



COOPER
CARGILL
CHANT
ATTORNEYS AT LAW

DEC 21 2015

December 18, 2015

By Hand

Carroll County Superior Court
Abigail Albee, Clerk
96 Water Village Road- Box 3
Ossipee, NH 03864

Re: David and Christina Caldwell v. Town Of Jackson Zoning Board Of Adjustment
Docket No.: 212-2015-cv-00099
CCC File No: 18719.000

Dear Clerk Albee:

Enclosed in the above referenced matter, please find Plaintiff's Objection to Defendant's Motion for Reconsideration for consideration and filing with the Court.

Thank you for your attention to this matter, and if you should have any questions, please do not hesitate to contact me.

Very truly yours,

COOPER CARGILL CHANT, P.A.

Christopher T. Meier
cmeier@coopercargillchant.com

CTM/cje
Enclosures
cc: Client
Peter Malia, Esq.

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

Docket No. 212-2015-cv-00099

DAVID CALDWELL, JR. AND CHRISTINA CALDWELL,
Plaintiffs,

v.

TOWN OF JACKSON ZONING BOARD OF ADJUSTMENT,
Defendant.

**PLAINTIFFS' OBJECTION TO
ZONING BOARD'S MOTION FOR RECONSIDERATION**

NOW COME the Plaintiffs, David Caldwell, Jr. and Christina Caldwell, by and through their attorneys, Cooper Cargill Chant, P.A., and hereby object to the defendant's motion for reconsideration. In support, Applicant states as follows:

1. In brief, the defendant fails to present with particular clarity, any points of law or fact that the Court overlooked or misapprehended. Superior Court Rule 12(e).
2. The defendant may disagree with the Court's interpretation of RSA 674:33, however it appears to simply rehash arguments that it made at trial, which provides no basis or cause for reconsideration.
3. As it did at hearing, the defendant contends that the statute should be interpreted to require that the variance from zoning is "necessary" to accommodate the disabled person, rather than the actual reasonable accommodations being "necessary" for the disabled person to use the premises. First, the statute simply does read as defendant argues – if the Legislature intended the result sought by defendant, it could have drafted the statute that way, allowing that a zoning board may grant a variance when such variance is necessary to allow a disabled person to use the premises. It did not, and rather allowed the

variance not when the variance is necessary, but “when reasonable accommodations are necessary to allow [a disabled person] to use the premises.” RSA 674:33, V. Under the clear language, it is the need for reasonable accommodation to the disability that is the lynchpin, not accommodation from zoning.

4. Second, the interpretation sought by defendant would provide a draconian result that would likely eclipse the exception – it would mean that no matter how drastic the disability, and how dramatic the cost or hardship of a conforming access solution, if a variance was not absolutely necessary to provide a disability accommodation, it could not be granted. For example, under the defendant’s proposed interpretation of RSA 674:33, V, even a conforming disability access solution which cost more than the house itself, but was technically possible, would block a disability variance. Under the defendant’s proposed interpretation, in response to every disability variance application, every Zoning Board in New Hampshire would have to consider each and every technically feasible alternative solution, however cost-prohibitive, and treat the same as an absolute bar to any disability variance. This is likely why the Legislature chose the language it did, in order to actually provide the possibility of property owners obtaining disability variances.
5. As an aside, in its motion, the defendant incorrectly states that “it is undisputed that plaintiffs have the ability to construct such a ramp... at a location reasonable for her access and use and without disturbing the zoning ordinance”, and they “could just as easily build” such a ramp. Motion, at 2, 4. First, this was not of record – there was no evidence from anyone which showed an alternative means of accessible access, no less a covered access protected from the elements, or what the cost of such an alternative

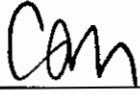
covered access would be, such that the Town could make an allegation that such solution would “just as easily have been built.” But more importantly, if any technically feasible solution, however costly or unsightly, bars a disability variance, the defendant undercuts its own interpretation by considering relative cost.

6. As to the other arguments raised again by defendant, plaintiff concedes that the Board must proceed through the remaining criteria of the statute, at RSA 674:33, V(a), and (b) regarding harmony and survivability – and if plaintiff was proposing a “giant, sprawling, ramped deck from one side of the house up to and running along the very edge of the road”, of which defendant expresses concern, Motion, at 4 – the Board might use any discretion it “may” have under the statute to find that such a ramp does not meet the “harmony” requirement of RSA 674:33, V(a). Here, however, as noted by the Court, the proposed ramp intrudes into the setback “a mere five feet eight inches”, leaving over forty-four feet of setback, and any “gain to the public from preventing such a minor intrusion is so minimal as to be negligible.” Order, at 7-8.

For all these reasons, the Plaintiffs respectfully requests that this Court deny the defendants’ motion for reconsideration, and grant such further relief as is appropriate.

Respectfully Submitted,
The Plaintiffs,
DAVID AND CHRISTINA CALDWELL,
By their Attorneys,

Dated: December 18, 2015

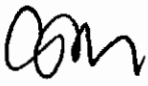
By: 

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Certificate of Service

I, Christopher T. Meier, hereby certify that on this day, I served the foregoing on all counsel of record by mailing the same by first class mail, postage pre-paid, or electronically as allowed by rule.

Date: December 18, 2015



Christopher T. Meier, NH Bar ID #17135