

**TOWN OF NORTHEAST
ZONING BOARD OF APPEALS
MINUTES OF OCTOBER 15, 2020**

The regularly scheduled monthly meeting of the Town of North East Zoning Board of Appeals, ("ZBA") took place on Thursday, October 15, 2020 at 7:30PM in the annex of the North East Millerton Library, 28 Century Blvd., Millerton, NY. ZBA members present were Chairman Julie Schroeder, Edith Greenwood, Patti Lynch-Vandebogart, Karen Pitcher, Jon Arnason and Judy Carlson, Secretary to the Zoning Board. Also present were Brooke Schooley, Catherine Howard, Doug Larson, and Robert Akroyd.

At 7:30 PM Chair Schroeder opened the public hearing by reading the public hearing notice on the application of Brooke Schooley and David Head for a reduction in the required front yard from one hundred feet to forty-three feet from the centerline of the street in order to construct a tennis court at 107 Indian Lake Rd. in the A5A Zoning District tax parcel #7269-00-145762 in the Town of North East.

Robert T. Akroyd of Greylock Design Associates, Lenox Mass. representing Brooke Schooley and David Head, gave an overview of the proposed project.

Back ground: The property is a little less than 20 acres and is bisected by Indian Lake Road. The tennis court will be located on the east side of Indian Lake Road. Brooke Schooley, co-owner of the property did get written opinions from the Dutchess Land Conservancy and the Department of Environmental Conservation because of environmental issues associated with the property. Their recommendations resulted in the only land being available for establishing the tennis court outside of the confines of the conservation easement as well as the DEC guidelines for bog turtle habitation put the tennis court within the front yard setback of Indian Lake Road.

The above is the reason they appeared in front of the ZBA to seek permission to locate the tennis court within the front yard setback of that parcel. Akroyd went on to explain the means of construction for the tennis court: A. The field is gently sloping and in order to establish a flat tennis court area it will require them to retain a certain amount of earth resulting in retaining walls that will be the height of 6' or 8' stepping down to 2' . This allows the tennis court to settle into the land so the view of the tennis court will be hidden as much as possible from the road; and, B. Part of the requirements from DLC is that plant screening material be placed underneath the existing tree line. Akroyd introduced a planting map which showed an existing canopy of red maples along the road; hydrangea and viburnum that will be six to eight feet shrub material that will help create the screening of the tennis court from the road. His goal is to create the feel of a "relic" structure associated with the farm land. The retaining walls will be veneered at the lowest point of 2' on the inside of the court and around the outer edge will be stone 2' high and to 6' barn board siding. There will be barnyard doors on the back wall thus reinforcing the idea that this is a "relic" structure associated with the balance of the farm land. The tennis court's dimension is 60' w by 120' long (the standard size of tennis courts).

RECEIVED
NOV 24 2020
TOWN OF NORTH EAST
TOWN CLERK

Discussion: Arnason referred to the letter dated April 24, 2000 from the Dutchess Land Conservancy stating that the tennis court will be located on the east side of Indian Lake Road, outside of the easement's preservation area. In response to a request from Arnason, Robert Akroyd explained that the restricted land was the dark green area on the map he was using. A discussion took place regarding the location of the road and the tennis court and conservation lands. Photographs were shown to the board.

Chair Julie Schroeder asked what was the DEC's involvement. Brooke Schooley explained that south of where the conservation boundary is there is a state wetland and also a federal wetland. Schooley needed to check with DEC if they were within 100' of this area, the customary buffer around wetlands. Initially they wanted to locate the tennis court behind the barns and that was why they were in contact with the DEC to see if that location was feasible, but it turned out that this location was not. This is why they had the dialogue with them to make sure that they were agreeable with the site proposed.

The parcel is in the bog turtle check zone. They have a sign off from a bog turtle expert and DEC that no communities of the bog turtle exist in that area. Chair Schroeder asked if this was in writing and that it should be with the application. Brooke will supply the board with that information. Chair Schroeder also referred Brooke to the Hudsonia study on the bog turtle.

Arnason asked if Mr. Head and Ms. Schooley donated the conservation easement to the Dutchess Land Conservancy. Schooley replied that they had bought the property in 2003 and the couple that they bought the property from had already put this property under the conservation easement. When they bought the property they inherited the conservation easement. Arnason thought that it would be useful to have a copy of the easement for the record. Schooley explained that the easements were never separated so it is the combined easement on the full property. Akroyd made it clear that this site is the only appropriate place to DLC for the court and that they went to acceptable measures to mitigate its visual impact on the public.

Greenwood asked if the barn doors on the visual provided are on the long side. Akroyd said they are on the back side and showed Chair Schroeder other pictures to explain the back wall structure. The location of the road was emphasized.

Akroyd introduced to the board Exhibit A (a sketch of the tennis court area).

Arnason asked if it is your intention that the vegetation will be such that the tennis court will be basically invisible from the road. Akroyd replied that the intention is that the tennis court will be screened to the extent humanly possible by vegetation. Invisible is the word he would not use, feeling that at some vantage point during the year one may see the tennis court but to the person driving, bicycling, walking, or jogging along Indian Lake Road the tennis court will not stand out as a tennis court and it will look like it belongs there. One would have a difficult time seeing the tennis court.

Schooley explained that they are also not using a chain-link fence as the DLC requires them not to use it. The fence will be 6' high versus a standard tennis court fence of 8' to 10'.

Greenwood asked if there are any requirements that tennis court fences be a certain height. Akroyd explained that while there are no code requirements, practical use requirements say fences should be 8' high. Greenwood asked if they were creating problems since you are making the fence 6' in height. Schooley said that they were not since they are using a synthetic grass surface so this will look like grass. She further stated that when one plays on synthetic grass the ball bounce is a lot lower so you are much less likely to have situations where balls are going all over the place.

Arnason emphasized that essentially this is the only place this court could be situated on the land. Akroyd replied that this is the only place that the Dutchess Land Conservancy and the DEC agreed to, based on all the parameters.

Chair Schroeder stated what concerns her is that zoning boards cannot recognize easements and private agreements and are bound by the standards in NYS law. She will ask the Attorney for the Town for guidance in this matter.

Akroyd said that he understood the requirements of granting variances and he hoped that the board could grant the variance because of the unique nature of the property. It would be difficult to site the tennis court elsewhere, notwithstanding the concerns about easements and obligations to the NYS zoning board. Akroyd went on to explain that a very good job was done in siting and placing the court so that there shouldn't be anything detrimental to be considered because of grading, vegetation placement and site planning to anyone in the neighborhood or public.

Chair Schroeder asked if there was any way to change the terms of the easement. Schooley said that they have tried over the last two years and went through five different sites and DLC will not change the terms of the easement.

Aranson suggested that they should adjourn the meeting until they receive the Dutchess Land Conservancy easement. It was decided to look at the Dutchess Land Conservancy easement and DEC information and re-consider the request at the next meeting of the board.

Chair Schroeder felt that the tennis court would have a visual impact regardless of whether it is 43 ' or 100 ' from the centerline of the street.

A motion was made by Greenwood, seconded by Lynch-Vandebogart and the motion passed to recess the hearing until November 19, 2020 at 7:30 pm

Pitcher made a motion to open the meeting at 7:55pm. Motion seconded by Arnason; all were in favor and the motion passed.

Minutes

Greenwood made a motion to accept the January 16, 2020 minutes as presented. Motion seconded by Pitcher; all were in favor and the motion passed.

Arnason made a motion to recess the meeting and open the public hearing for Catherine Howard. Motion seconded by Greenwood; all were in favor and the motion passed.

Chair Schroeder opened the public hearing at 8:05pm. Judy Carlson read the public hearing notice on the application of Catherine Howard/Bean Brook LLC owner of tax parcel #6970-00-851871, for a special permit to convert an existing accessory building to an accessory apartment at 1684 Rt. 83 in the A5A Zoning District in the Town of Northeast.

Background: Catherine Howard, owner of the property, introduced herself to the board. She has a little farmhouse on Route 83 near Beans River Road. It is hard to see and is secluded and set up high. It was built somewhere around 1790. It has two bedrooms and a barn that has been used as storage shed. She would like to make the inside of the barn capable of having guests because she only has a two bedroom house.

Doug Larson of Larson Architecture Works was introduced. He is overseeing the project.

Discussion: Arnason asked if the existing barn was built in 1790. Howard explained that it was hard to tell. It is on a cement block foundation. She does not know if it is original to the land. Larson stated that it had hand hewn post and beams.

Greenwood asked if there was an historical reference to this parcel on Dutchess County parcel access. Larson stated that it is not on the state or national register.

Chair Schroeder stated that we cannot go by our existing zoning mapping of the Land Conservation zone because it was done without access to the Federal Flood Plain mapping, but it is obvious that the site cannot be damaged by flood waters. Larson pointed out that even though it is in the LC zone, it is up on a bluff.

Chair Schroeder stated that the lot is 3.5 acres, but it is supposed to be a 5 acre lot according to the Town's regulations regarding accessory apartments, but there is a clause deeming lots pre-existing enactment of the zoning laws to be conforming. Chair Schroeder did not know if it was necessary to also obtain an area variance. Chair Schroeder went over the requirements regarding a non-conforming lot. The board agreed that the lot met the requirements.

Chair Schroeder directed the board to look at the Short Environmental Form and brought the board's attention to #9. "Does the proposed action meet or exceed the state energy code requirements?" Larson explained that the energy code is part of the building code. If you have a building that is on the state or national register, you are exempt from applying for the energy code. The barn is not on the state or national register.

Upon reviewing the Short Environmental Assessment Form - Part 2 - Impact Assessment, the board answered no to all questions. The answer to #9 is also no because it is a pre-existing building.

Chair Schroeder made the motion that the proposed action will not result in any significant adverse environmental impacts. Motion seconded by Greenwood, Pitcher seconded; all were in favor and the motion passed.

Greenwood asked if they should classify this as a Type 2 action. Chair Schroeder stated that being a special permit it is an Unlisted Action and required review.

Greenwood made the motion to close the public hearing, Pitcher seconded; all were in favor and the motion passed.

Pitcher made the motion to re-open the meeting, Lynch-Vandebogart seconded; all were in favor and the motion passed.

Chair Schroeder made the motion to grant a special permit for the accessory apartment as proposed and to waive the requirement to obtain site plan approval from the Planning Board, Aranson seconded; all were in favor and the motion passed.

Close of Meeting

A motion was made by Greenwood to adjourn the meeting at 8:30pm, seconded by Arnason; all in favor and the motion passed.

Respectfully Submitted,



Judy Carlson
Zoning Board Secretary

ZBA 10/15/2020