

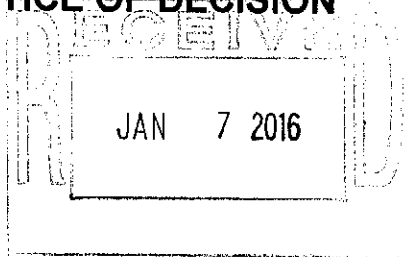
**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

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NOTICE OF DECISION

**Peter J. Malia, ESQ
Hastings Malia PA
376 Main Street
PO Box 290
Fryeburg ME 04037-0290**



Case Name: **David & Christina Caldwell, Jr. v Town of Jackson ZBA**
Case Number: **212-2015-CV-00099**

Enclosed please find a copy of the court's order of January 05, 2016 relative to:

Order - Motion to Reconsider

January 05, 2016

Abigail Albee
Clerk of Court

(406)

C: Christopher T. Meier, ESQ

STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

David Caldwell, Jr. & Christina Caldwell

v.

Town of Jackson Zoning Board of Adjustment

Docket No. 212-2015-CV-00099

ORDER

The Plaintiffs, David Caldwell and Christina Caldwell, appealed the decision of the Town of Jackson Zoning Board of Adjustment (“ZBA”) denying their application for a variance. Following a hearing on the merits, the Court reversed the decision of the ZBA and remanded for further proceedings. The ZBA now moves for reconsideration. For the reasons set forth below, the ZBA’s motion is DENIED.


A motion for reconsideration “shall state, with particular clarity, points of law or fact that the court has overlooked or misapprehended.” Super. Ct. Civ. R. 12(e). In its motion, the ZBA argues the Court erred in its interpretation of RSA 674:33, V. It succinctly summarizes the substance of its argument as follows: “There is no known caselaw on point. Therefore, this legal analysis is a simple matter of statutory construction. And it is in this legal analysis that the Court disagrees with the ZBA.” (Def.’s Mot. Reconsider at 2.) In disagreeing with the Court’s interpretation of the statute, the ZBA appears to simply raise the same arguments it made before the Court in the first instance. As such, the ZBA has failed to present points of law or fact that the Court overlooked or misapprehended.

Moreover, the Court notes the ZBA's concerns over a hypothetical "giant, sprawling, ramped deck" are unfounded. An applicant seeking a variance must still meet all other applicable criteria under RSA 674:33, including the remaining factors under RSA 674:33, V that were not addressed by the ZBA in the first instance. The totality of these factors still serves as a check on harmful or burdensome projects.

Accordingly, for the foregoing reasons, the ZBA's motion for reconsideration is DENIED.

SO ORDERED.

Date: 1/5/16



Charles S. Temple
Presiding Justice