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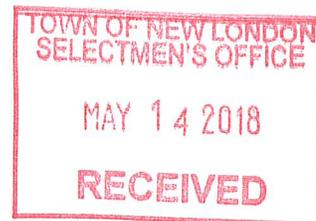
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**Via Fedex Overnight**

May 11, 2018

Mr. Douglas W. Lyon, Chair  
 Zoning Board of Adjustment  
 Town of New London  
 375 Main Street  
 New London, NH 03257



Re: Application of Spec Bower  
 ZBA #18-02

Dear Chairman Lyon,

Enclosed please find a Motion For Rehearing in the above referenced matter for filing with the board. A duplicate original is being sent to Nicole Gage, Zoning Administrator, via first class mail.

Please contact me if you need anything further or have any questions.

Very truly yours,

John P. Rab

CC: Spec Bowers

CC w/enclosure: Nicole Gage, Zoning Administrator via First Class Mail

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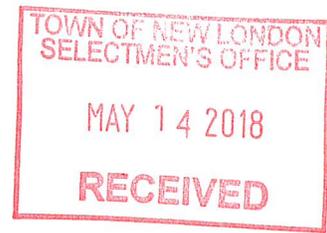
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STATE OF NEW HAMPSHIRE

Merrimack County  
ZBA #18-02

New London  
Zoning Board of Adjustment

MOTION FOR REHEARING PURSUANT TO RSA 677:2

NOW COMES Spec Bowers, of PO Box 323, Georges Mills, New Hampshire 03751, by and through counsel, John P. Rab, Esq., and says as follows:

1. This Motion is related to property located at 1876 Newport Road, New London, New Hampshire.
2. On April 17, 2018, the Board of Adjustment considered an application for a variance from Article xx, Sections B.1.a, B.1.c.iii and B.5.a of the New London Zoning Ordinance to permit a vertical expansion of a structure damaged by fire, a 1-foot overhang of the second floor on the front side of the structure, and an increase in the number of bedrooms.
3. On April 17, 2018 the Board of Adjustment voted to deny the application.
4. The action of the board of Adjustment was unlawful and unreasonable, and it is respectfully requested that the board grant a rehearing on this matter for the following reasons:

In rendering its decision the board chose not to deliberate or vote on all five of the criteria that are required to be considered for a variance as set-forth in RSA 674:33 (b). Rather, the board decided to solely consider and rule on the “requirements of the unnecessary hardship provision.” The board’s deliberation and vote not only failed to consider all five variance criteria, it failed to deliberate and vote on the separate criteria set-forth in RSA 674:37 I, (b) (5) in denying the application for a variance. Consequently, the board’s vote and decision to deny the variance was unlawful and unreasonable and will not sustain judicial review.

RSA 674:33 I, (b) (5) provides:

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

- (i) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
  - b. The proposed use is a reasonable one.
- (ii) If the criteria in subparagraph (i) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The definition of “unnecessary hardship” set forth in subparagraph A shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

Both sections (i) and (ii) of this provision requires the board to initially consider and clearly decide on the record and make findings of fact on whether or not the property under consideration is subject to any “special conditions” that “distinguish it from other properties in the area.” In its deliberation as described in the minutes of the meetings the board did not even fully consider the basic issue of whether or not “special conditions” existed which would mandate that the board engage in the analysis of the remaining subparagraph to make a determination whether or not an unnecessary hardship exists under either RSA 674:37 I, (5) (A) of B. The board merely voted to “Deny the request for variance, as its fails to satisfy the requirements of the unnecessary hardship provision” without making any findings of fact or providing a clear record of the reasons for the denial. The board’s failure to fully consider, deliberate and make findings of fact with respect to the request for a variance denies the applicant any meaningful judicial review of the decision.

The New Hampshire Supreme Court has strongly recommended, and has required in many instances, that specific findings be stated by a board of adjustment in consideration of an application for a variance. In the case of *Alcorn v. Rochester*, 114 N.H. 491 [1974], the supreme court remanded a decision of the board of adjustment stating that “... *the failure of this board to disclose the real basis of its decision prevented the plaintiffs from making the requisite specification and thus denied them meaningful judicial review.*” See: The Board of Adjustment In New Hampshire, A Handbook For Local Officials, December 2017, NHOSI, Section III-14. In that decision, the supreme court cited, as authority, Anderson, American Law of Zoning where it stated at 20.41 [1977]: “*In general, a board of adjustment must, in each case, make findings which disclose the basis for its decision. Absent findings which reveal at least this much of the process of decision, the reviewing court may remand the case to the board for further proceedings. Thus a bare denial of relief without a statement of the grounds for such denial will be remitted to the board for further action. A decision granting a variance will be remanded if the board fails to make findings which disclose a basis for its determination.*”

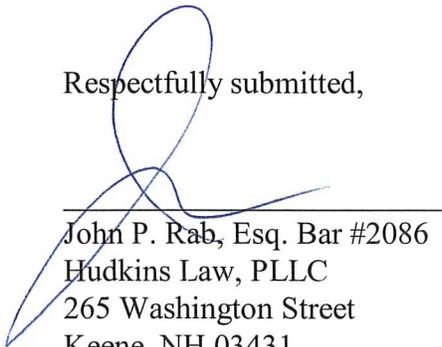
“General fairness to all parties concerned and reinforced by New Hampshire Supreme Court decisions, strongly indicates that the board should prepare a statement of its reasons. Since the decision of the board of adjustment is so important, it is necessary for both the appealing party and the municipality to have a clear record of what occurred. . . The board should state all the reasons for its decision to allow for proper review if that should be necessary. . . The reasons may be found defective if they omit an issue essential to the decision made by the board. The courts are generally unwilling to assume that a basic issue was resolved unless the reasons for the decision are clearly stated.” The Board of Adjustment In New Hampshire, A Handbook For Local Officials, December 2017, NHOSI, Section III-15.

Findings of a board of adjustment must be more specific than a mere recitation of conclusions, and board decisions will be reversed if it fails to adequately support its implicit or explicit findings. See, Cormier v. Town of Danville Zoning Board of Adjustment, 142 N.H. 775 (1998). The purpose of requiring a board to make findings is to provide the reviewing court with a means of determining whether the decision of the board is reasonable. See, Foote v. State Personnel Commission, 116 NH 145 (1976). A reviewing court needs finding of basic facts to understand administrative decisions and to ascertain whether the facts and issues sustain the ultimate result reached. Society of Protection of New Hampshire Forests v. Site Evaluation Committee, 115 NH 163 (1975).

In this matter it is clear that the board did not fully consider and deliberate on the variance request, failed to make adequate findings of fact which support the denial of the variance and failed to state adequate grounds for the denial. Therefore, it is incumbent on the board to grant the applicant a rehearing on the request for a variance.

Respectfully submitted,

Dated: May 11, 2018

  
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