

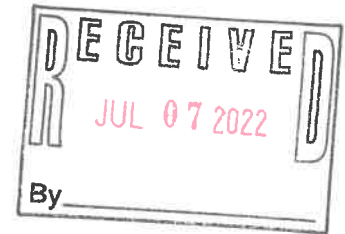


LICENSED IN:
MASSACHUSETTS
NEW HAMPSHIRE
MAINE

Thursday, July 07, 2022

City of Rochester
Zoning Board of Adjustment
Mr. Larry Spector, Chair
33 Wakefield Street
Rochester, NH 03867

HAND DELIVERED



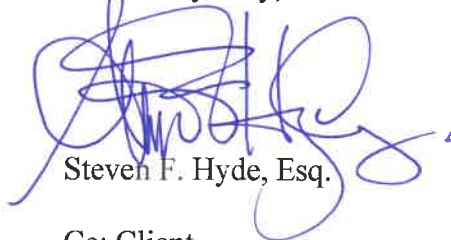
Re: Request for Rehearing Pursuant to RSA 677:2
File: Z-22-23 – 86 Church Street, LLC - Tax Map 258 Lots 7 & 8

Dear Chairman Spector:

Enclosed herewith please find the Request for Rehearing in the matter of ZBA file Z-22-23, the request of 86 Church Street, LLC seeking a variance from Chapter 275, Section 30.3A of the Zoning Ordinance. This Request for Rehearing follows the Board's denial of the variance on June 8, 2022, and its Notice of Decision dated June 17, 2022.

Please file same in your usual manner and provide any and all notices of the Zoning Board of Adjustment hereafter to my client with a copy to my office at the below address.

Yours very truly,



Steven F. Hyde, Esq.

Cc: Client

Encl.

The State of New Hampshire

STRAFFORD, SS

CITY OF ROCHESTER

ZONING BOARD OF ADJUSTMENT CITY OF ROCHESTER, NEW HAMPSHIRE

86 CHURCH STREET, LLC'S MOTION FOR REHEARING PURSUANT TO RSA 677:2

NOW COMES, 86 Church Street, LLC, by and through its attorneys Law Offices of Steven F. Hyde, PLLC, and respectfully requests pursuant to RSA 677:2, rehearing of the matter resulting in this Honorable Board's decision at its June 8, 2022 meeting, noticed in a Notice of Decision dated June 16, 2022, stating in support thereof as follows:

1. The instant request for rehearing follows 86 Church Street, LLC's (hereinafter the "Applicant"), application seeking a variance from Rochester Zoning Ordinance Chapter 275, Section 30.3A, to permit the expansion of a previously approved non-conforming use to allow additional multi-family dwellings in the Agricultural District in an area where existing multi-family complexes exist, to provide for the increased housing needs of the City.
2. The parcels the subject of the variance requested are Map 258, Lots 7 and 8.
3. According to the contents of this Honorable Board's Notice of Decision dated June 16, 2022, this Board, "... Denied the Variance because the Board feels it is too much density for the parcel."
4. The action of the Board in denying the variance sought was unlawful and unreasonable and the petitioners respectfully request that the Board grant a rehearing on this matter for the following reasons:
 - A. The Board failed to consider all of the evidence presented at the hearing;

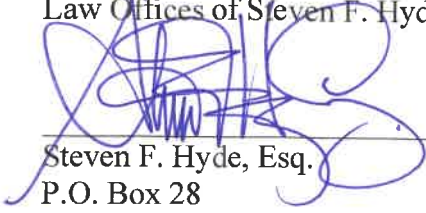
- B. The Board failed to provide findings of fact to support its decision to deny the variance based on its impression as to “too much density.”
- C. The Board failed to consider the variance criteria as presented at the hearing;
- D. The Board failed to consider the opinion of the City staff regarding the hardship prong of the variance criteria, that owing to the unique characteristics of the subject property being AG zoned and laying within the density ring, and the intent of the density ring section of the City’s Ordinance.
- E. The Board made its decision, according to the Notice of Decision, based solely upon the concept of “too much density” notwithstanding that the requested total density is less than that permitted by the density calculation contained in the City’s Ordinance at Table 19-A.
- F. That at least one Board member made the following statement related to “access” and “congestion” upon the property, stating his concern for “an awful lot of cars going down one two-lane road to get out to Church Street” that would be contained entirely on the subject parcel.
- G. That notwithstanding the foregoing statements, the occupants or owners of the multi-family units contemplated to be added to the subject parcel if the variance were granted, would have several methods of accessing Route 125, including the traffic signal-controlled intersections at Pickering Road, Colby Street, and the non-signalized Church Street connector in addition to Pickering Road for commuting to destinations locally to the south. It should be noted that the Church Street Connector to Route 125 is a roadway marked, three lane connector wider than nearby Hemmingway Drive, a two-lane non-roadway marked way serving a substantially larger number of multi-family residential units.
- H. That at least one Board member made statements related to the location of proposed buildings upon the lot which statements tend to show the member’s mindset related to items contained in the plan that are conceptual only and subject to further review,

revision, and approval by the Planning Board, which review, revision and approval is outside the purview of the Zoning Board of Adjustment.

- I. That the same Board member having made the foregoing statement also stated “I’m not the one to say how many there should be or shouldn’t be,” an apparent reference to the purview of the Planning Board where the project would next be considered if the variance was approved.
 - J. That the focus and import of the foregoing statements mischaracterized the nature of the variance being requested, that is, an expansion of an existing, permitted use, prejudicing the petitioner’s request.
5. The meeting Minutes confirm that there was no meaningful discussion of the five criteria for granting a variance; rather, denial of the variance appears to have been made on the basis of the belief of at least one members that the project, would result in “too much density.”
 6. The Board acted inconsistent with the applicant’s presentation regarding the variance criteria and inconsistently with the City Staff’s opinion that the variance criteria as to hardship were met, in denying the petitioners’ variance application.
 7. The Board acted inconsistently with its approval of other recent similar requests for expansion of a multi-family use within the AG Zone where “density,” “congestion,” and “access” were not made the focus of such similar requests, and the variances were granted upon the same or similar showings made by the applicant in the instant matter as it relates to the variance criteria.
 8. No members of the public spoke against the project evidencing no apparent sentiment of the public related to the variance sought.
 9. The Decision to which this Request for Rehearing applies is annexed hereto as the only exhibit. Exhibits presented at the June 8th, 2022 hearing are incorporated by reference.

Date: July 6, 2022

Respectfully Submitted,
86 Church Street, LLC
By its attorneys,
Law Offices of Steven F. Hyde, PLLC



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City of Rochester, New Hampshire

Zoning Board of Adjustment

June 17, 2022

Greg Mahanna
86 Church Street, LLC
120 Aviation Avenue
Portsmouth, NH 03801

Notice of Decision

Z-22-23 86 Church Street, LLC Seeks a *Variance* from Section 30.3.A to permit an expansion of a previously approved non-conforming use to allow additional multi-family dwellings in the Agricultural District.

Location: 84 & 86 Church Street, Tax Map 258 Lots 7 & 8 in the Agricultural Zone.

At its June 8, 2022 meeting, the Zoning Board of Adjustment ***Denied*** the Variance because the Board feels it is too much density for the parcel.


Shanna B. Saunders,
Director of Planning & Development

It is the applicant's responsibility to obtain any applicable permits from local, state, and federal agencies. Any work completed within the thirty (30) day appeal period, explained below, is at your risk.

Note: Any person affected has a right to appeal this decision. A request for a rehearing is the first step of an appeal. The request must be submitted to the Planning Department within **thirty (30) calendar days**, starting the day after the decision is made. If a rehearing is not granted, the next step is to appeal to Superior Court within thirty (30) days. If a rehearing is granted, it is the responsibility of the original applicant to present the case to the Zoning Board, with the same obligations and following the same procedure used when the case was first heard.

As Per RSA 674:33.I.a.(a)

Variances authorized by the Zoning Board of Adjustment, Rochester NH shall be valid only if exercised within 2 years from the date of this application.

Cc: View Point Z-22-20
File