

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Reporter, Supreme Court of New Hampshire, One Charles Doe Drive, Concord, New Hampshire 03301, of any editorial errors in order that corrections may be made before the opinion goes to press. Errors may be reported by email at the following address: reporter@courts.state.nh.us. Opinions are available on the Internet by 9:00 a.m. on the morning of their release. The direct address of the court's home page is: <https://www.courts.nh.gov/our-courts/supreme-court>.

THE SUPREME COURT OF NEW HAMPSHIRE

Housing Appeals Board
Case No. 2025-0019
Citation: Appeal of Murray, 2026 N.H. 26

APPEAL OF CHRISTINE MURRAY
(New Hampshire Housing Appeals Board)

Argued: January 8, 2026
Opinion Issued: July 15, 2026

Yasenka Law PLLC, of Portsmouth (Kristin M. Yasenka, on the brief and orally), and MacMillan Law Offices, of Bradford, Massachusetts (Thomas K. MacMillan on the brief), for the petitioner.

Beaumont & Campbell Prof. Ass'n., of Salem (Bernard H. Campbell on the brief and orally), for the respondents.

Soule, Leslie, Kidder, Sayward & Loughman, P.L.L.C., of Salem (Diane M. Gorrow), for the Town of Hampstead Zoning Board of Adjustment, filed no brief.

GOULD, J.

[¶1] The petitioner, Christine Murray (the abutter), appeals an order of the Housing Appeals Board (HAB) affirming a decision of the Town of Hampstead Zoning Board of Adjustment (ZBA) granting a special exception to

the respondents, Beth and Scott Spicer (the applicants), permitting them to build a second-floor addition to their lakefront cottage across the road from the abutter's home. We reverse and remand.

[¶2] The HAB found, or the record supports, the following facts. The applicants own a lakefront seasonal residential cottage in Hampstead. The applicants' lot is non-conforming because of its small size and lack of sufficient frontage. Consequently, the Hampstead Zoning Ordinance (HZO) requires a special exception to alter or enlarge the cottage. Hampstead, N.H. Zoning Ordinance, § 1.2:1(B)(2) (1968) (amended 1998); § III-3:4 (1968) (amended 1989). The applicants applied to the ZBA for a special exception to remodel and add a second story to the cottage. After a hearing, the ZBA granted the special exception. The ZBA's decision did not "include specific written findings of fact that support the decision" as required by RSA 676:3, I (Supp. 2025). Instead, it recited only that the ZBA "determined the request met the requirements" of the ordinance. The abutter moved for rehearing of the ZBA's decision. During the pendency of the rehearing request, the applicants partially completed the planned renovations. The ZBA denied rehearing. The abutter appealed the ZBA decision to the HAB. After a merits hearing, the HAB dismissed the appeal, finding that the ZBA's decision was not unreasonable or unlawful. This appeal followed.

[¶3] On appeal, the abutter argues that the ZBA erred in granting the applicants a special exception because they did not meet their burden to prove that the special exception criteria were satisfied. As a result, the abutter argues, the HAB erred in affirming the ZBA's decision. The applicants argue that photographs of the abutter's lake view provided by the abutter to the ZBA support the ZBA's "(implicit) finding that no diminution of the value of the [abutter's] real estate would occur" and, therefore, "there is no basis to override the HAB." We agree with the abutter.

[¶4] When reviewing a zoning board's decision, the HAB must uphold the decision unless there is an error of law or the HAB is persuaded by the balance of probabilities, on the evidence before it, that the decision was unreasonable. RSA 679:9, II (Supp. 2025); see RSA 677:6 (2016); see also RSA 679:9, I (Supp. 2025) (appeals to the HAB shall be consistent with those to the superior court pursuant to RSA 677:4 through RSA 677:16). The appealing party bears the burden of proving the ZBA's decision was unlawful or unreasonable. RSA 677:6; see also RSA 679:9, I. The HAB must treat the ZBA's factual findings as prima facie lawful and reasonable. RSA 677:6; see also RSA 679:9, I. The HAB determines not whether it agrees with the ZBA's findings but rather whether there is evidence in the record upon which the ZBA could have reasonably based its findings. See Appeal of Chichester Commons, 175 N.H. 412, 415-16 (2022); Trustees of Dartmouth Coll. v. Town of Hanover, 171 N.H. 497, 504 (2018).

[¶5] Our review of the HAB’s decision is governed by RSA chapter 541. See RSA 679:15 (Supp. 2025). Accordingly, we will not set aside the HAB’s order unless we are satisfied, by a clear preponderance of the evidence, that the order is unjust or unreasonable. See RSA 541:13 (2021). We treat the HAB’s factual findings as “prima facie lawful and reasonable.” See id. “When reviewing the HAB’s findings, our task is not to determine whether we would have found differently or to reweigh the evidence, but, rather, to determine whether the HAB’s findings are supported by competent evidence in the record.” Appeal of Chichester Commons, 175 N.H. at 416.

[¶6] In an application to obtain a special exception from a zoning board, the burden of proof is on the applicant to present sufficient evidence to support a favorable finding on each of the ordinance’s requirements for a special exception. See McKibbin v. City of Lebanon, 149 N.H. 59, 61 (2003); Tidd v. Town of Alton, 148 N.H. 424, 427 (2002); Jensen’s, Inc. v. City of Dover, 130 N.H. 761, 765 (1988). When considering whether to grant a special exception, zoning boards may not vary or waive any of the requirements set forth within the ordinance. See McKibbin, 149 N.H. at 61.

[¶7] The HZO states that “[p]rovided that said changes are within the spirit and intent of the Ordinance, the Board of Adjustment may grant as a Special Exception the following changes: . . . The alteration or enlargement of a structure on a non-conforming lot, as long as there is no diminution of surrounding property values in the view of the Board.” Hampstead, N.H. Zoning Ordinance § 1.2:1, B (1968) (amended 1998). Accordingly, the applicants were required to prove that: (1) the addition to their cottage would be within the spirit and intent of the ordinance and (2) the addition would not result in a diminution of surrounding property values. See Jensen’s, Inc., 130 N.H. at 765. The applicants did not meet this burden.

[¶8] At the ZBA hearing on the application, Mr. Spicer testified about the applicants’ reasons for seeking the special exception and the content of the proposed construction plans. Mr. Spicer further testified that the addition would increase the height of the structure by ten feet. The applicants presented no evidence regarding whether the addition would affect the value of surrounding properties or whether the project was consistent with the spirit and intent of the ordinance. Indeed, the applicants did not even mention the ordinance’s special exception criteria at the hearing.

[¶9] The abutter testified at the hearing that the addition would obstruct her view of the lake and introduced pictures of her lake view. In contrast to the applicants’ presentation, the abutter quoted the special exception criteria and stated that the project “is contrary to the spirit and intent of the ordinance, and it will diminish my property value.” The applicants offered nothing in rebuttal to the abutter’s testimony.

[¶10] In Barrington East Owners' Assoc. v. Town of Barrington, 121 N.H. 627 (1981), a landowner applied for a special exception to build a shopping mall. Barrington East Owners' Assoc., 121 N.H. at 629. The ZBA approved the application, and the superior court affirmed. Id. We reversed. Id. at 632. We observed that the zoning ordinance required that the project “would not cause a substantial diminution of area property values,” among other requirements, and that the landowner presented no evidence that the proposed mall would not cause such a diminution. Id. at 630 (brackets omitted). At the hearing, other property owners “testified that the proposed mall would adversely affect the value of their condominiums.” Id. On this record, we concluded that the ZBA “did not have sufficient information before it to make the required findings” regarding diminution of area property values, among other criteria. Id. at 631.

[¶11] Here, the applicants likewise presented no evidence that the proposed addition would not diminish surrounding property values and the abutter testified that it would reduce the value of her property. The applicants suggest that the pictures submitted by the abutter provided sufficient evidence for the ZBA to find that there would be no diminution of property values resulting from the addition. We disagree that this evidence was sufficient to demonstrate that the surrounding property values would not be diminished. Cf. Hussey v. Town of Barrington, 135 N.H. 227, 234 (1992) (affirming denial of variance request where “the ZBA heard detailed appraisal data indicating the negative effect [the operation] would have on adjoining property values”). The applicants therefore failed to meet their burden to establish a right to a special exception, and the ZBA had no record basis for its implicit conclusion that the addition would not adversely affect surrounding property values. Cf. Jensen's, Inc., 130 N.H. at 765-66 (affirming denial of special exception request where applicant “failed to meet its burden of proof” on a special exception criterion).

[¶12] The applicants also argue that the language “in the view of the Board” found in the ordinance’s special exception criteria “was intended to vest the [ZBA] with broad discretion and limit the ability to challenge the [ZBA] finding on this point.” More specifically, the applicants assert that the language changes the standard of review on appeal to “whether an agency (in this case the ZBA) acted illegally with respect to jurisdiction, authority or observance of law, or unsustainably exercised its discretion or acted arbitrarily, unreasonably or capriciously.” The applicants contend that under this standard of review, the ZBA’s decision should be affirmed.

[¶13] We disagree that the language “in the view of the Board” alters the standard of review in this case. We hold that this language requires that to grant a special exception the ZBA must make the specific finding that surrounding property values would not be diminished. As explained above, the applicants failed to meet their burden to demonstrate that surrounding

property values would not be diminished and, upon this record, the ZBA's decision granting the special exception is unreasonable and cannot stand.

[¶14] Accordingly, we conclude that the ZBA's decision granting the special exception and the HAB's decision affirming the ZBA are unreasonable. See RSA 541:13. Consequently, we reverse the HAB's decision and remand to the HAB with the instruction that it reverse the ZBA's decision. See Gail C. Nadeau 1994 Trust v. City of Portsmouth, 155 N.H. 810, 813 (2007) (reversing trial court order where the petitioners failed to meet their burden of proof).

Reversed and remanded.

MACDONALD, C.J., and DONOVAN and COUNTWAY, JJ., concurred.