

Town of Northumberland Zoning Board of Appeals

Minutes

Wednesday,

July 1, 2009 7:00 pm

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*Accepted by the Zoning Board of Appeals*

**Present:** Mark Boyce, Chairperson, Hugo Leone, Bruce Bemis, Julie Trollip and Carl Harrison.

**Absent:** Clinton barber, Rebecca Hodgson and Gordon Strong.

**Town Employees Present:** Tia Kilburn, Zoning Board Clerk.

Mr. Boyce called the monthly meeting to order at 7:07 PM.  
All in attendance stood and recited the Pledge of Allegiance.

**OLD BUSINESS**

None

**NEW BUSINESS**

**Application #: 0004-09 – Area Variance / pump setbacks & lot coverage %**

**(Site Plan Review – Special Use Permit)**

**Applicant: Stewart's Shops Corp.**

Location: 1917 Route 32N

SBL#: 103.12-4-3

Zoning: Hamlet

Acres: .868 +/-

Status: Preliminary

Representatives: Brandon Meyers / Chris Potter

Mr. Myers introduced himself to the Board and stated he was referred to them by the Planning Board. As he explained this application he stated he had two parts to present, part A was what the Planning Board told him and part B was his questions for this Board. He explained the application as a desire to build a new larger Stewarts Shop at the present location which they have outgrown. He stated the current building was built in the fall of 1980, 29 years ago. Stating the lot is crowded and the septic system in the back of the parcel is in a partial state of failure.

Mr. Myers said he was unsure what "use" this would fall under in the Towns codes, whether it would be convenience store or quick food retail with gas, because it doesn't fit into either one. In the Towns' ordinance a retail business can have a maximum lot coverage of 60% and a gas station can have 50% coverage. Mr. Myers reviewed the descriptions of each in the ordinance with the Board. The proposed plan has lot coverage of 70% , with a combination of the building, walkway, parking lot and accessory buildings. He stated the new building will be 300' larger than the one that is there. Mr. Myers said with this project everything will be rebuilt except the gas tanks.

Mr. Leone asked if they would be adding diesel tanks. Mr. Myers said no.

Mr. Myers said they have put hundreds of hours into this plan and designed it to the inch to meet the Towns regulations. He said the regulations list a minimum lot size of 20,000 sq ft, they have 19,000 sq ft, the regulations call for 19 parking spaces they have designed for 20 spaces. He then added the plan will not work without variances. He said there is nothing extra in the plan, everything is needed by Stewarts, and it is up to this Board to categorize either a quick food with gas or retail business.

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Mr. Leone asked if the kerosene tanks were still there because they have drilled a new well in place of them. Mr. Myers said the tanks were moved because of the new well and added they needed the new well to obtain the separation needed from the septic; the kerosene tanks would be put back. He then discussed more of the proposal, he stated currently the lot is 60% green space and after the upgrade it will be 30% green space and the new well is 17' from the street. Mr. Leone asked how far the well was to the building, Mr. Myers responded approximately 145' and Mr. Colozza said that would be regulated by the D.O.H. Mr. Myers stated the issue would be to the gas pumps. He said the septic system is in failure and regardless of this applications approval it will still have to be replaced, they have already had to have it serviced twice. Mr. Myers then explained there will be 10' from the leach field to the property line, the septic will be 5' from the proposed building and in the Town codes 10' is required. Discussion ensued on the footage. Mr. Myers said the footage to the proposed building from the gas pumps was 20' from the center of the pump island, 24' for the drive lane, approximately 18' for parking and the sidewalk so approximately 62' from the pumps to the building. He stated there is 48' from the pumps to the property line, in front and 39' on the side to the pumps the requirement is 50', therefore 2' and 11' variances are needed. Mr. Myers said variances are needed for the ingress/egress as well, currently the one located on Stump St is 70' wide, the code states 30' is the maximum, and the proposal is for 50'. The Route 32 entrance will be 40' and the center entrance on Route 32 will be closed. Mr. Leone asked if the entrance closest to the railroad on Route 32 was the one to be closed, Mr. Myers responded yes.

Mr. Myers said there is a balancing test the Board can balance benefit to applicant with detriment to health, safety & welfare of the community, and gave each Board member a copy (also in the file) which he discussed and stated the board should also consider,

1. Whether the benefit can be achieved by other means feasible to applicant; Mr. Myers stated no, they need the new building.
2. Undesirable change in neighborhood character or to nearby properties; Mr. Myers stated no, there is no undesirable change because there is an existing store there and the new store will be an improvement.
3. Whether request is substantial; is request unreasonable; Mr. Myers said no, they want to grow with the community.
4. Whether the request will have adverse physical or environmental effects; Mr. Myers said no,
5. Whether alleged difficulty is self-created;

Mr. Myers then read from the sheet, this Board could if approved shall grant minimum variance necessary, and may impose reasonable conditions.

Mr. Myers stated that was pretty much the part A of his proposal, and asked if the Board had any questions. Mr. Bemis asked the distance from the well to the fuel tanks. Mr. Myers stated they are underground and there is 23 or 24' to the well, the kerosene tank will be above ground about 9' away from the well. Mr. Myers then said according to the Zoning Ordinance page 54, section 3 subsection a, gas or fuel tanks cannot be located within 2,500 feet of municipal water or public water supply, there is no public water supply in the area, Stewarts' well water is considered a "non-community public well" by NYS D.O.H. and they will monitor it, so his question was does the 2,500 feet apply to them or do they need a variance for it. He stated he wanted to be sure to address all areas and wanted the record to reflect they did. Mr. Myers also stated they wanted to acknowledge that the well will be 190' from the proposed well and the regulations state 200' is needed.

Mr. Myers said landscaping and buffering on the residential side of the property and any buffering in the rear will be achieved as required. He added the kerosene tanks will be turned and be a distance of 27' from the front property line and 10' from the side line. Mr. Myers discussed the requirements as listed on page 96, section 2 subsection b of the Zoning Ordinance of the Town addressing parking.

Mr. Colozza stated no matter what they touch on this site modifying should meet the codes because it already exists. The Planning board only referred this application to this Board for an area variance, meeting all the codes is almost impossible,

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Mr. Myers is looking for clarity so the Planning Board will say the Zoning Board looked at this.

Mr. Myers said the underground tanks will not be touched because they were recently updated, he believed there were 3 variance request for this application.

Mr. Leone said this in under the Hamlet zoning so what category would it fall under. Mr. Colozza stated it is different than both categories Mr. Myers discussed previously, it is actually gas with retail business. Mr. Myers said it should be retail because their business consist of 75% for the store and 25% gas. Ms. Trollip reiterated there is more retail at 75% than gas sales. Mr. Colozza said the Planning Board was leaning towards the gas and 50% lot coverage. Mr. Boyce stated this is independent of the definitions with 70% coverage and it should be stated in the variance, the basis for the parking is retail. Mr. Myers said yes and the gas pumps.

Mr. Boyce said he did not see where the well would need a variance. Mr. Colozza stated the well is not a municipal well it is private with public water supply and if you were to ask New York State they would refer you to D.O.H. Discussion ensued who was responsible for the water quality from the well. Mr. Boyce stated the definition reads that D.O.H regulates, therefore a variance for the well does not apply here. Mr. Myers said he just wanted to cover this before he went back to the Planning Board. Mr. Boyce asked the Board if there were any more questions. Mr. Bemis expressed concern over the quality of the water. Mr. Colozza said the D.O.H. has to give them an operating permit; they will cover the distance and testing of the well. Mr. Bemis asked if they had received an operating permit for the new well yet. Mr. Colozza stated it was not hooked to the store yet. Mr. Myers said when the test are complete and the treatment system is ok they will receive the permit, he was unsure if it had to be attached to the store for the permit to be issued. Mr. Bemis asked if D.O.H had looked at the placement of the well. Mr. Myers responded yes. Mr. Boyce stated the Planning Board cannot send you back to this Board because of a definition. Mr. Colozza said the Planning Board only addressed the questionable areas, this Board decides the interpretation. Mr. Boyce asked what this Board has to look at. Mr. Colozza stated everything touched has to be looked at, if it is left alone it's ok because it is existing, he added the applicant has the right to ask this Board for an interpretation and skip the Planning Board and himself. Mr. Boyce said ok, he did not see where it would apply here, D.O.H. would take care of it. Mr. Myers stated there is no public water in this Town.

Mr. Boyce reviewed the application and said area variances for the pump setbacks and for the parking along the side are needed. Mr. Myers said also the 30' maximum entrance width vs. the 50' actually proposed and the year round buffering, he asked if he needed buffering in the back. Mr. Colozza stated because it is a corner lot the back is also considered the front, it is a double corner lot and with the septic out there he will want to be careful what is put there. Mr. Myers said they wanted to keep a clear view and he would put up an argument the nearest resident is 500' away. Mr. Leone asked if the entrance was wide enough for a fire truck / emergency vehicle. Mr. Myers said yes the tankers for the gas enter without a problem. Mr. Bemis asked about a fence between the neighboring property and the store. Mr. Myers stated her house is a long way away, a fence is not what they want, there are maintenance issues and he said there is no way they will impact her. Mr. Bemis said they could be creating a crime situation, it would be easy for someone to get in and out of the line of trees and shrubbery especially in the evening, if an elderly person were to park there they could become an easy target. It hasn't happened yet there but it could with the opportunity. Mr. Myers reiterated they wanted a fence for security. Mr. Bemis agreed. Mr. Potter said there will be lighting out there. Mr. Bemis said lighting would not stop anyone. Mr. Myers said ok the issue is not resolved yet, what about the in ground tanks are they ok because we are not touching them, is there any action required. Mr. Leone stated if they are not touching them and only putting a slab on top they should be ok. Mr. Boyce said his initial reaction is they don't need any action because they are not touching them. Mr. Colozza added only new concrete on top of them. Discussion ensued among the Board. The Board unanimously agreed they did not need action on the in ground tanks because they were not touching them.

Mr. Boyce asked if there were any other questions for this variance application. Mr. Bemis said the application was not

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filled in correctly. Mr. Colozza stated it was corrected once and notarized. Mr. Bemis said the owner did not sign, then asked if Jennifer Howard was the property owner because she was the one who signed. Mr. Myers stated they are all owners or agents. Mr. Bemis asked if they could get a signature from a CEO or President of the Company or a letter giving permission. Mr. Myers said yes they would get something.

Mr. Boyce stated the application has to be corrected and amended to include five (5) area variance request as follows; fuel setback, kerosene setback, residential side setback, lot coverage up to 70% and the entrance widths. Mr. Bemis asked about the fence. Mr. Colozza said they don't need a variance for a fence that would be looked at by the Planning Board.

Mr. Boyce asked if there was a SEQRA (State Environmental Quality Review Assessment) form, Mr. Colozza said yes the short form, he asked to see it. Mr. Boyce asked if this has gone to Saratoga County Planning Board. The Clerk said yes from the Planning Board.

Mr. Boyce made a motion to schedule a public hearing for August 5<sup>th</sup>, 2009 at 7:00 P.M.,  
Mr. Harrison 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Mr. Myers asked if he obtains the Special Use Permit from the Planning Board. Mr. Colozza responded yes, you get the variances here and then go back to the Planning Board for the Special Use and Site Plan. Mr. Myers stated that the food preparation and sale was not on the list for the Special Use, Mr. Colozza said no, but it is listed as a quick stop with gas.

Mr. Boyce asked if there were any other questions or comments. Mr. Colozza said the septic permit will probably be issued because it is in a current state of failure and needs to be fixed.

Mr. Boyce thanked Mr. Myers and stated the public hearing will be August 5<sup>th</sup>, at 7:00 P.M.

**ACTION**

Applicant will correct the variance application and amend for 5 specific area variance request, fuel pumps, kerosene tanks, side parking, lot coverage up to 70% and the entrance widths. Applicant will obtain either the signature of a CEO or President of the Company as owner or a letter of permission. Public Hearing will be scheduled for August 5, 2009 at 7:00 P.M.

**Application #: 0002-09 – Use Variance**

**Applicant: Lawrence & Donald Neville**

Location: 4750 Route 50

SBL#: 116.-1-41

Zoning: C/R

Acres: .51

Status: Preliminary

Mr. Neville stated he was unsure why he had to come before this Board, he thought his application was only for the Planning Board. Mr. Colozza stated this application is for a parcel in the Commercial / Residential (C/R) zone on Route 50 and it doesn't address the upholstery shop as an allowed use Mr. Neville is proposing, therefore he needs a use variance. Mr. Boyce asked to see the application. Mr. Bemis shared his copy of the application with Mr. Boyce. Mr. Boyce asked the Board if they had any questions. Mr. Bemis stated the Towns' Attorney, Mr. Ward has previously stated the upholstery business should be listed as a retail business; however, the application is for an upholstery shop and garage. Mr. Neville said it should only be the upholstery shop, cross off the garage, his wife had completed the paperwork for him and it is

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wrong. Mr. Bemis said the application would have to be redone they cannot just cross it off. Mr. Bemis then asked about the back of the application stating it was an upholstery / refinishing shop. Again Mr. Neville stated that was wrong, it was only an upholstery shop, he did not work with any chemicals what so ever and there was no automotive or mechanical, the garage is just for personal use. Mr. Bemis asked about the junk laying around such as; the car doors, the truck and the car. Mr. Neville stated that will all be gone, he had friends help move him from the site in Wilton and they did not know what to do with it so they brought it all to this site, he will get rid of it all or move it into the garage for storage. Mr. Bemis then mentioned the stack of automobile tires. Mr. Neville said he would take care of them and he added he did not know if they were going to stay at this site. Mr. Bemis asked about the big compressor by the garage. Mr. Neville said they use that for the staple guns. Mr. Bemis then asked about the sign and where Mr. Neville wanted to place it. Mr. Neville responded, anywhere it was legal. Mr. Bemis asked if they worked on boats and if they would be pulling in and out of there. Mr. Neville said they do about 4 boats a year, usually just the seats. Mr. Bemis stated he was concerned about them pulling in and out onto Route 50 and added it is dangerous. Mr. Neville agreed and said he doesn't like it either, they wanted to purchase the old store here in the hamlet but couldn't get approval there. He then added the most would be 3 cars a week, they just haven't had any work and they just wanted to make it legal.

Ms. Trollip asked what the operating hours would be. Mr. Neville said 6 AM to 5 PM, and most of the calls he gets he goes to the customers, sometimes people stop in at the shop to just look around. Ms. Trollip asked if he would have a light up sign. Mr. Neville stated no. Mr. Bemis asked Mr. Colozza if the sign was ok with the State. Mr. Colozza stated the sign will be part of the site plan review before the Planning Board when and if a use variance is approved. Mr. Neville added whatever size the Planning Board wants is fine as long as it can be read at 50 mph from Route 50. Mr. Harrison said the sign has nothing to do with the Zoning Board of Appeals.

Mr. Boyce asked if there were any other questions. None were noted. He then asked for the SEQRA and asked if this has been to Saratoga County Planning. The Clerk gave him the SEQRA form and stated it had to go due to the State Highway and all variances go to the County.

Mr. Boyce asked if there were any other questions or concerns, Mr. Bemis stated they just needed a new "corrected" application. Mr. Neville agreed.

Mr. Boyce made a motion to schedule a public hearing for August 5, 2009.

Mr. Harrison 2<sup>nd</sup> the motion,

All in attendance unanimously agreed.

Mr. Boyce thanked Mr. Neville.

**ACTION**

Public Hearing to be scheduled for August 5, 2009 at 7:00 PM.

Mr. Boyce made a motion to adjourn the monthly meeting at 8:41 PM,

Ms. Trollip 2<sup>nd</sup> the motion,

All in attendance unanimously agreed, meeting adjourned at 8:41 PM.

**FUTURE MEETINGS**

Regular Monthly Meeting, August 5, 2009 – 7:00 PM, Two Public Hearings

Respectfully submitted,

Tia Kilburn, Zoning Board Clerk