



## TOWN OF LITCHFIELD

### LITCHFIELD ZONING BOARD OF ADJUSTMENT

Litchfield, New Hampshire August 20, 2020

#### DRAFT

Regular meetings are held at the Town Hall at 7:00 pm on the 2<sup>nd</sup> Wednesday of each month.

#### **ZBA Members in Attendance (indented if absent):**

Richard Riley, Chairman (Remote from home)

Albert Guilbeault

John Devereaux (Remote from home)

Thomas Cooney (alternate)

Eric Cushing (alternate)

Greg Lepine (alternate)

Mark Falardeau (alternate) (Remote from home)

Kyle D'Urso (alternate), (Remote from home - 7:20 pm - Mr. D'Urso stated he could hear, but did not have video due to technical difficulty)

Laura Gandia, Vice Chairman (Remote from home)

#### **I. CALL TO ORDER AND ROLL CALL**

Richard Riley called the meeting to order at 7:02 pm. Alternate, Mark Falardeau was appointed by the Board; resulting in a quorum of four.

Richard Riley took roll call attendance: Richard Riley, present; Laura Gandia, present; John Devereaux, present; Mark Falardeau, present.

#### **II. CHAIRPERSON OPENING REMARKS**

Richard Riley reviewed the schedule for hearings. He indicated that there is a four member Board this evening. He stated the purpose of the meeting is to hear a motion for a rehearing filed by Tammy Law on LZBA Case 2020-04 for request of a variance from LZO 310.00, where the Board granted a variance of 39 ft into the 50 ft setback, leaving the structure 11 feet from the property line.

Richard Riley indicated there will be no public input or additional testimony as per the requirements of a rehearing. He asked for input from Laura Gandia, Vice Chair.

#### **III. MOTION FOR REHEARING**

**LZBA Case Number: 2020-04**

**Requester: Tammy and James Law, Abutters**

**Property of Interest: 22 Campbell Drive, Litchfield, NH 03052**

**Property Owner: Kenneth Krebs**

#### **Motion Requested**

Mr. and Mrs. Law are requesting the Litchfield Zoning Board grant a motion to rehear Case Number 2020-04, for which a variance from LZO Section 310.00 was granted by the Board to allow a shed to be built 39 ft. into the 50 ft. setback, which is 11 feet from Talent Road. The requesters indicated the location of the shed will negatively impact their property value.

Laura Gandia explained the Board was presented a motion for rehearing under RSA 667:2 and RSA 667:3, where the person filing for a rehearing has the burden of proving the Board made a mistake misapplying facts or misinterpreting the law. She noted the burden is on the applicant or requester to set forth their reasoning that the action of the Board was unreasonable. She indicated it is important to know if there is evidence that was available and could have been presented at the hearing and was not presented that is not a basis for a rehearing. She commented that if the party was not properly prepared that does not rise to the level for a motion for rehearing. She reiterated the rehearing is to prove the Board did something wrong or there is new evidence that was not available at the time of the hearing.

Richard Riley commented that the person filing motion needs to be have standing and being an abutter gives them standing.

Laura Gandia explained the State says not to grant a rehearing lightly because that would mean no decision of the board is final until two hearings have been held. She indicated under very certain guidelines and standards should a rehearing be granted.

Laura Gandia commented that the Board needs to take a look at the motion that was filed. She indicated the motion was filed in a timely manner and put forward three points for the Board to consider:

1) Contrary to Public Interest and Safety

Mrs. Law stated in her request dated July 8, 2020, that the shed in question in Case 2020-04 is illegal and was built in defiance of an order per the Town Administrator and Building Code Inspector. The footprint is a permanent negative fixture that is temporarily and partially screened out of view. Talent Road is heavily traveled by high school traffic and others; there are times when visibility and unfavorable conditions can vastly affect personal safety. She and Mr. Law feel with the amount of changes made by her neighbor to ½ acre or more terrain alterations, shoulder, part time driveway, fence, and propane tank location that much of this should have gone through the Planning Board as it is comparable to a new build. Perhaps with the shed we have reasonable recourse through the Town? She and Mr. Law are currently doing what they can to preserve the neighborhood.

Laura Gandia pointed out that this is where the Board needs to have a discussion on if the facts were misinterpreted. She indicated Mrs. Law is not electing the Board did anything wrong and is restating her testimony in opposition of the variance that was granted.

2) Spirit:

The rural neighborhood is zoned residential for a reason. This roadside shed, fence and black gate look like commercial or city property. The character has changed. Many people have stopped to ask what is going on over there. They do not like the appearance.

3) Negative Financial Impact:

Mr. and Mrs. Law have a letter from Josh Johnson, Realtor, that explains why this affects their property value. Attorney Greg Palkon has advised Mr. and Mrs. Law the shed should be placed out of their immediate forward view, should they agree to a compromised location so as not to diminish their value.

Laura Gandia indicated the Board cannot consider the letter from the realtor because that is evidence that was available to her and she could have presented, and that she should have done so for the initial hearing in June 2020. She noted the Board did consider the opinion from the realtor and her testimony at the initial hearing. She commented based on that it is up to the Board to decide if she has presented any further evidence not seen in the original hearing. Laura Gandia indicated she did not see any further evidence and that Mrs. Law is not claiming the Board made the mistake of misrepresenting facts or misinterpreting the law.

Richard Riley clarified that any event of rehearing brings the case back to square one, which includes re-notifying the public and rehearing everything.

### **Zoning Board Deliberation**

Richard Riley indicated the Board will start with the third point and work backward in their deliberations.

#### **Point 3: Negative Financial Impact**

Richard Riley commented Mrs. Gandia's explanation that this is evidence that was available and could have been presented at the time of hearing is accurate. He noted the language in the RSA is very clear about that. He believes the Board could not grant the motion based on this point. He added that Mrs. Law presented photos, which appear to be the original photos that the Board saw at original hearing.

Laura Gandia agreed with the Chair that there is no new evidence and agreed that the photos have previously been presented to the Board.

Mark Falardeau commented he originally read through all the original case documents and does not feel any new evidence has been presented.

John Devereaux agreed that there is no new evidence that would be grounds for a rehearing.

Richard Riley commented there is new evidence in the letter from the realtor; however, the Board is not allowed to look at that evidence as the evidence was available to her at that time and she did not come prepared.

Kyle D'Urso joined the meeting at 7:20 pm. Richard Riley asked if the Board can add him at this time. Laura Gandia indicated that the Board can add Mr. D'Urso.

Kyle D'Urso mentioned he was having difficulty with the link to the meeting, but was able to hear the discussion before joining visually.

Richard Riley indicated Kyle D'Urso would be assigned to the Board as an Alternate. He noted Mr. D'Urso was the fourth member in attendance in June when Case 2020-04 was heard initially by the Board. He informed Mr. D'Urso that Mrs. Gandia explained the purpose of the motion and requirements for rehearing under the law, as well as reviewed the Requester's testimony. He asked for Mr. D'Urso's input on Point 3.

Kyle D'Urso agreed the letter should have been provided at the time of the original hearing.

#### **Point 2: Spirit**

Richard Riley indicated Mrs. Gandia summarized this point by saying that there has been no claim to technical error for an improper decision. He believes Mrs. Law's statements do not rise to the level of granting a motion for rehearing.

Mark Falardeau agreed indicating it is her opinion and hearsay.

John Devereaux agreed that no new material was presented that would be adequate to granting a motion for rehearing.

Kyle D'Urso agreed as well.

#### **Point 1: Contrary to Public Interest and Safety**

Richard Riley asked Mrs. Gandia to explain the reasoning on this point.

Laura Gandia explained first Mrs. Law states the shed is illegal, which was testimony she presented and discussed previously; the footprint mentioned in Mrs. Law's statements was also discussed, as was the road visibility; the amount of changes were discussed at the original hearing. Laura Gandia indicated that Mrs. Law stated this case should have gone to the Planning Board, but it was a request to seek zoning criteria from the Town and not in the Planning Board's purview. She commented Mrs. Law is reiterating what she stated at the original hearing, which was fleshed out and discussed with the original analysis of the Board. She added Mrs. Law is not complaining the Board did something unlawful according to the RSA; she simply does not like the decision of the Board.

Richard Riley commented that he was the lone dissenter in the Board vote to grant the variance and feels he did not do a good job of explaining why he was not in favor of the motion. He explained his sticking point was that a cease and desist order was issued and the shed was completed. He added the applicant testified about the cost to move the shed and that was the major reason he was not in favor of the variance.

Richard Riley asked if it is fair to say that his reading of the RSA is that it gives an opportunity to a Board member who list in the decision to reiterate their stance.

Laura Gandia indicated that is not a fair assumption. She explained that if he had an issue with the decision he could have filed his own motion for a rehearing. She believes what Mr. Riley is saying is that he did not make a mistake and his position was heard. She noted whether or not he believes he should have been more forceful would not rise to the level of rehearing.

Richard Riley agreed with Mrs. Gandia's interpretation. He mentioned that, with regard to technical errors, he received an email from Mrs. Law on June 4, 2020 in which she was pointing out that in the registered letter notifying abutters in June, she noted my wording on the case said "to allow a shed which has been constructed in the minimum setback requirements; and that the shed encroaches 39 ft into the 50 ft setback requirement. He indicated she felt the first sentence was misworded and should have stated the shed was not constructed within the setback requirement. Richard Riley noted he was not sure about whether one word makes a difference, but he is comfortable with the second sentence, which clearly states what was being sought and the public notice was accurate. He does not believe that rises to the level of a rehearing.

Laura Gandia agreed. She indicated that is not part of the rehearing and cannot be considered. She noted it is not a technical error and would not rise to the level of a rehearing.

Richard Riley asked if there were further comments by Board members. Hearing none, he asked for a motion for rehearing.

***Laura Gandia made a motion to deny the request for the rehearing. Mark Falardeau seconded. The motion carried by roll call vote: Richard Riley, yes; Mark Falardeau, yes; John Devereaux, yes; Kyle D'Urso, yes; Laura Gandia, yes.***

Richard Riley indicated the motion for rehearing has been denied and has not met the legal requirements.

#### **IV. COMMUNICATIONS AND OTHER BUSINESS**

Richard Riley noted there was no further business. He noted the Board will address election of officers and three cases at their next meeting.

#### **V. ADJOURNMENT**

***John Devereaux made a motion to adjourn the meeting and Richard Riley seconded the motion. The motion passed 5-0-0.***

The meeting was adjourned at 7:26 p.m.

Respectfully submitted,  
Michele E. Flynn