

STATE OF NEW HAMPSHIRE

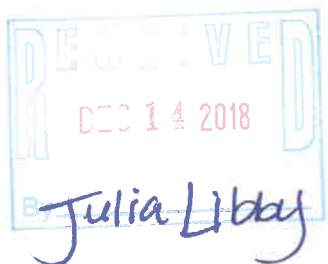
COUNTY OF STRAFFORD

CITY OF ROCHESTER
ZONING BOARD OF ADJUSTMENT

Case No. 2018-10
Variance Request

Corey MacKoul and Gary MacKoul

147 Wakefield Street
Map 113, Lot 55



MOTION FOR REHEARING

NOW COME Corey MacKoul and Gary MacKoul, of 147 Wakefield Street, Rochester, New Hampshire and, by way of this Motion for Rehearing, say:

1. Corey MacKoul and Gary MacKoul are the owners of land and buildings located at 147 Wakefield Street in Rochester, New Hampshire (Tax Map 113, Lot 55.)
2. On November 14, 2018, the Board of Adjustment considered an application brought by Corey MacKoul and Gary MacKoul for a variance to allow them to create a mixed-use dwelling with a residence on the second floor and two commercial activities on the first, both of which are low impact activities that are permitted home occupations.
3. On November 14, 2018, the Board of Adjustment voted to deny the application for a variance.
4. The action of the Board of Adjustment 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; specifically, the Board members had not read or considered letters and emails submitted in support of the petitioners' application although these were timely submitted and were part of the file prior to the hearing.
 - B. The Board failed to provide findings of fact to support its decision to deny the variance as being contrary to the public's interest.

C. Several Board members made statements that mischaracterized the nature of the variance being requested, indicating a lack of understanding of the petitioners' request. Specifically,

(1) Member Stevens stated that he was opposed to the petitioners' request when they applied for a special exception in 2017 and continued to be opposed because their request amounts to "spot zoning". The petitioners submit that this characterization of their request is in error because they are requesting a variance for a discreet, defined use within the Ordinance and are not requesting a wholesale change to the zoning of their particular property to permit uses that are beyond the requests in their variance application or that are otherwise not permitted in the R-2 Zone.

(2) One member stated that, if the variance was granted, a McDonald's could be built on the property. This is not correct or accurate. The petitioners are requesting that they be permitted to use their property as a mixed-use dwelling. This use is specifically defined in the Ordinance and could not include a McDonald's or other similar development.

(3) One member stated that he did not think the petitioners should be granted a variance since the City Council denied the petitioners' motion for a zoning amendment. The motion for a zoning amendment was to change a large area (including the petitioners' property) to Neighborhood Mixed Use. The petitioners' request for a variance was for a discreet and defined use within the Ordinance, limited only to their property. The petitioners' motion for a zoning amendment was substantially different than the relief the petitioners' requested in their variance application, the standards for review of these requests are different, and the City Council's actions in denying the motion to rezone should have no bearing on whether the petitioners are entitled to a variance and should not be a factor in the Board's considerations.

4. The Minutes confirm that there was no real 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 some members that the petitioners' use of the property would be or become solely commercial in nature; this is not the use requested or contemplated by the petitioners; their

request is to permit them to use the property for a residence and two commercial activities that are allowed as home occupations under the Ordinance; if the Board is concerned about the possibility that the petitioners would expand their activities beyond their requests expressed in the variance application, the Board is free to attach such conditions as it deems appropriate.

6. The Board acted inconsistently in denying the petitioners' variance application since it has granted other variances for solely commercial activities on similarly situated properties that are in residential zones but are also in close proximity to significant commercial development and have no ready residential market.

7. In the first agenda item of the Board's November 14, 2018 meeting related to the petitioners' appeal of an administrative decision, the Code Compliance Officer, with the consent of and at the direction of the City Attorney, engaged in acts of bad faith in violating the petitioners' privacy rights and releasing private medical information to the public in an effort to paint the petitioners as rule breakers who do not abide by the parameters of their permits or the Ordinance; thereby creating a potential bias against the petitioners.

WHEREFORE, the petitioners pray:

A. That the matter be noticed and scheduled for a rehearing at the next available meeting of the Board of Adjustment; and

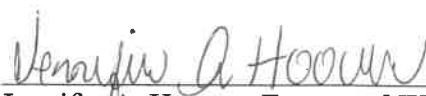
B. For such other and further relief as may be just and reasonable.

Respectfully submitted,

Corey MacKoul and Gary MacKoul
By their attorneys,

Holmes & Ells, PLLC

Date: December 13, 2018


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