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Jeanne S. Saffan**
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** Also admitted in MA & NY
*** Also admitted in FL
**** Also admitted in MN

November 7, 2018



Tracy Uhrin, Clerk
Merrimack Superior Court
163 N. Main Street
PO Box 2880
Concord, NH 03301

Re: Spec Bowers v. Town of New London Zoning Board of Adjustment;
Case No.: 217-2018-CV-00469

Dear Clerk Uhrin:

Enclosed for proper filing with this Court is the Town of New London Zoning Board of Adjustment's Reply to Objection to Motion to Dismiss and Objection to Motion for Summary Judgment relative to the above-captioned matter.

I hereby certify that a copy of this letter and the enclosures was mailed to Spec Bowers at 1373 Rt 11, Box 323, Georges Mills, N.H. 03751.

Sincerely,

Barton L. Mayer
bmayer@uptonhatfield.com

BLM/cab
Enclosure(s)
cc: Spec Bowers
Zoning Board of Adjustment
Kimberly Hallquist, Esq., Town Administrator

STATE OF NEW HAMPSHIRE

MERRIMACK, ss

SUPERIOR COURT

Case No. 217-2018-CV-00469

Spec Bowers

v.

Town of New London Zoning Board of Adjustment

REPLY TO OBJECTION TO MOTION TO DISMISS

NOW COMES, the Town of New London Zoning Board of Adjustment, by and through its attorneys, Upton & Hatfield, LLP, and in reply to the Objection to Motion to Dismiss, states as follows:

1. The parties are in agreement that RSA 677:2 controls plaintiff's right to file a second motion for rehearing, and the disposition of the Town's Motion to Dismiss. See, Objection, ¶3, Motion to Dismiss, ¶5.
2. The minutes of the June 11, 2018 hearing, which also contained the ZBA decision (CR 39-43), were made available on June 18, 2018 (CR 39; upper right hand corner) within five business days of the hearing, satisfying RSA 677:2,I. *Exhibit A* (CR 102).
3. On June 18, 2018, the Town Administrative Assistant e-mailed a courtesy copy of the June 11 minutes (which also contained the ZBA decision) to the plaintiff. *Exhibit B*.
4. Consequently, the minutes and decision of June 11, 2018 were available within five business days, as required by RSA 677:2, not "a full 16 days after the vote," as plaintiff incorrectly suggested, (Objection, ¶2), and therefore there is no statutory basis for an amended motion.

5. Moreover, on July 2, 2018, the Zoning Administrator mailed to both plaintiff and his attorney a courtesy copy of the clarified ZBA decision, dated June 26, 2018. *Exhibit C* (CR 109).

6. **After** receiving the clarified decision of the ZBA, and in reliance on that decision, plaintiff's attorney drafted a Motion for Rehearing on July 6, 2018 which was received on July 10, 2018, which expressly addressed the June 26th clarified ZBA decision. See, Motion to Dismiss, Exhibit A (attached hereto as *Exhibit D*) (¶9, "the Board issued a notice of decision on the matter on June 27, 2018 which expanded the stated grounds for denial over and above the basis for denial at the April 17, 2018 hearing and what was voted at the June 11, 2018 hearing. Therefore, the filing of this motion for rehearing is required. See, Dziama v. City of Portsmouth, 140 N.H. 542 (1995).").

7. The Board denied the July 6th Motion for Rehearing.

8. Nevertheless, plaintiff then filed a second Motion, see, Motion to Dismiss, *Exhibit C*.

9. Thus, contrary to plaintiff's objection, the "amended motion" was in fact a "serial motion," as there was no legal basis for filing an amended motion under RSA 677:2,I, and plaintiff's July 6th Motion for Rehearing expressly relied upon the June 26th decision of the ZBA.

10. None of the foregoing facts are in dispute, and all are a matter of record.

11. Plaintiff has abandoned the grounds stated in his Motion for Rehearing, *Exhibit D*, and his complaint relies word-for-word on his second, serial motion. Consequently, the complaint must be dismissed.

WHEREFORE, the Town of New London Zoning Board of Adjustment respectfully prays that this Honorable Court:

- A. Deny plaintiff's Objection to the Town's Motion to Dismiss;
- B. Dismiss this appeal in its entirety; and
- C. Grant such other and further relief as may be just and equitable.

Respectfully submitted,
TOWN OF NEW LONDON
By its attorneys,
UPTON & HATFIELD, LLP

Dated: November 7, 2018

By: 
Barton L. Mayer #1644
10 Centre Street, PO Box 1090
Concord, NH 03302-1090
(603) 224-7791
bmayer@uptonhatfield.com

CERTIFICATE OF SERVICE

I certify that a copy of this Answer was mailed to Spec Bowers, *Pro se*.


Barton L. Mayer

6-18-18

Nicole Gage

From: Nicole Gage
Sent: Monday, June 18, 2018 1:22 PM
To: Dianne Bottari
Subject: FW: Draft ZBA minutes
Attachments: 6-11-2018 ZBA draft.docx; 6-11-2018 ZBA draft.pdf

Dianne:

I think draft minutes get posted to the website. If so, and Cary's not here, can you post them for me? Thanks!

Nicole

From: Nicole Gage
Sent: Monday, June 18, 2018 1:21 PM
To: Nicole Gage <zoning@nl-nh.com>
Subject: Draft ZBA minutes

Here are the draft minutes, FYI.

Nicole Gage
Zoning Administrator
Town of New London, NH
Email zoning@nl-nh.com / Web www.nl-nh.com
Direct (603) 526-1246 / Town Office (603) 526-4821

CONFIDENTIALITY NOTICE: Privacy should not be assumed with emails associated with town business. Certain emails are public documents and may be subject to disclosure. This electronic message, and any attachments, may contain information that is confidential and/or legally privileged in accordance with NH RSA 91-A and other applicable laws or regulations. This email message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy/delete all copies of the original message.

Nicole Gage

From: Administrative Assistant
Sent: Monday, June 18, 2018 3:05 PM
To: Nicole Gage
Subject: RE: Draft ZBA minutes

Nicole,

Minutes have been posted and Spec Bowers called and I emailed them to him.

Bests,

Dianne Bottari
Administrator Assistant
Town of New London
375 Main Street
New London, NH 03257
603-526-1242
www.nl-nh.com

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From: Nicole Gage
Sent: Monday, June 18, 2018 1:22 PM
To: Administrative Assistant <office@nl-nh.com>
Subject: FW: Draft ZBA minutes

Dianne:
I think draft minutes get posted to the website. If so, and Cary's not here, can you post them for me? Thanks!

Nicole

From: Nicole Gage
Sent: Monday, June 18, 2018 1:21 PM
To: Nicole Gage <zoning@nl-nh.com>
Subject: Draft ZBA minutes

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Nicole Gage
Zoning Administrator
Town of New London, NH
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7-2-18

Nicole Gage

From: Nicole Gage
Sent: Monday, July 2, 2018 2:46 PM
To: John Rab; Spec Bowers
Subject: final minutes and decision
Attachments: 06-11-2018 ZBA Notice of Decision.pdf

Dear John & Spec:

Attached please find the notice of decision from the New London Zoning Board of Adjustment.

Nicole Gage
Zoning Administrator
Town of New London, NH
Email zoning@nl-nh.com / Web www.nl-nh.com
Direct (603) 526-1246 / Town Office (603) 526-4821

CONFIDENTIALITY NOTICE: Privacy should not be assumed with emails associated with town business. Certain emails are public documents and may be subject to disclosure. This electronic message, and any attachments, may contain information that is confidential and/or legally privileged in accordance with NH RSA 91-A and other applicable laws or regulations. This email message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy/delete all copies of the original message.

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 June 11, 2018, the Board of Adjustment considered an application for a variance from Article xx, Sections B.1.a and B.5.a of the New London Zoning Ordinance to permit a vertical expansion of a structure damaged by fire and an increase in the number of bedrooms.
3. The June 11th hearing was a result of a previously filed Motion For Rehearing which was related to a denial of a variance by the board solely on the grounds that it failed "to satisfy the requirements of the unnecessary hardship provision." (April 17, 2018 hearing)
4. At the June 11th hearing the board denied the variance solely on the grounds that it violated the spirit of the ordinance.
5. The draft minutes of the meeting stated:

IT WAS MOVED (Doug Lyon) AND SECONDED (Michael Todd) to deny the variance request for the reasons discussed, that primarily, the consensus is that the spirit of the ordinance was violated that that related to three criteria, Public Interest, Spirit of the Ordinance and Substantial Justice. Also some members felt the hardship criteria has been met. THE MOTION WAS APPROVED UNANIMOUSLY 5-0.

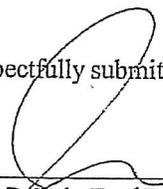
6. The vote to deny the variance solely on the basis of violation of the spirit of the ordinance comports with the recollection of the applicant and his counsel.
7. For reasons presently unknown to the applicant and counsel, the board subsequently met on June 26, 2018 for "Clarification of Motion/Decision from June 11th rehearing."
8. The board then made material changes to the original motion that was approved by the board on June 11, 2018.
9. The board issued a Notice of Decision on the matter on June 27, 2018 which expanded the

stated grounds for denial over and above the basis for denial at the April 17, 2018 hearing and what was voted at the June 11, 2018 hearing. Therefore, the filing of this Motion for Rehearing is required. See, Dziama v. City of Portsmouth, 140 N.H. 542 (1995).

10. The action of the Board of Adjustment was unlawful and unreasonable and it is respectfully requested that the board grant a rehearing for the following reasons:
 - a. The second meeting was unlawfully held and resulted in an improper and unlawful revision of the record and of the original vote of the board.
 - b. The board's decision was unlawful and unreasonable in that it used incorrect legal standards and put additional burdens of proof on the applicant over what is required by law and statute.
 - c. The board's decision dated June 27, 2018 was inconsistent with its deliberations and vote of June 11, 2018.
11. The applicant reserves the right under RSA 677:2 to amend this Motion For Rehearing, including the grounds therefor, within 30 days after the date the decision was actually filed which was June 27, 2018.

Respectfully submitted,

Dated: July 6, 2018



John P. Rab, Esq. Bar #2086
Hudkins Law, PLLC
265 Washington Street
Keene, NH 03431
#603-357-1007

STATE OF NEW HAMPSHIRE

MERRIMACK, ss

SUPERIOR COURT

Case No. 217-2018-CV-00469

Spec Bowers

v.

Town of New London Zoning Board of Adjustment

OBJECTION TO MOTION FOR SUMMARY JUDGMENT

NOW COMES, the Town of New London Zoning Board of Adjustment, by and through its attorneys, Upton & Hatfield, LLP, objecting to plaintiff's Motion for Summary Judgment, and as grounds therefore states as follows:

1. For the reasons stated in the Town's Motion to Dismiss, Reply to Objection to Motion to Dismiss, and the exhibits attached thereto, all of which are incorporated herein by reference, defendant objects to the Motion for Summary Judgment.
2. No Affidavit is required in this case as substantially all of the exhibits attached to the Motion to Dismiss and Reply to Objection to Motion to Dismiss are part of the Certified Record already filed with this Court, and there has been no objection to any of the exhibits.
3. The Motion to Dismiss and Reply to Objection to Motion to Dismiss demonstrate that:
 - a. ZBA made available the June 11 minutes, which included the decision of the Board, on June 18, within five business days, as required by RSA 677:2, I;
 - b. Copies of the June 18 minutes were delivered to plaintiff by e-mail on June 18;

- c. The minutes and decision were available within five business days, as required by RSA 677:2, and there is no statutory basis for plaintiff's filing and "amended" motion for rehearing;
- d. On July 2, 2018, the Zoning Board of Adjustment provided to plaintiff and his attorney the minutes of the June 26th ZBA meeting and clarified decision;
- e. Plaintiff's attorney filed a Motion for Rehearing, expressly relying upon the June 26th ZBA decision;
- f. The Board denied plaintiff's Motion for Rehearing, thereby closing the case;
- g. Plaintiff filed a second Motion for Rehearing, entitled "Amended" Motion for Rehearing, which represented a serial filing of motions for rehearing;
- h. The Board rejected the serial Motion;
- i. Plaintiff's Complaint relies upon word-for-word repetition of the second, serial Motion for Rehearing, which was untimely and not permitted, and consequently, his Complaint must be dismissed pursuant to RSA 677:3, for failure to fully state the grounds for his Motion for Rehearing.

4. Based upon the facts and law, plaintiff is not entitled to summary judgment.

WHEREFORE, the Town of New London Zoning Board of Adjustment respectfully prays that this Honorable Court:

- A. Deny plaintiff's Motion for Summary Judgment;
- B. Grant the Town of New London Zoning Board of Adjustment's Motion to

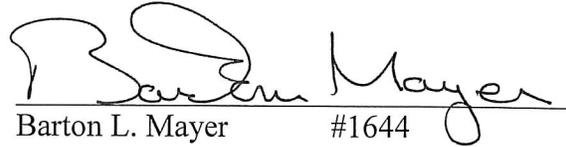
Dismiss, as plaintiff failed to fully set forth the grounds for his present complaint in his Motion for Rehearing, in violation of RSA 677:3; and

C. Grant such other and further relief as may be just and equitable.

Respectfully submitted,
TOWN OF NEW LONDON
By its attorneys,
UPTON & HATFIELD, LLP

Dated: November 7, 2018

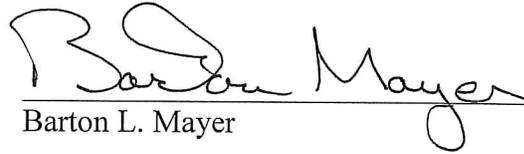
By:



Barton L. Mayer #1644
10 Centre Street, PO Box 1090
Concord, NH 03302-1090
(603) 224-7791
bmayer@uptonhatfield.com

CERTIFICATE OF SERVICE

I certify that a copy of this Motion to Dismiss was mailed to Spec Bowers, *Pro se*.



Barton L. Mayer