurant has been taxed as a restaurant then it may still be a restaurant.

B. The need for a variance is due to the unique circumstances of the property and not to general conditions in the neighborhood.

Mr. Bourette said this was a historic building that was moved to this location to be a restaurant. Its design makes it unusable as anything else. It has never been a residence.

Scott Adams said the building could be used for other things; the property could be used for other things.

The Bourette's said they tried to sell it for other uses and did not get any bites on it. They have had people interested in buying the property but when they discussed with the CEO and was told it could not be a restaurant they were no longer interested.

Steve Malcolm said there are no others around and he thinks that alone satisfies as unique circumstances.

C. The granting of a variance will not alter the essential character of the locality.

Mr. Bourette said this is compatible with the look and character of the surrounding area and enhances the charm. He feels the side entrance and parking in the back helps to make it fit in.

Jeanne Fuller and James Tonan both said they felt Mr. Bourette's perception was right on.

D. The hardship is not the result of action taken by the applicant or a prior owner.

It was felt this was not the result of any action taken by the owner. It was a restaurant; it is listed as a restaurant.

Scott Adams talked about the lack of activity as a restaurant for more than two years.

It was discussed that there was no ordinance when it first opened as a restaurant. It has been a restaurant since 1987 and the new two year grandfather period went into effect in 2004. It has continually been taxed as a restaurant and the Corporation is still in good standing.

Scott Adams asked what does discontinue mean. In this case, the use was not discontinued, it never stopped being a restaurant, it just did not open its doors. The Bourette's have filed tax returns every year for the Corporation and are willing to show tax returns to prove it. The Corporation is still in good standing with the state.

The board next opened the discussion up to any members of the audience. Clayton Pottle asked if the variance if granted would go with the property and not the owner. The board said yes, if a variance is granted it goes with the property.

John Bertolite, a member of the Comp Plan Committee said the committee would be 100% in agreement with this variance. If it was legal it is legal.

The board reviewed the findings of fact and voted on them.

A. The land in question cannot yield a reasonable return unless a variance is granted.

This is not a change in use. It is being taxed as a restaurant and the equipment is still there. The owners have tried to sell it for other uses and have not been able to; the investment in the equipment, infrastructure (restaurant size septic and grease traps) and the Corp. would yield the most reasonable return if sold as a restaurant.

James Tonan made a motion that because of the investment in this property as a restaurant the owners will get the most reasonable return if sold as a restaurant. Jeanne Fuller seconded the motion. Vote: 5-0 in favor.

B. The need for a variance is due to the unique circumstances of the property and not to general conditions in the neighborhood.

Scott Adams made a motion that the need for a variance is due to the unique circumstances of the property and not to general conditions in the neighborhood and David Steinmetz seconded the motion. Vote: 5-0 in favor.

C. The granting of a variance will not alter the essential character of the locality.

James Tonan made a motion that the granting of a variance will not alter the essential character of the locality and Scott Adams seconded the motion. Vote: 5-0 in favor.

D. The hardship is not the result of action taken by the applicant or a prior owner.

James Tonan made a motion that the property was in operation as a restaurant prior to zoning and is recognized by the Town as a restaurant, is taxed as a restaurant and the corporation is still in existence, the property has remained as a restaurant with the state continually and is still paying taxes as such. David Steinmetz seconded the motion. Vote: 5-0 in favor.

The variance was granted based on the above findings of fact and conclusions.

DRAFT – NOT YET APPROVED

5. ADJOURN:

James Tonan made a motion to adjourn the meeting at 8:05PM and Scott Adams seconded the motion. Vote: 5-0 in favor.

Minutes respectfully submitted,

Sherry Tibbetts
Secretary