

**TOWN OF NORTHEAST  
ZONING BOARD OF APPEALS  
MINUTES OF NOVEMBER 19, 2020**

The regularly scheduled monthly meeting of the Town of North East Zoning Board of Appeals, ("ZBA") took place on Thursday, November 19, 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, Karen Pitcher, Jon Arnason and Judy Carlson, Secretary to the Zoning Board. Absent was Patti Lynch-Vandebogart. Also present were Brooke Schooley and Robert Akroyd.

**7:30 PM - Continuation of public hearing on the application of David Head and Brooke Schooley, owners of tax parcel # 7269-00-145762, 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 of the Town of North East.**

Chair Schroeder opened the continuation of the hearing at 7:30PM. She stated that the public hearing had begun at the meeting of October 15, 2020 and since then there had been new information submitted in relation to the project.

Robert Akroyd of Greylock Design Associates, Lenox Mass. representing Brooke Schooley and David Head, provided more information by submitting a copy of the Dutchess Land Conservancy easement and further explanation and justification of the proposed setting of the tennis court. Brooke Schooley had copies of the findings of the DLC and the Department of Environmental Conservation regarding restraints on the property related to the wetlands and bog turtle habitats.

Both Akroyd and Schooley believe that the area variance can be easily granted without deviating from the intention of the North East zoning by-laws.

Arnason stated that the area variances that the North East zoning board has granted in the past have been of two kinds: (a) permitting a pre-existing garage on a sub-standard lot (b) permitting an addition to a house where the house was an old house and was located right on the road where it was not possible otherwise. The board had turned down other applicants that have sought area variances.

Schooley and Akroyd discussed their reasons for not wanting the tennis court in the field because of agricultural reasons and also putting the court in the center of the field detracts from the

esthetics of the property. Putting the court in the field would take away from the property value and the large meadow serves as a view-shed not only for themselves but also their neighbors.

Arnason pointed out that the fact that you would prefer the court not be in the field as compared to where you propose the court is not a convincing reason for the zoning board of appeals but for the conservation easement.

Akroyd expressed the fact that the spirit of the conservation easement is consistent with the spirit of the Northeast zoning by-laws, meaning that the conservation easement serves to protect the field and granting the variance to allow the tennis court to go someplace other than the field is further consistent with the Northeast zoning by-laws.

Chair Schroeder asked if DLC had been asked for a waiver. Brooke Schooley replied that the DLC in denying the request felt strongly that the court should be clustered with the other buildings; she was told that it should be located within the development pocket. DLC further stated that it wanted no chain link fence, no lighting and the court to be screened with as much vegetation as possible.

Arnason stated that in reading the easement restrictions apply to all of the property whether or not the court is in the conservation area. Schooley stated that even though the project was within the development area, they could not go ahead without DLC approval.

Greenwood asked why there were wetland issues. Schooley replied that because of the bog turtle habitats on some sites of the property other sites for the court were off limits.

Chair Schroeder asked how the tennis court was going to be seen from the north and south. Akroyd explained that coming from the north it would be like looking into remnants of an old foundation of a barn - vegetation such as evergreens and bushes will help disguise it in the winter months. Coming from the south it would be below grade level.

Pitcher asked if this screening could be done on the other triangle that was available. Akroyd stated that on the other triangle you would not need the retaining walls. The court would sit in the field without any protection. You would see the court even though plant material was used. Akroyd stated that it looks like we are looking at one location according to the easement.

Chair Schroeder stated that ordinarily a zoning board gives an area variance for some physical impairment; a steep slope, a pond, a brook, but broader parameters may be considered.

Chairman Schroeder asked for an explanation of a wetland check zone and a federal wetland; Schooley stated that a wetland check zone means that you have to check with DEC primarily to

determine if the bog turtle is inhabiting the land. Federal wetland or the emergent wetland is a federal classification for that strip of land.

8:00PM- Chairman Schroeder made the motion to close the public hearing, Greenwood seconded; all were in favor and the motion passed.

Greenwood made the motion to open the meeting, Pitcher seconded; all were in favor the motion passed.

Chair Schroeder asked for opinions from the board.

Arnason stated that there is something to be said for locating the tennis court with the other buildings (clustering) and that it is a better way to go about it rather than putting it in the field. The decision to grant this variance is a complex one as Arnason expressed.

Pitcher stated that the look of the tennis court was not an issue - the issue was turning down other applications and accepting this one. Chair Schroeder said that the decision has to be worded very carefully. Arnason agreed to write the final facts and findings decision for the zoning board.

Arnason asked if Akroyd was putting in additional vegetation. Akroyd said that the vegetation was going to be significant and that the court would be screened as maximum as possible from the road.

Chairman Schroeder, Schooley and Akroyd discussed the fence application (wire mesh fencing material) covered in black that will be invisible from the road.

Arnason expressed that he is prepared to approve the project as long as it had the proper fencing.

The zoning board went through the Northeast Code book under area variances section 180-100C to make its determination and gave a ("yes") or ("no") answer to the following statements:

1. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue, other than an area variance was answered no.
2. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance was also answered no.
3. Whether the requested area variance is substantial was answered yes.
4. Whether granting of the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district was answered in the negative.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance was answered in the affirmative.

Arnason made a motion to approve the application and submit it subject to further approval with respect to planting and fencing material which will be considered prior to the issuance of the Certificate of Occupancy and authorize the chairman to file the decision. Pitcher seconded; all in favor and the motion passed.

### **Minutes**

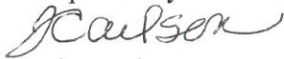
Greenwood had one correction on page 4 of October 15, 2019 minutes. On page 4 under background. The minutes should read that the house is located on Rt. 83 and near Bean River Road.

Greenwood made motion to accept minutes as corrected. Pitcher seconded; all in favor and the motion passed.

### **Close of Meeting**

Chair Schroeder made motion to adjourn the meeting at 8:15 PM., seconded by Greenwood; all in favor and the motion passed.

Respectfully submitted,



Judy Carlson

ZBA Secretary

11/19/2020

RECEIVED  
MAR 30 2021

TOWN OF NORTH EAST  
TOWN CLERK