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November 2, 2015

Barbara Irvine, Land Use Secretary
Zoning Board of Adjustment
Town of Barrington
P.O. Box 660
Barrington, NH 03825

Re: George A. Calef and Arvilla T. Calef, Trustees of The George A. Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008, and Arvilla T. Calef and George A. Calef, Trustees of The Arvilla T. Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008 v. Town of Barrington, New Hampshire

Dear Ms. Irvine:

Enclosed please find Petitioners' Motion for Rehearing for filing with reference to the above-captioned matter. I hereby certify that copies of the enclosed and this letter have this date been forwarded by first class mail, postage prepaid, to Judith E. Whitelaw, Esq., counsel for the Town of Barrington Planning Board, and John L. Arnold, Esq., counsel for The Three Socios, LLC, and to Michael L. Donovan, Esq., counsel for the Town of Barrington Zoning Board of Adjustment.

Thank you for your attention to this matter. As always, should you have any questions or concerns or wish to discuss this matter, please do not hesitate to contact me.

Sincerely yours,

Gregory D. Wirth

GDW/jbb
Enclosures
Cc: George A. Calef and Arvilla T. Calef, Trustees of The George A. Calef Living Revocable Trust and the Arvilla T. Calef Living Revocable Trust
John L. Arnold, Esq.
Judith E. Whitelaw, Esq.
Michael L. Donovan, Esq.

TOWN OF BARRINGTON
ZONING BOARD OF ADJUSTMENT

George A. Calef and Arvilla T. Calef, Trustees of
The George A. Calef Living Revocable Trust
of 2008 u/t/a dated May 21, 2008,
and Arvilla T. Calef and George A. Calef, Trustees of
The Arvilla T. Calef Living Revocable Trust of 2008
u/t/a dated May 21, 2008

v.

Town of Barrington, New Hampshire

PETITIONERS' MOTION FOR REHEARING

NOW COME the Petitioners, George A. Calef and Arvilla T. Calef, Trustees of The George A. Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008, and Arvilla T. Calef and George A. Calef, Trustees of The Arvilla T. Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008, and by way of a Motion for Rehearing, state as follows:

1. This matter was commenced by Appeal of Decision of the Town of Barrington, New Hampshire Planning Board Pursuant to New Hampshire R.S.A. 676:5(III) dated September 11, 2015 (the "Appeal") and pertains to the Notice of Decision of the Barrington Planning Board dated August 18, 2015 (the "Planning Board Decision") conditionally approving the April 15, 2015 Project Application (the "Application") filed by, or on behalf of, The Three Socios, LLC and Barrington Village Place, LLC "to construct a proposed well with associated water line piping and access to serve a non-community water supply" (the "Proposed Well") on a certain tract or parcel of land, comprising a total of approximately one hundred thirty five and five hundred sixty three thousandths (135.563) acres (the "BVP Premises") adjacent to the Calef Premises (as defined in the "Appeal") and the Three Socios Premises (as defined in the "Appeal").

2. The Petitioners asserted in the Appeal that "(t)he Planning Board Decision, based upon the terms of the Barrington Zoning Ordinance or upon the construction, interpretation or application of the Barrington Zoning Ordinance, is not in conformance with the Barrington Zoning Ordinance" and, based thereon, further asserted that the Planning Board Decision is in error and must be reversed.

3. Specifically, the Petitioners asserted that their premises situate on Route 125 in Barrington, New Hampshire (the "Calef Premises") are currently serviced by a well situate on premises now or formerly owned by George Tsoukalas and identified as Barrington Tax Map 238, Lot 7 (the "Tsoukalas Premises"), that the Calef Premises have been serviced by a well on the Tsoukalas Premises since approximately 1966, that the drawing of water from a well for the benefit of the Calef Premises is documented in an Easement dated August 2, 2007 and that the plans submitted with respect to the development of The Three Socios Premises, including the Overall Vicinity Plan revised April 8, 2014, show the well servicing the Calef Premises, designated as PWS 0158200, as "EX. WELL TO BE ABANDONED PWS 0158200".

4. The Petitioners asserted numerous provisions of the Barrington Zoning Ordinance in support of the Appeal.

5. Article 19 of the Barrington Zoning Ordinance allows for Conservation Subdivisions in the Village District "(p)rovided that such use complies with Article 6 of this Ordinance entitled 'Conservation Subdivision Regulations.'"

6. Article 6.3.1 of the Barrington Zoning Ordinance addresses Permitted Uses in Conservation Subdivisions.

7. Article 6.3.1(1) of the Barrington Zoning Ordinance, titled "Primary Uses", states as follows:

"Primary permitted uses include single-family detached dwelling units and single-family attached dwelling units. Structures containing attached dwellings may not contain more than six (6) units per structure. Home businesses, as defined in this Ordinance, are specifically prohibited from Conservation Subdivisions."

8. Article 6.3.1(2) of the Barrington Zoning Ordinance, titled "Accessory Uses", states as follows:

"Accessory permitted uses include garages, recreation facilities such as playgrounds, parks and trails, parking lots for residential or recreational uses, and other accessory uses commonly associated with residential dwellings."

9. Article 18 of the Barrington Zoning Ordinance defines "Accessory Use" as "(a) structure or use that is subordinate in purpose of the principal use; contributes to the comfort, convenience, or necessity of the principal use; and, is located on the same lot as the principal use."

10. The Petitioners asserted in the Appeal that a non-community water supply to service off site commercial uses (the "Proposed Well") is not a permitted use, either primary or accessory, as provided for in Article 6 of the Barrington Zoning Ordinance.

11. A Hearing was held before the Barrington Zoning Board of Adjustment on Petitioners' Appeal on October 13, 2015.

12. At the October 13, 2015 Hearing, the Barrington Zoning Board of Adjustment denied the Petitioners' Appeal.

13. Specifically, the Barrington Zoning Board of Adjustment "voted to dismiss the appeal as untimely. The Board reviewed; October 8, 2013 Planning Board Notice of Decision that stated the applicant needed a variance from 6.2.2(8), the October 29, 2013 Notice of application for the Variances to 6.2.2(8) to the Zoning Board of Adjustment, and September 25, 2014 Minutes from the ZBA where the applicant withdrew claims to 6.2.2(8) & 6.2.2(9) in determining the application for appeal was untimely."

14. The Barrington Zoning Board of Adjustment Notice of Decision denying the Petitioners' Appeal was issued on October 20, 2015.

15. While the Petitioners acknowledged in Paragraph 32 of the Appeal that "Three Socios and/or BVP have obtained a variance with respect to Article 6.2.2 (pertaining to design standards in common open space) and 6.2.6 (pertaining to the perimeter buffer setback) of the Zoning Ordinance", the Petitioners asserted that "no variance from the provisions of Article 6.3.1 of the Barrington Zoning Ordinance ha(d) been obtained by Three Socios and/or BVP."

16. The Barrington Zoning Board of Adjustment's finding and ruling that "the appeal (i)s untimely" is without basis in law or fact.

17. The Petitioners' Appeal seeks the review of and a decision with respect to the August 18, 2015 Planning Board Decision conditionally approving the April 15, 2015 Project Application filed by, or on behalf of, The Three Socios and BVP.

18. It would not have been possible, nor legally required, for the Petitioners to appeal, in 2013 or 2014, a Planning Board Decision issued on August 18, 2015 pertaining to a Project Application dated April 15, 2015.

19. Additionally, the bases for the Petitioners' Appeal include Articles 6.3.1, 6.3.1(1), 6.3.1(2), 18 and 19 of the Barrington Zoning Ordinance.

20. The Petitioners do not base the Appeal on Articles 6.2.2, 6.2.2(8), 6.2.2(9) or 6.2.6 of the Zoning Ordinance.

21. For each of the foregoing reasons, the decision of the Barrington Zoning Board of Adjustment to grant, in part, the Joint Motion to Dismiss is both unlawful and unreasonable.

WHEREFORE, your Petitioners, George A. Calef and Arvilla T. Calef, Trustees of The George A. Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008, and Arvilla T. Calef and George A. Calef, Trustees of The Arvilla T. Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008, respectfully pray that the Barrington Zoning Board of Adjustment:

A. After hearing or, in the alternative, without hearing, grant this Motion for Rehearing; and

B. Following such rehearing, reverse the August 18, 2015 Decision of the Barrington Planning Board; and

C. Order such other and further relief as may be just and equitable.

Respectfully submitted,

George A. Calef and Arvilla T. Calef, Trustees of The George A Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008, and Arvilla T. Calef and George A. Calef, Trustees of The Arvilla T. Calef Living Revocable Trust of 2008 u/t/a dated May 21, 2008
By their Attorneys,
The Law Offices of Gregory D. Wirth, P.L.L.C.

Dated: November 2, 2015

By: _____
Gregory D. Wirth, Esq.
(NH Bar #2769)
100 Main Street, Suite 240
P.O. Box 2209
Dover, NH 03821-2209
603-516-2200

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

I hereby certify that a copy of the foregoing Motion for Rehearing has this date been forwarded by email to Judith E. Whitelaw, Esq., counsel for the Town of Barrington, New Hampshire, to John L. Arnold, Esq., counsel for The Three Socios, LLC, and to Michael L. Donovan, Esq., counsel for the Town of Barrington Zoning Board of Adjustment.

Gregory D. Wirth, Esquire