

MINUTES OF THE NEW CASTLE ZONING BOARD OF ADJUSTMENT
Tuesday, October 29th, 2019 – 8:00 p.m. (Town Hall)

Members Present: Todd Baker, Chair, John Fitzpatrick, Rebecca Goldberg, Margaret Sofio, Alyson Tanguay.

Members Absent: Mark Gardner, Ben Lannon.

Others Present: Ellen and Randy Bryan, 34 Wentworth Rd., New Castle, NH; Derek Durbin, Durbin Law Offices, PLLC, 144 Washington St., Portsmouth, NH; Skip Homitz, Main Street, New Castle, NH; R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A., 127 Parrott Ave., Portsmouth, NH.

Chair Baker called the meeting to order at 8:00 p.m. and asked attendees to sign in.

Request for Rehearing Case #2019-05. Harvey Mason, Kristin Garretson, and Preston Garretson have requested a rehearing of the ZBA's August 20, 2019 approval of Randolph and Ellen Bryan's variance application. The ZBA will vote whether to rehear the case at a future date.

Chair Baker reminded members that in order for the Board to rehear a case, there must be new information that the Board did not previously have, or there must be a misinterpretation of facts or misapplication of the law.

In analyzing whether a rehearing should be granted, Ms. Sofio cited *Bourassa v. Keene* (108 N.H. 261, 234 A.2d 112 [1967]), which states, in part, that while "the coming to light of new evidence is not a requirement...the reasons for granting a rehearing should be compelling ones. The board has no right to reopen a case based on the same set of facts unless it is convinced that an injustice would otherwise be created, but a rehearing should be seriously considered if the moving party is persuasive that the board has made a mistake."

Ms. Sofio appreciated the brief submitted by the Appellants requesting the rehearing through Attorney Monica Kieser of Hoefle, Phoenix, Gormley & Roberts. However, she felt that the request for a rehearing did not list additional information that was not available at time of the hearing. Other Board members agreed. Mr. Fitzpatrick noted that his issue with the brief was that the Appellants did not seem to identify a specific point that they felt the Board misinterpreted. He felt that the brief submitted by the abutters was a reiteration of the argument presented in the original hearing of the case in August.

Chair Baker felt that the Board listened to a lot of public comment during the August meeting. He commented that the previous hearing had a different result than what was implied in the Appellants' brief. Chair Baker believed that each of the five criteria for zoning relief were adequately addressed and does not see any reason why the rehearing would be appropriate.

Mr. Fitzpatrick motioned to deny the request for rehearing pursuant to RSA 677:2. Ms. Sofio seconded. Motion carried unanimously.

2. Approve Minutes.

Ms. Goldberg moved to accept the September 2019 minutes as submitted. Ms. Tanguay seconded. The motion carried unanimously.

3. Set Date of Next Meeting.

Chair Baker announced that the next Zoning Board of Adjustment meeting will be held on Tuesday, November 19, 2019 at 7:00 p.m.

4. Adjournment.

There being no further business, Chair Baker moved to adjourn the public meeting. Ms. Sofio seconded. The motion carried, unanimously, and the meeting adjourned at 8:16 p.m.

Respectfully Submitted,

Meghan Rumph
Secretary