MITCHELL MUNICIPAL GROUP, P.A.
ATTORNEYS AT LAW
25 BEACON STREET EAST
LACONIA, NEW HAMPSHIRE 03246

WALTER L. MITCHELL
JUDITH E. WHITELAW
LAURA A. SPECTOR-MORGAN
STEVEN M. WHITLEY

TELEPHONE (603) 524-3885
FACSIMILE (603) 524-0745

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VIA EMAIL ONLY

Zoning Board of Adjustment
Town of Barrington
PO Box 660
Barrington, NH 03825

Re: Town of Barrington Planning Board's Motion for Rehearing
Case No. 238-5-TC/SDAO)-15-Appeal
Owners: George & Arvilla-Calef-George Calef Fine Foods

Dear Board Members:

This office represents the Barrington Planning Board in this matter. The purpose of this letter is to request a rehearing of the Zoning Board of Adjustment's decision of October 21, 2015 that a "well" is not a "structure" as that term is defined in Article 19 of the Barrington Zoning Ordinance ("ordinance"). The planning board believes the ZBA's decision is not supported by the ordinance language and is based on reasons which are not within the scope of the ZBA's authority.

The planning board's explanation of why a well is a structure under the ordinance was set out in detail in both its objection to the Calefs' appeal of the ZBA decision and testimony offered on its behalf at the ZBA's hearing. In short, Article 19 defines a structure as "Anything constructed, installed, placed or erected, whether above or below ground." (Emphasis added). There is no credible argument that a well is not a structure. The only issue is whether the ordinance exempts wells from specific provisions which are applicable to structures. The definition does contain exemptions but a well is not included in the list. Wells are not excluded. The ZBA decision that a well is not a structure under the ordinance is clearly legally erroneous.

The ZBA did not base its decision on the terms of the ordinance. Instead, the ZBA determined that the ordinance "should have" included wells within the list of exemptions, that the planning board had not addressed the issue before, and the property used to have a well so should have one now. None of these reasons are related to the interpretation of the language of the ordinance. To the extent the ZBA attempted to apply municipal estoppel or administrative gloss, it does not have the authority to do so as such equitable remedies are not with the scope of its statutory powers. It was clear error for the ZBA to exceed its statutory authority to interpret the zoning ordinance.

The planning board urges the ZBA to grant the motion for rehearing so that the ZBA may correct its legal errors. Thank you for your consideration of the Planning Board's position in this matter.

Sincerely,

Judith E. Whitelaw
jae@mitchellmunigroup.com

cc: Marcia Gasses, Planner and
Land Use Administrator
John Scruton, Town Administrator
John L. Arnold, Esquire
Gregory D. Wirth, Esquire
Michael L. Donovan, Esquire
(All via email only)