

relief from any erroneous decision on the part of the defendant by an appeal to the board of adjustment. The Legislature intended that any alleged errors should first be passed upon by the local board charged with supervising administration of the ordinance, so that appeals to the court should come before it with the benefit of the judgment of the board, and with the presumptions in favor of that judgment which the statute provides. See *Gelinas v. Portsmouth*, 97 N. H. 248, 249. Under the circumstances, it was error for the Trial Court to entertain the petition invoking its discretionary jurisdiction in *mandamus*.

Although the order of the court below must be set aside, it does not follow that the determination made by the defendant was necessarily correct. As to this we express no opinion. Whether a nonconforming use was in fact abandoned or discontinued; whether under this ordinance abandonment or discontinuance operates to terminate the right; or whether a previous use which was not actually being made at the time of enactment of the last amended ordinance in 1948 was intended to be cut off at that time (s. 8), are questions which must be determined in the first instance in accordance with the statutory procedure. The order in this action is

Petition dismissed.

All concurred.

Original,
No. 4366.

LEON P. LABELLE v. PARKER L. HANCOCK, *Warden*.

Submitted September 27, 1954.

Decided October 29, 1954.

Leon P. LaBelle, pro se.

Warren E. Waters, Deputy Attorney General, filed motion to dismiss.

PER CURIAM. Revised Laws, chapter 369, section 2, gives the Supreme Court authority to issue writs of *habeas corpus* and other extraordinary writs but this original authority is not ordinarily exercised if the Superior Court has the opportunity to exercise concurrent jurisdiction. The "original authority of this court will be exercised only sparingly and in exceptional cases where its exercise by the Superior Court will cause undue hardship in delay to meet an emergency or is a mere formality" *Nelson v. Morse*, 91 N. H. 177, 178.

Treating the petition as an appeal from a previous denial of a petition for a writ of *habeas corpus* in the Superior Court (*Wheeler*, C. J.) in January, 1954, the record of that hearing clearly indicates that the petitioner was represented in the criminal proceeding by counsel appointed by the Court and paid for by the county. On that record the denial of the petition was proper. *Petition of Gobin*, 95 N. H. 532. While the denial of the petition in the Superior Court is not *res judicata* of the petition filed in this court (*Fitzgibbons v. Hancock*, 97 N. H. 162, 166), "repeated applications for a writ of *habeas corpus* introducing no new facts material to the issue will ordinarily be summarily disposed of." *Petition of*

[REDACTED]

Moebus, 74 N. H. 213; *Gobin v. Hancock*, 96 N. H. 450, 451. To the extent that the petition is in the nature of an appeal, it is without merit and the order is

Petition dismissed.

[REDACTED]

Rockingham,
No. 4270.

JUDITH S. WISEMAN & a.

v.

FRANK D. MERRILL, *Commissioner*.

Argued October 5, 1954.

Decided November 4, 1954.

[REDACTED]

[REDACTED]