

TOWN OF BRIDGEWATER  
297 Mayhew Turnpike  
Bridgewater, NH 03222

June 16, 2014

Scott H. Harris, Esquire  
McLane, Graf, Raulerson & Middleton, P.A.  
PO Box 326  
Manchester, NH 03105-0326

Re: Motion for Reconsideration of Denial Dated April 22, 2014 of Request for Variance (Alex Bonner)

Dear Attorney Harris:

The zoning board of adjustment, having received and reviewed your May 21, 2014 motion for reconsideration, met on June 16, 2014 to consider its merits. At that meeting, the board voted 5 to 0 to deny your motion for rehearing, as you have presented no evidence which convinced it that its April 21, 2014 decision was unlawful or unreasonable. That being said, your motion did cause the board to question the clarity of its decision, and the board therefore takes this opportunity to expand on its April 21, 2014 decision.

As an initial matter, you suggest in your motion that the variance requested for the expansion of the house has been granted. That is incorrect—both the variance for the expansion of the house and the variance for the garage were denied.

Second, you allege that the zoning board has failed to maintain meeting minutes. To the contrary, the zoning board has retained all records in accordance with the law. Some of those records were lost in a fire when the chairman of the board took them home to review and his house burned to the ground. The town does not have duplicate copies of those records.

Finally, let us reiterate our findings on the variance criteria. The board found that the variances would not be contrary to the public interest, and reached no decision on whether they would be contrary to the spirit of the ordinance. In struggling with the question of whether this variance would be contrary to the spirit of the ordinance, the board considered the cumulative impact of granting many such similar variances in this area, as it is entitled to do.

The board unanimously found that the variances would not do substantial justice, because the reduction of the setback from 20 feet<sup>1</sup> to less than 5 would result in a loss to the general public. Specifically, the board was concerned that the location of the garage and house expansion being located so close to the abutters' property would harm the public given the property's location facing northwest and the density of the lots on Whittemore Point, which will enable fire to spread quickly among these properties, and there are neither fire hydrants nor a full time fire department to address such a catastrophe. Moreover, the board notes that the garage can be located in more than one

---

<sup>1</sup> Incidentally, your letter states that the 20 foot setback was adopted at the same time as the 2 acre minimum lot size. This is not correct. The 20 foot setback was adopted in 1983, 20 years before the 2 acre minimum lot size was adopted.

conforming location; it is simply Mr. Bonner's desire to locate it in the setback. The fact that the abutters agree with the requested variance is irrelevant to the board's consideration.

The board next found that the house addition would not diminish surrounding property values, but that the garage would, for the same reasons set forth above. Although you have alleged that other properties in the area have similarly non-conforming garages, Exhibit 2 to your motion appears to have been created by Mr. Bonner, as it is not a town document; and Mr. Bonner acknowledges in his variance application that many of these other garages were built before the 20 foot setback was adopted. Those uses, of course, are permitted to continue, and are neither a basis for the grant of Mr. Bonner's variance, nor the basis for an equal protection claim.

Likewise, with regard to unnecessary hardship, the board found that denial of the house variance would result in unnecessary hardship, but that the denial of the garage variance would not. You complain in your motion that the board applied the wrong hardship standard; however, it is worth noting that Mr. Bonner completed both hardship criteria sections on his variance application, and therefore the board was justified in finding that no hardship existed pursuant to RSA 674:33, I (a) (5) (B) because the garage can be constructed in conformance with the ordinance. Even if the board were to have utilized RSA 674:33 I(a)(5)(A), it would have been justified in finding that no hardship exists from the denial of the variance because neither Mr. Bonner's application nor your motion explain how there are special conditions of the property which distinguish it from other properties in the area, or how there is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property or how the proposed use is reasonable where the garage could be placed in a conforming location. You do attempt to argue that the 20 foot setback is excessive on the basis of fire concerns; however, this is the setback that the legislative body has chosen, and it is therefore presumed reasonable.

We trust this clarifies the board's ruling and reasoning.

Sincerely,



Steven Williams  
Chairman, Zoning Board of Adjustment