

SUPREME COURT OF NEW HAMPSHIRE

Town of Plaistow Board of Selectmen v. Town of Plaistow Zoning Board of Adjustment

146 N.H. 263 (2001) · Decided April 9, 2001

SUMMARY

The New Hampshire Supreme Court considered an appeal involving a variance for a used-car dealership and the Town of Plaistow Board of Selectmen's request for rehearing. The court held that the town manager was authorized to submit the rehearing request and that incorporation of the planning board's memorandum satisfied the statutory requirements for stating the grounds for rehearing. Because the trial court applied an outdated definition of unnecessary hardship, the court vacated and remanded for further proceedings under the standard articulated in *Simplex Technologies v. Town of Newington*.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, J.; Brock, C.J.; Broderick, J.; Nadeau, J.; Horton, J.
JURISDICTION	New Hampshire
DECIDED	April 9, 2001
DISPOSITION	vacated
PROCEDURAL POSTURE	Intervenor Richard Taylor appealed the superior court's reversal of the Town of Plaistow Zoning Board of Adjustment's decision granting him a zoning variance.
STANDARD OF REVIEW	In a zoning case, the Supreme Court reviews whether the evidence reasonably supports the trial court's findings and whether the decision is erroneous as a matter of law; it upholds the trial court unless its decision lacks evidentiary support or is legally erroneous.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Richard Taylor v. Town of Plaistow Board of Selectmen

TOPICS

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PRACTICE AREAS

zoning

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QUESTIONS PRESENTED

1. Whether the town manager was authorized to request a rehearing on behalf of the Board of Selectmen without a formal vote taken before the twenty-day period expired.
2. Whether the rehearing request satisfied RSA 677:3 by incorporating and attaching the planning board's memorandum identifying the grounds for rehearing.
3. Whether the superior court properly applied the unnecessary-hardship standard when it relied on Taylor's operation of a tire-sale business and the availability of other commercial uses.

HOLDINGS

1. A town manager may request a zoning rehearing on behalf of the selectmen when acting with the authorization and direction of a majority of the selectmen; a formal vote before expiration of the statutory period is not required.
2. Incorporating and attaching the planning board's memorandum, which identified specific grounds for rehearing, satisfied RSA 677:3.
3. The superior court's variance ruling had to be reconsidered under the newer three-part unnecessary-hardship standard announced in *Simplex Technologies v. Town of Newington*.

KEY QUOTATIONS

"Because this is a zoning case, the standard for review of this court is not whether we would find as the trial court did, but whether the evidence reasonably supports the finding." (264)

"We hold that incorporation of the planning board's memorandum satisfied RSA 677:3." (266)

"To establish unnecessary hardship, applicants for variances must now prove:" (267)

FACTUAL BACKGROUND

In 1997, Plaistow adopted a zoning amendment prohibiting an automobile dealership within 1,000 feet of another dealership. The ZBA granted Richard Taylor a variance to establish a used-car dealership on property within that distance, finding that the property was unsuitable for retail use and that granting the variance would benefit the area. The Board of Selectmen, acting through the town manager with the authorization of a majority of the selectmen, requested a rehearing within twenty days, but the ZBA denied the request. Taylor later purchased the property and operated a tire-sale business there.

PROCEDURAL HISTORY

The ZBA granted Taylor a variance permitting a used-car dealership within 1,000 feet of an existing dealership. The Town of Plaistow Board of Selectmen requested a rehearing, which the ZBA denied. On appeal, the superior court reversed the ZBA's variance decision, concluding that denial of the variance would not create unnecessary hardship. Taylor appealed to the New Hampshire Supreme Court.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The superior court must conduct further proceedings consistent with the Simplex Technologies unnecessary-hardship standard.

CASES CITED

- Hussey v. Town of Barrington, 135 N.H. 227, 231 (1992)
- DiPietro v. Nashua, 109 N.H. 174, 176-77 (1968)
- Grey Rocks Land Trust v. Town of Hebron, 136 N.H. 239, 242 (1992)
- Simplex Technologies v. Town of Newington, 145 N.H. 727, 731-32 (2001)

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