



CITY OF CONCORD

REPORT TO MAYOR AND THE CITY COUNCIL

FROM: James W. Kennedy, City Solicitor

RE: Amend Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-9, Administration and Enforcement

DATE: June 8, 2021

Recommendation

Accept this report and set the attached Ordinance amending the Code of Ordinances, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-9, Administration and Enforcement, Section 28-9-3, Decisions by the Zoning Board of Adjustment (ZBA), for a public hearing on August 9, 2021.

Discussion

Under RSA 674:33, I(b), a zoning board of adjustment has the power to grant a variance if: (1) the variance is not contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the value of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The evidence in the record supports the ZBA's determination that those factors were satisfied.

It is well settled in New Hampshire that when a zoning board of adjustment grants a variance, there is no requirement for written findings because it is understood that all variance criteria have been satisfied. *Rochester City Council v. Rochester Zoning Bd. Of Adjustment*, 171 N.H. 271, 276 (2018). The New Hampshire Supreme Court has made clear that “[a]lthough disclosure of specific findings of fact by a board of adjustment may often facilitate judicial review, the absence of findings, at least where there is no request therefor, is not in and of itself error.” *Id.* (internal quotation omitted).

Ordinance 28-9-3 should be amended to reflect the current standard as articulated by the New Hampshire Supreme Court.