

# NEW HAMPSHIRE MUNICIPAL ASSOCIATION (/)

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## Court Update

### NEW EVIDENCE SUBMITTED WITH A MOTION FOR REHEARING MAY BE DISREGARDED: ZBA CONDITIONS REASONABLE WHEN TIED TO FUTURE USES

*Exeter Farms Homeowners Association v. Town of Exeter*

New Hampshire Supreme Court No. 2016-0036, 9/30/2016

In upholding the grant of a special exception by the Town of Exeter Zoning Board of Adjustment the NH Supreme Court ruled that new evidence submitted with a Motion for Rehearing may be disregarded. The Court also addressed the reasonableness of conditions imposed by the ZBA and whether the measure of reasonableness should be the simplicity of administrative enforcement of those conditions.

The applicant sought permission to convert a residence located in a single family residential district in order to house a social service agency that provides daytime services to homeless families with children under the age of eighteen. The subject property had been previously used as a doctor's office for over thirty years and, more recently, as a day care center. The ZBA granted the special exception and attached conditions barring overnight stays on the property, and mandating strict screening of clients for drug and alcohol abuse and prior criminal conduct.

After the ZBA granted the special exception the abutters sought a Rehearing under RSA 677:2 and submitted, for the first time, a real estate appraisal report. The Court upheld the ZBA's refusal to consider the appraisal report when denying the Motion for Rehearing. In so doing the Court rejected the assertion that the need for the report was not apparent to the abutters until the applicant submitted an appraisal report at the public hearing. The Court observed that the Exeter Zoning Ordinance plainly stated that the adverse effect of a use on nearby property values was a consideration the ZBA had to address and thus the abutters were on notice that property values was a factor the ZBA was required to consider. Therefore the Court affirmed the ZBA's decision to reject the newly presented appraisal report as a reason to grant the Motion for Rehearing.

The Court also rejected the abutters' contention that the conditions attached to the special exception did not relate to basic zoning objectives and are unenforceable from an administrative perspective. The Court found that the client screening conditions and overnight stay prohibition were reasonable and necessary to preserve the spirit of the ordinance and were related to the use of the land due to fact the conditions would run with the land.

On the issue of whether the conditions related to the screening of clients was administratively unenforceable the Court ruled that the land use statutes contain various enforcement options and the abutters failed to demonstrate those procedures could not be used to enforce the conditions of approval.

Click Here to View Court Decision (<http://www.nhmunicipal.org/Resources/ViewDocument/763>)

**Practice Pointers: Generally, new evidence submitted with a Motion for Rehearing can be disregarded by a ZBA where the need for that evidence at the public hearing was apparent. Conditions imposed by the ZBA can be particular to the operation of the proposed use by the applicant and still be related to basic zoning objectives since the conditions will run with the land.**

**DISCLAIMER: This is an unpublished opinion. Readers should be aware that Supreme Court Rule 20(2) states that an order disposing of any case that has been briefed but in which no opinion is issued, shall have no precedential value. However, it may be used for persuasive purposes.**

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