HINCKLEY ALLEN

11 South Main Street, Suite 400
Concord, NH 03301-4846

p: 603-225-4334 f: 603-224-8350
hinckleyallen.com

John L. Arnold
jarnold@hinckleyallen.com
(603) 545-6166

October 22, 2015

Karyn Forbes Chair
Zoning Board of Adjustment
Town of Barrington
P.O. Box 660
333 Calef Highway
Barrington, NH 03825

Re: ***Case No. 238-5-TC/SDAO-15 Appeal; Calef's Find Foods***

Dear Chairperson Forbes and Members of the Zoning Board:

This letter is to request, on behalf of The Three Socios, LLC ("TTS"), a rehearing of the October 21, 2015 decision by this Board that a well does not constitute a "structure" under the Barrington Zoning Ordinance. A rehearing should be granted because the Board misconstrued the issue before it, and based its decision on matters outside the scope of the Board's review.

The sole issue the Board had to determine was whether a well falls within the following definition of a structure:

> "Anything constructed, installed, placed or erected, whether above or below ground."

See Barrington Zoning Ordinance, Definitions. There is no plausible way to read that definition to exclude a well. TTS refers the Board to the written and oral submissions on this issue by the undersigned, and by Attorney Whitelaw on behalf of the Planning Board, and incorporates those arguments herein. Furthermore, the New Hampshire Supreme Court has interpreted a definition of "structure" very similar to Barrington's in a way which would include wells:

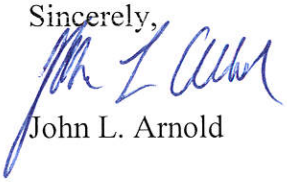
> As noted, the ordinance prevents the erection of a "structure" within a setback and defines structures broadly as: "Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground." Septic systems and other "underground objects" fit within this definition. Therefore, the setbacks may not be used for the erection of a building or its appurtenant structures and should not be included within the minimum building site area.

Doyle v. Town of Gilmanton, 155 N.H. 733, 738 (2007).

Some members of the Board opined that the Town has not treated wells as structures in the past, and that Mr. Calef should be entitled to have a well on his property. However, those sentiments, regardless of their merits, are inappropriate considerations for the Board's determination of the issue before it. The Board is not tasked with, and lacks the authority to substitute its own judgment for the plain, unambiguous terms of the Ordinance. The Board has a duty to the residents of Barrington to uphold the Ordinance, as it is written, despite any personal disagreement with the outcome resulting therefrom.

For these reasons, we respectfully request that a rehearing be held regarding the Calefs' appeal.

Sincerely,



John L. Arnold

JLA/dj

cc: The Three Socios, LLC
Jae Whitelaw, Esq.
Gregory D. Wirth, Esq.

#55295337