

**TOWN OF NORTH EAST ZONING BOARD OF APPEALS
MINUTES
SPECIAL MEETING
AUGUST 7, 2023**

A special meeting of the Town of North East Zoning Board of Appeals, ("ZBA") took place August 7, 2023 at 7:30pm in the Town of North East Town Hall, 19N Maple Ave., Millerton, NY. ZBA members present were Chairman Julie Schroeder, Vice-Chairman Edith Greenwood, Patti Lynch-Vandebogart, Karen Pitcher and Judy Carlson, Secretary to the Zoning Board. Also present were Lana Morrison, Lann Rubin II, Lann Rubin III, Rich Stalzer, and Rob Cooper.

182 Route 44 East LLC (North East Ford)
Public Hearing for Area Variances
182 Route 44
Parcel # 133889-7271-00-739225

7:30pm- Chair Schroeder entertained a motion to continue the public hearing on the application of North East Ford and Lann Rubin II. It was opened on June 15th, continued on July 5th and July 20th when it was recessed to be continued on August 7, 2023. Lynch-Vandebogart so moved; Vice- Chair Greenwood seconded; all voted in favor and the motion passed.

Rubin presented to the Board a revised site plan, prepared by Domenick Lopane Jr. Landscaping showing the final landscaping. The Board and Rubin reviewed the site plan. Rubin stated that in the front are two flowering dogwoods which will be surrounded by six Russian sage bushes. The Russian sage bushes will be a low lying cover which will be in a free form mulch bed which will attract one's eye away from the building. Over at the side will be five Acer Rubrum Red Sunset maples 3" caliber which will provide shade for the customers using the chargers. The planters have been removed and replaced with seven Green Mountain boxwoods. The inkberries have been replaced with boxwoods. The boxwoods and maples will provide a "natural fence" (a separation from the other property without using a fence). All landscaping will soften the building and the area.

Rich Stalzer, head of the Town's Conservation Advisory Council, came to present the CAC's report that the wetland should be respected and if the ZBA approves construction in the wetland buffer they would like to see some offsetting mitigation to make sure that contaminants do not enter the wetland.

Chair Schroeder stated that from the minutes, she did not think that the wetland was going to be disturbed. Buried containment tanks will collect any roof run-off and sheet flow. Rubin added that all the refuse containers will be inside. Chair Schroeder added that all existing vegetation will not be disturbed. It is quite dense. It is Rubin's responsibility to go to DEC to obtain the proper permitting.

Stalzer asked about if the chargers are available to the general public. Rubin explained you cannot get the grants if the chargers are not open to the public and to be an elite Ford Dealer the chargers have to be open to the public.

Chair Schroeder asked if anyone else wished to speak.

Chair Schroeder entertained a motion to close the hearing on the application of North East Ford and Lann Rubin II. Vice-Chair Greenwood so moved; Lynch-Vandebogart seconded; all voted in favor and the motion passed.

Chair Schroeder made a motion to open the meeting. Pitcher so moved; Lynch-Vandebogart seconded; all voted in favor and the motion passed.

The Board reviewed the minutes of July 20, 2023. There were two corrections on page number three.

In the fourth paragraph down the sentence should read as follows: **The way Central Hudson explained it is that if you look at the lowest one based upon those schematics they cannot be lower than the lowest one.**

The following changes were made in the seventh from the top paragraph. The following sentences should read: **The Board went over SEQR and determined that it was an unlisted action. Chair Schroeder stated that the Board should opt to do an uncoordinated review.**

Vice-Chair Greenwood made a motion to accept the minutes with the changes made; Pitcher seconded; all voted in favor and the motion passed.

The Board completed the balancing test considering the five criteria for the granting of an area variance starting with the rear yard variance:

REAR YARD:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of this rear yard variance.

Vice-Chair Greenwood stated that it will not have much of an impact since it sets back on the property and it has been nicely designed.

Chair Schroeder stated that Rubin has agreed to not have windows on the rear side so it will not affect the wildlife or the adjacent property owner. The addition of the containment tanks and the fact that the gutters are feeding into that will lessen any impact. The existing vegetation is dense and will not be disturbed.

Rubin stated that the building will create a separation between human activity and wildlife. It will act as a barricade between the two.

2. Whether the benefit sought by the applicant can be achieved by some other method for the applicant to pursue other than this rear yard area variance. Given the traffic flow and parking areas on the property designated by Planning Board site plan approval in 2014, the applicant has no other feasible choices.
3. Whether the requested rear area variance is substantial? Being over 25%, the Board felt the variances were substantial.
4. Whether the granting of the proposed rear area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district in the neighborhood? Chair Schroeder stated that the building itself will have a large impact on the view from Route 44. Given the proposed buffering and reduced lighting agreed to by the applicant, the visual impact will be softened.
5. Is the alleged difficulty self-created? Yes

The Board completed the balancing test considering the five criteria for the granting of an area variance for the side yard variance:

SIDE YARD:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of this side yard variance. Chair Schroeder responded and added that without the buffering and the landscaping the building would have a major impact on the visual environment. The proposed will lessen the impact on the environment. The EV chargers will have no internal lighting and the screen is back lit. The whole lighting effect has been improved.
2. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than this side yard area variance. Chair Schroeder stated that given the traffic flow and the configuration of what is existing it is the logical place.
3. Whether the requested area variance is substantial? The request is substantial.
4. Whether the 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 in the neighborhood. Chair Schroeder stated that the building itself will have somewhat of an impact as will the charging stations from the traveled way, but because of the agreed to modifications and additions in the landscaping and lighting of the site, the impact will be mitigated.
5. Whether the alleged difficulty was self-created. The Board answered yes.

After discussion by the Board, a motion was made by Chair Schroeder to grant both the rear and side yard variances as follows:

Motion to grant in the rear yard a reduction of 20 feet, 30 feet from the rear property line when 50 feet is required and in the side yard a variance of 14 feet from the east side yard property line when 20 feet is required. All planting as shown on the August 4, 2023 Domenick Lopane Jr. Landscaping shall be maintained throughout the duration of the use and plants not

maintained, damaged, or showing lack of vigor shall be replaced in accordance with the specifications of the approved plan.

All existing pole-mounted luminaries shall be replaced with equipment meeting the following specifications:

- 1) All replacement luminaries shall be fully shielded, defined as a fixture constructed and installed in a fixed position and in such a manner that all light emitted is projected below the horizontal plane through the luminaires' lowest light-emitting part.
 - 2) The color temperature replacement luminaries shall not exceed 3000 degrees Kelvin and the light emitted by each luminaire shall not exceed 15,000 lumens.
 - 3) The angle of the luminaries with respect to the horizontal plane shall be fixed and incapable of being adjusted.
 - 4) The height of the replacement luminaries shall not be higher than the existing luminaries.
- This motion is contingent upon receiving a positive response from the County.

Motion seconded by Vice-Chair Greenwood; all voted in favor and the motion passed.

8:45pm Motion made by Vice-Chair Greenwood to adjourn the meeting; Vandebogart-Lynch seconded; all voted in favor and the motion passed.

Respectfully submitted,



Judy Carlson
Zoning Board of Appeals Secretary

Date accepted 12/21/23

RECEIVED
JAN 11 2024

TOWN OF NORTH EAST
TOWN CLERK