

**TOWN OF NEW DURHAM
ZONING BOARD of ADJUSTMENT
August 8, 2023, 7:00 PM
*New Durham Town Hall, New Durham, NH 03855***

MEMBERS PRESENT

Terry Jarvis, Chair
Linda Callaway, Member
David Bickford, Member
Bill Meyer, Member
Heather Freeman, Member

ALSO PRESENT

Susan Stillwell, Land Use Assistant
William Warren, DTC Lawyers (via Zoom)
Chris Shields, Applicant (via Zoom)
David Swenson, Resident

CALL TO ORDER

Chair Jarvis called the meeting to order at 7:02 PM.

Introductions were made of the Board members present.

Deliberations and Decision of Motion for Rehearing for a Variance

Application for Christopher and Elizabeth Shields, 10 South Shore Road, Tax Map 119, Lot 037, Case #2023-005. Motion submitted by Eric A. Maher, Esquire, DTC Lawyers.

Chair Jarvis stated the request for a rehearing submitted by DTC Lawyers on behalf of the applicant was received electronically on July 10, 2023; per the FedEx receipt it was delivered to Town Hall on July 11 which was the 30th day, however, it was not delivered to Town Hall as the receipt indicated. FedEx's Proof of Delivery says Janelle signed for it, but Janelle stated she did not sign for it as she works Monday, Tuesday and Thursday, 8:00 AM to 6:00 PM. (July 11, 2023, was a Tuesday.); however, it was delivered to the Police Station. Chair Jarvis stated that the Motion for Rehearing was received by the Land Use Office on Tuesday, July 18, 2023. She asked the Board to determine if it was a timely receipt for the request for rehearing; she stated that the electronic copy was received within the deadline, but the hard copies were not. After discussion, the Board concurred the intent was there and agreed to accept the request as timely since the electronic copy was received on-time; the hard copies were delivered to the incorrect Town department.

MOTION: *The Rehearing Request for Case #2023-005 for Christopher and Elizabeth Shields, 10 South Shore Road, Tax Map 119, Lot 037, Case #2023-005 submitted by Eric A. Maher, Esquire, DTC Lawyers, was received in a timely manner.* Motion by Chair Jarvis. Second by Mr. Meyer. **Motion passed 5-0-0.**

The Board reviewed and discussed the Request for Rehearing to determine whether a rehearing would be allowed. Mr. Meyer stated he would accept the request for a rehearing in order to better understand the case. Ms. Callaway stated she doesn't agree with granting the request as she doesn't feel any of the rationale given in

the request is pertinent or accurate; she stated she doesn't believe there were any unreasonable justifications in reasons given by the Board for how they voted. She stated some statements were taken out of context and while there is a NH DES permit, that is based on a 50-foot setback and doesn't take into consideration that the Town has a 75-foot setback. Ms. Callaway stated all of the statements about the garage being part of the structure are inaccurate; the only existing structure that is grandfathered is the existing 1260 square foot house; she stated building a building on top of unfinished impervious surface is new construction and is an expansion of an existing building. She stated due consideration was given to the application; the character was definitely considered and right now there is an impervious surface on a small lot and a small house that does not obstruct any views; a two-story house with a full basement is now changing the character of the lot; she stated many rainwater mitigation improvements can be done without putting a two-story garage on the lot. Ms. Callaway stated not having a two-car garage is not a hardship, the houses and garages used for comparison were built prior to the ordinances and setbacks and some lots were much larger in size and located across the road from the shoreline.

Ms. Freeman stated while she was not on the Board for the original case, she did review the memorandum and the case file, but she is unclear as to what was unlawful and not justified in the rationale by the Board. She stated she finds the lack of clarity in the request makes it hard for her to believe a rehearing is needed; however, there doesn't seem to be a party that would be aggrieved by a rehearing so she would be inclined to vote in favor of a rehearing.

Chair Jarvis stated she believes there could be improvements in the rationale and findings of fact and case law indicates that denial can't be based on the fact that the zoning ordinance doesn't allow it and it can't be a reason for saying "no" to anything.

Ms. Callaway stated she believes a lot of consideration went into the decision and granting a rehearing out of fear of a lawsuit, will make all zoning board decisions a two-step process. Chair Jarvis stated due to changes in the statute in the last year with regard to decisions and findings of fact, she agrees more could have been done differently.

Mr. Bickford stated he agrees with Ms. Callaway but would go along with a rehearing because Chair Jarvis feels the record could be improved with more rationale. Ms. Freeman stated she believes there were additional statements made in the rehearing request that require consideration.

MOTION: *To grant the Request for a Rehearing for Case #2023-005 as requested in the letter dated July 10, 2023, from Eric A. Maher, Esq., of DTC Lawyers.* Motion by Chair Jarvis. Second by Ms. Freeman. **Roll Call Vote:** Mr. Meyer- no; Ms. Callaway-no; Chair Jarvis-yes; Ms. Freeman-yes; Mr. Bickford-no. **Motion fails, 2-3-0.**

Review of Town Counsel's Changes to the ZBA Procedural Rules

Chair Jarvis stated no input has been received from Town Counsel at this time.

Request from the New Durham Planning Board for a Joint Meeting on August 15, 2023

The Board reviewed and discussed the request from the New Durham Planning Board as well as an agenda for that meeting. Chair Jarvis noted many of the topics are not pertinent to the ZBA. Mr. Meyer and Chair Jarvis noted they have conflicts with attending the Tuesday meeting.

MOTION: *That the Zoning Board of Adjustment does not attend the Planning Board meeting of August 15, 2023.* Motion by Mr. Bickford. Second by Ms. Callaway. **Motion passed 5-0-0.**

David Swenson, resident, asked for an explanation why the Board does not want to attend the meeting. Mr. Bickford stated he doesn't see there is anything the ZBA could contribute to the discussion. Ms. Callaway stated two members will be attending but not as Board members.

APPROVAL OF MINUTES

Meeting of June 13, 2023- Edits were made. **MOTION:** *To approve the minutes as amended and confirmed.* Motion by Mr. Meyer. Second by Ms. Callaway. **Motion passed 4-0-1.** Ms. Freeman abstained.

Meeting of June 16, 2023 – Edits were made. **MOTION:** *To approve the minutes as amended.* Motion by Mr. Meyer. Second by Ms. Callaway. **Motion passed 4-0-1.** Ms. Freeman abstained.

Meeting of July 11, 2023 – Edits were made. **MOTION:** *To approve the minutes as amended.* Motion by Mr. Bickford. Second by Ms. Callaway. **Motion passed 5-0-0.**

Next Meeting: September 12, 2023

ADJOURN

MOTION: *To adjourn the meeting.* Motion by Mr. Meyer. Second by Ms. Callaway. **Motion passed 5-0-0.**

The meeting was adjourned at 9:20 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary