

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 26-ENV-00050

982 Holiday Point Road ZA Determination

ENTRY ORDER

Title: Motion to Clarify and Dismiss (Motion: #1)

Filer: Merrill E. Bent, Attorney for Interested Persons Kathleen Ryan and Anthony Fusco

Filed Date: July 10, 2026

Memorandum in Support filed by Michael J. Tarrant, Attorney for Town of North Hero, on July 10, 2026.

Memorandum in Opposition filed by Christian S. Chorba, Attorney for Appellant Carolyn Shields, on July 17, 2026.

Reply in Support of Motion filed by Merrill E. Bent, on July 21, 2026.

The motion is GRANTED.

This matter involves an appeal of the Town of North Hero (Town) Development Review Board (DRB)'s decision affirming the Zoning Administrator (ZA)'s determination that a structure located at 982 Holiday Point Road is a fence exempt from permitting requirements. On June 17, 2026, Appellant filed a Statement of Questions consisting of six questions. Presently before the Court is a motion by Kathleen Ryan and Anthony Fusco (Interested Persons) to clarify Question 1 and dismiss Questions 2 through 6 of Appellant's Statement of Questions.

An appellant's Statement of Questions "functions like a pleading to limit the issues that are to be heard on the appeal" to this Court. *Atwood Planned Unit Dev.*, 2017 VT 16, ¶ 12 (quotation omitted). Thus, an "appellant may not raise any question outside of the statement" and an appellee "does not have the right to respond to the statement of questions." *Id.* A "statement of questions should be a short, concise and plain statement that will establish the scope of the appeal, and ultimately, the scope of the issues of trial." *In re Champlain Marina, Inc.*, No. 28-2-09 Vtec, slip op. at 1-2 (Vt. Super. Ct. Env'tl. Div. July 31, 2009) (citations omitted). A Statement of Questions is not

a mechanism to argue one's claims. In re Conlon CU Permit, No. 2-1-12 Vtec, slip op. at 1 (Vt. Super Ct. Env'tl. Div. Aug. 30, 2012) (Durkin, J.).

A Statement of Questions is subject to a motion to dismiss or clarify the Questions therein. V.R.E.C.P. 5(f). This Court has dismissed questions, pursuant to V.R.C.P. 12(b)(6), where the questions did not reference any specific provisions of the applicable regulations. See e.g., In re Couture Subdivision Permit, No. 53-4-14 Vtec, slip op. at 2–3 (Vt. Super. Ct. Env'tl. Div. June 17, 2015) (Durkin, J.) (dismissing a question that did not reference any specific provisions, just the applicable regulations generally). We will also direct a party to clarify its Questions when necessary to ensure that “the claims have enough specificity to notify the opposing party and the court of the issues on appeal.” Atwood Planned Unit Dev., 2017 VT 16, ¶ 14 (citing In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 20, 188 Vt. 262; In re Gulli, 174 Vt. 582, 583 (2002) (mem.)). Notably, however, this Court can “consider the matters intrinsic to a statement of questions, even though the issue was not literally stated in the statement of questions.” Atwood Planned Unit Dev., 2017 VT 16, ¶ 17; see, e.g., In re Jolley Assocs., 2006 VT 132, ¶ 9 (“The literal phrasing of the question cannot practically be considered in isolation from the zoning administrator's action that prompted the appeal.”).

The Questions before the Court, as set forth in Appellant's Statement of Questions, state:

- (1) Pursuant to the North Hero Development Regulations, does the structure at issue in the application submitted by Carolyn Shields to the Town of North Hero Development Review Board (Application No. 2026-9DRB) not qualify as a “fence” that does not require a zoning permit?
- (2) Because it is greater than six feet tall in some parts, pursuant to the North Hero Development Regulations, does the structure at issue in the application submitted by Carolyn Shields to the Town of North Hero Development Review Board (Application No. 2026-9DRB) not qualify as a “fence” that does not require a zoning permit?
- (3) Because its “flush,” “finished,” or “good” side faces inward toward Tony Fusco and Kathleen Ryan's property such that it can only be maintained by trespassing on Carolyn Shields's property, pursuant to the North Hero Development Regulations, does the structure at issue in the application submitted by Carolyn Shields to the Town of North Hero Development Review Board (Application No. 2026-9DRB) not qualify as a “fence” that does not require a zoning permit?
- (4) Because it is overbuilt and more substantial than necessary to enclose, screen, or separate Tony Fusco and Kathleen Ryan's property from Carolyn Shields's property, pursuant to the North Hero Development Regulations, does the structure at issue in the application submitted by Carolyn Shields to the Town of North Hero

Development Review Board (Application No. 2026-9DRB) not qualify as a “fence” that does not require a zoning permit?

- (5) Because of its length and close proximity to the Lake Champlain shoreline, pursuant to the North Hero Development Regulations, does the structure at issue in the application submitted by Carolyn Shields to the Town of North Hero Development Review Board (Application No. 2026-9DRB) not qualify as a “fence” that does not require a zoning permit?
- (6) Because it is entirely opaque, pursuant to the North Hero Development Regulations, does the structure at issue in the application submitted by Carolyn Shields to the Town of North Hero Development Review Board (Application No. 2026-9DRB) not qualify as a “fence” that does not require a zoning permit?

Statement of Questions (filed June 17, 2026).

In this case, Interested Persons state that Appellant’s Question 1 represents the fundamental legal issue before the Court, although they argue the Question should be clarified to eliminate its double-negative phrasing. The remainder of Appellant’s Questions (i.e., Questions 2 through 6), they state, contain phrasing that is duplicative of Question 1, are argumentative and fail to identify any governing regulatory standards for the Court to address. Therefore, Interested Persons ask the Court to dismiss Questions 2 through 6 pursuant to V.R.C.P. 12(b)(6).¹ The Town agrees with Interested Persons. For her part, Appellant has no objection to clarification of Question 1 if it would be helpful to the Court, but she opposes dismissal of the remaining questions which she contends “help identify major sub-issues” on appeal.

We believe that clarification of Question 1 would be helpful since, as Interested Persons observe, it contains a double negative (i.e., “does the structure . . . not qualify as a fence that does not require a zoning permit?”).² We agree that phrasing the question affirmatively to ask whether the structure qualifies as a fence that is exempt from the requirement to obtain a zoning permit is a clearer formulation of the fundamental issue. Therefore, Question 1, as rephrased and clarified, shall state:

¹ In reviewing a motion to dismiss under V.R.C.P. 12(b)(1) for lack of subject matter jurisdiction, we accept as true all uncontroverted factual allegations and construe them in a light most favorable to the nonmoving party. Rheume v. Palito, 2011 VT 72, ¶ 2.

² In addition to the double-negative phrasing, the Court finds Question 1 confusing in its reference to “the application submitted by Carolyn Shields to the Town of North Hero Development Review Board (Application No. 2026-9DRB).” Ms. Shields is the Appellant in this proceeding, and she is challenging a decision of the Zoning Administrator that the structure at issue, located on the property owned by Interested Persons, is exempt from permitting requirements. While the Court understands that the Town may refer to a notice of appeal to the DRB as an “application,” this terminology is misleading since an application is typically submitted by a party seeking zoning approval, whereas Ms. Shields seeks to reverse or overturn the Zoning Administrator’s decision.

1. Does the structure at issue qualify as a “fence,” as defined in Article 11 of the North Hero Development Regulations 2023, that is exempt from the requirement to obtain a zoning permit pursuant to Section 4.1(B)(3)?³

Regarding the remainder of the Questions, the Court agrees that, as phrased, they are duplicative, argumentative and fail to identify any governing regulatory standards within the Court’s jurisdiction to address. Further, the Court finds Questions 2 through 6 awkwardly phrased at best, and unnecessary given the fundamental issue on appeal. While we acknowledge Appellant’s desire to notify the parties and the Court regarding secondary or “sub-issues” on appeal, this case is not so complex that elaboration on every sub-issue by separate question is helpful or desirable. Accordingly, Questions 2 through 6 are **DISMISSED**. Appellant remains free to argue, on the basis of the evidence presented at trial, why she believes that the structure does not qualify as a fence, as defined in the Regulations, that is exempt from permitting requirements (for all of the reasons suggested by her Questions 2 through 6). Any such arguments, however, should be tied to the express provisions of the Regulations or relevant language in Title 24, Chapter 117.

Accordingly, for the foregoing reasons, Interested Persons’ Motion to Clarify and Dismiss is **GRANTED**. Question 1 is clarified as set forth above. Questions 2 through 6 are **DISMISSED**.

Electronically signed on July 27, 2026, pursuant to V.R.E.F. 9(d).



Joseph S. McLean
Superior Court Judge
Environmental Division

³ As clarified, Question 1 raises for this Court’s de novo consideration the issue of the correctness of the DRB’s conclusion of law, which states: “Based on the Findings of Fact, the Development Review Board finds that the structure installed meets NHDR Article 11 definition for a Fence. As this fence is no more than 6 feet in height, all exemptions for permitting are met.”