



**CITY OF FRANKLIN, NEW HAMPSHIRE**  
*"The Three Rivers City"*

Planning and Zoning  
316 Central Street  
Franklin New Hampshire 03235

Phone: (603) 934-2341

**APPLICATION FOR REHEARING BY  
ZONING BOARD OF ADJUSTMENT**

**An appeal of the action of the Zoning Board of Adjustment  
Refer to NH Revised Statutes Annotated 677**

You must print legibly and with ink.

Name of Applicant: April Russell  
Address: 26 Goonan Road, Hooksett, NH 03106  
Telephone Number: Counsel: 603-624-4333 Email Address: rltygrl@gmail.com

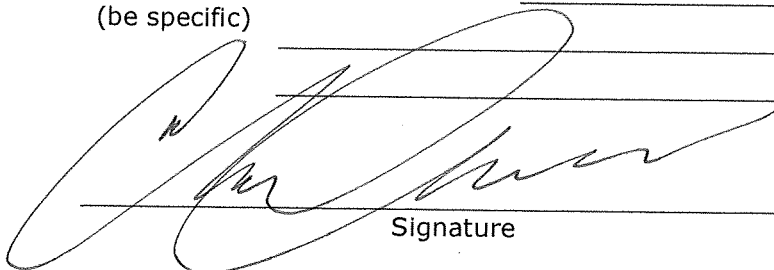
Owner of Property in Question: Same as applicant  
Address of Subject Property: 25, 27 and 29 Depot Street, Franklin, NH  
Map/Lot #: Map: 98 / Lot: 60 Zone: B1W&S  
Application #: Z24-01 Date of decision: 02/07/2024

The Original Application was: ☐ Variance ☒ Appeal from an Administrative Decision  
☐ Special Exception ☐ Equitable Waiver of Dimensional Requirements

Decision Appealing: Please see attached narrative  
(be specific) \_\_\_\_\_  
\_\_\_\_\_

Reason for Appeal: Please see attached narrative  
(be specific) \_\_\_\_\_  
\_\_\_\_\_

How are you directly affected: Please see attached narrative  
(be specific) \_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Signature

March 1, 2024  
\_\_\_\_\_  
Date

If the board determines they will rehear the application, then the Application Fee is= \$150.00 plus \$10.00 for each abutter.

**LETTER OF AUTHORITY/PERMISSION**

The undersigned, being the owner of the property known as 25, 27 and 29 Depot Street, Franklin, Map 98, Lot 60, hereby grants authority and consent to Attorneys at Cronin, Bisson & Zalinsky, P.C. to sign and file ZBA and Planning Board applications and any related materials on my behalf and deliver the same to the Town of Franklin, represent me at any hearing(s) concerning these applications, and perform all other necessary actions in connection with such applications.

April Russell  
3/11/2024

Signature

Date

April Russell  
Print name

**THE STATE OF NEW HAMPSHIRE**  
**FRANKLIN ZONING BOARD OF ADJUSTMENT**

**REQUEST FOR REHEARING**

NOW COMES April Russell, (the “Applicant”) by and through their attorneys, Cronin, Bisson & Zalinsky, P.C., and moves that the City of Franklin Zoning Board of Adjustment (“ZBA”) conduct a rehearing in this case. In support of their request, the Applicant states as follows:

**PARTIES**

1. The Applicant is an individual with a principal residence at 26 Goonan Road, Hooksett, NH 03106.
2. The City of Franklin is an incorporated municipal entity with a mailing address of 124 Memorial Street, Franklin, NH 03235 (the “City” and/or the “ZBA”).
3. The properties at issue are mobile homes located at 25, 27, and 29 Depot Street in Franklin and also known as Tax Map 98, Lot 60 (collectively referred to hereafter as the “Property”).

**PROCEDURAL AND FACTUAL BACKGROUND**

4. The Applicant appealed the Administrative Decision of the Franklin Planning and Zoning Director, Seth Creighton, who denied a building permit application on July 1, 2022.
5. The Permit application was relative to some renovation work to three mobile Homes at the Property.

6. The building permit was denied *via* a letter to the Applicant because Mr Creighton held that “*per Zoning Ordinance 305-18.A.5, the mobile home park has lost its grandfathered status as its use has ceased/been abandoned for more than one year.*”

7. The basis for Mr. Creighton’s decision was that the Applicant had no tenants for over a year and, thus, Mr. Creighton deemed the ‘use’ of the property abandoned.

8. The Applicant appealed the denial but said appeal was wrought with procedural and timing issues that can be summed up poor communication between all parties, which the end result was the City refused to entertain the appeal deeming it untimely.

9. What is relevant is that in order to have the Franklin ZBA entertain the appeal the Applicant had to petition the Merrimack County Superior Court with a *Writ of Mandamus* to essentially ‘restart the appeal clock.’

10. The Applicant was successful in their endeavor and the Merrimack Superior Court did grant the *Writ of Mandamus*, by Order dated September 12, 2023, and, consequently, the ZBA heard the Administrative Appeal on February 7, 2024.

11. The ZBA ultimately denied the Appeal because the ZBA agreed with Mr. Creighton and held that the nonconforming use was abandoned.

12. At the February 7<sup>th</sup> hearing the Applicant testified that the Property was vacant due to various issues ranging from personal reasons, Covid delays, bloating costs relative to materials/labor, and also delays relative to finding good people to be tenants.

13. Nonetheless, the ZBA held that the ‘use’ was abandoned because no one has lived at the Property for over a year.

### **JURISDICTION AND VENUE**

14. Prior to filing an appeal with the Superior Court, Land Use Court, or the Housing Appeals Board (the “HAB”), an aggrieved party is required to submit a *Request for Rehearing* to the ZBA. NH RSA 677:2; NH RSA 677:3.

### **POINTS OF ERROR**

#### **Count I – the Use of the Property was not abandoned:**

15. The Applicant repeats and incorporates herein by reference the facts and allegations as set forth above.

16. The City’s Ordinance contains the following provision at issue:

*“In the event that any nonconforming use, conducted in a structure or on a lot, ceases or is abandoned, for whatever reason, for a period of one year or more, such nonconforming<sup>1</sup> use shall not be resumed.”* Franklin Zoning Ordinance Section 305-18.A.5.

17. There is no dispute that the Property’s use is nonconforming – what is in dispute is whether a lack of tenants qualifies as an abandoning the use.

18. We contend that the use was never abandoned as the Applicant continued to pay property taxes on the property<sup>2</sup>, paid for Code inspections in December 2021 (and never received a report from the City), and actively pursued professional services from Meridian Land Services, Inc., in order to begin renovations to the property but was told in 2020 that there would delays due to Covid.

---

<sup>1</sup> There appears to be a typographical error wherein the Ordinance spells “nonconforming” as “nonconfirming.” <https://ecode360.com/10177890#10177890>. For the sake of convenience, the term is corrected in this pleading.

<sup>2</sup> We acknowledge that the Applicant has on occasion been late on some payments, however, they are presently not delinquent or in default.

19. Additionally, the Applicant is still making up to date mortgage payments, pays for City water, as well as City sewer and has consistently kept up these payments throughout the entire applicable time.

20. The Property experienced some vandalism and in is in need of repair.

21. There have been no tenants between some point in 2019 and the relevant time of the Building Permit application filing on June 6, 2022.

22. Since the denial there has been a string of events wherein the Applicant was trying to appeal the decision. *See* attached Narrative from the Applicant as Exhibit “A.”

23. The time frame relevant to the issue of abandonment is 2019 through June 6, 2022, when the world was dealing with the Covid Pandemic.

24. “Abandonment” is not defined under the Franklin Zoning Ordinance. FZO Section 305.3, *et seq.*

25. The legal standard for “abandonment” is a creature of case law.

26. Unless preempted by the Ordinance, the test for “abandonment” depends upon the concurrence of two factors: (1) an intention to abandon or relinquish the use, and (2) some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use. Lawlor v. Town of Salem, 116 N.H. 61, 62 (1976).

27. Here, the Applicant never intended to abandon use evidenced by their continued maintenance and upkeep to the property – a fact which was acknowledged by the ZBA but misinterpreted as not having anything to do with the use of the property.

28. There was no overt act or failure either on the part of the Applicant because they continued to pursue tenants, permitting, paying property taxes, and even engaged Meridian who, in turn, stated that there would be delays due to Covid. *See* attached Exhibit “B.”

29. Furthermore, after Meridian announced their delay to the Applicant the Applicant had to pursue, and did obtain, a new survey. *See* Exhibit “C.”

30. While the Applicant may have on occasion been late with their property tax payment they have, nonetheless, not been in default. *See* Exhibit “D.” The delays in this process and lack of tenants while attempting to upgrade the property has resulted in revenue loss adding to the Applicant’s struggles.

31. Notably, the case law cited above requires BOTH an intention to abandoned AND an overt act or failure to demonstrate abandonment.

32. Neither have occurred here and, as such, the use was never abandoned simply for a lack of tenants during a time where the Applicant was delayed in updating/renovating the Property due to, among many reasons, a global pandemic.

WHEREFORE, the Applicant prays the ZBA:

- A. Grant a rehearing on this matter; and/or
- B. Grant the Applicant’s Building Permit; and/or
- C. Hold that the Property’s use was not abandoned; and/or
- D. Reverse its decision and grant the requested relief.

Respectfully submitted,

April Russell  
By Their Attorneys,  
CRONIN, BISSON & ZALINSKY, P.C.

Dated: March 1, 2023

By: \_\_\_\_\_

Christopher B. Drescher, Esquire

(NHBA #264845)  
722 Chestnut Street  
Manchester, New Hampshire 03014  
(603) 624-4333  
[cdrescher@cbzlaw.com](mailto:cdrescher@cbzlaw.com)