

THE STATE OF NEW HAMPSHIRE HOUSING APPEALS BOARD

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Case Name: 8 Water LLC v. Town of Meredith
Case Number: ZBA-2023-20

ORDER

This appeal follows a decision by the Town of Meredith ("Town") Zoning Board of Adjustment ("ZBA") denying an application for two variances requested by 8 Water LLC ("Applicant") proposing to convert an existing duplex into a multi-family structure by adding an additional dwelling unit.

FACTS

This matter concerns certain property located at 8 Water Street in Meredith ("Property"). Certified Record ("CR") at page 3. The Property is a nonconforming lot, consisting of approximately 8,610 square feet, on which sits a three-story, nonconforming duplex. CR 1, 9. As evident in the Town's zoning map, the Property is located at the easterly edge of the Town's Shoreline Zoning District and is abutted to the north, east, and south by the Town's Central Business District.

On or around March 21, 2023, in connection with efforts to convert the Property from a two-unit dwelling into a three-unit dwelling, the Applicant filed applications for five separate variances, including requests for relief from various dimensional requirements imposed by the Town's Zoning Ordinance ("Ordinance") in addition to a request to use the Property as a multi-family dwelling in the Shoreline Zoning District. CR 3-28.

The ZBA held a hearing on the requests during its meeting on May 11, 2023. CR 55-86. At the conclusion of such meeting, the ZBA voted to approve three of the variance requests. CR 85 (granting request to permit 38.8% lot coverage where a maximum of 30% is required); CR 85 (granting request for side setback of 13 feet where 20 feet is required); and CR 86 (granting request to convert a deck into 208 square feet of living space). At the same time, the ZBA also voted to deny the remaining two requests. CR 84 (denying request to convert two-unit duplex into three-unit multifamily); CR 84 (denying request to permit three units on 8,610 square

feet of land where 120,000 square feet is required). Notices of Decision were subsequently issued by the ZBA. CR 87-91. While the notices of denial reflect the vote and the voting members, they do not identify the basis for denial. CR 87, 88.

The Applicant filed a rehearing request with the ZBA under cover letter dated June 9, 2023, CR 95, which was denied by the ZBA at its meeting on June 29, 2023. CR 106. The Applicant filed its appeal with the Housing Appeals Board ("Board") on July 31, 2023. A prehearing conference was held on November 16, 2023, and a hearing on the merits was held on November 30, 2023. This decision follows.

LEGAL STANDARD OF REVIEW

The Housing Appeals Board's review of any Zoning Board of Adjustment decision is limited. It will consider the Zoning Board's factual findings prima facie, lawful, and reasonable. Those findings will not be set aside unless, by a balance of the probabilities upon the evidence before it, the Housing Appeals Board finds that the Zoning Board decision was unlawful or unreasonable. See RSA 679:9. See also, Lone Pine Hunters Club v. Town of Hollis, 149 N.H. 668 (2003) and Saturley v. Town of Hollis Zoning Board of Adjustment, 129 N.H. 757 (1987). The party seeking to set aside a Zoning Board decision bears the burden of proof to show that the order or decision was unlawful or unreasonable. RSA 677:6.

DISCUSSION

Prior to addressing the merits of the parties' arguments, the Board considers whether the ZBA's written decisions denying the Applicant's variance requests comply with certain statutory requirements. RSA 676:3 governs the issuance of decisions by a local land use board. Pursuant to the statute, as amended in 2022,

[t]he decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal . . . unless the court determines that there are other factors warranting the disapproval. If the application is not approved, the board shall provide the applicant with written reasons for the disapproval.

(Emphasis added.) This statute is clear. Not only must a local land use board issue a written decision, but it must also include specific written findings in support of such decision. Here, while

the ZBA issued written decisions, it was silent with respect to findings that supported the decision. Moreover, given the particular facts of this case and the state of the record, including the fact that five separate variances were discussed during the same meeting, and three of those were granted with two denials, the Board is unable to determine other factors warranting the disapproval.

As such, pursuant to RSA 676:3, the Board hereby reverses and remands the matter back to the ZBA, with instruction to hold new public hearings on the two variances at issue. Subsequent decisions issued by the ZBA in this matter should comply with the requirement found in RSA 676:3, I that “[t]he decision shall include specific written findings of fact that support the decision.”

CONCLUSION

Based on the foregoing, upon a balancing of the probabilities, the Housing Appeals Board ORDERS as follows:

1. The decisions of the Town of Meredith Zoning Board of Adjustment denying the Applicant’s requests for variances, which are currently on appeal, are REVERSED AND REMANDED, consistent with this Order.

**HOUSING APPEALS BOARD
ALL MEMBERS CONCURRED
SO ORDERED:**

Elizabeth Menard

Elizabeth M. Menard, Clerk

Date: December 7, 2023