

Town of Northumberland
Zoning Board of Appeals Minutes
Wednesday, June 27, 2007 7:00 pm
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Corrected and approved

Present: Chairperson, Mark Boyce, Rebecca Hodgson, Hugo Leone, Gordon Strong, Clinton Barber and Bruce Bemis

Town Employees: Rich Colozza, Town Code Enforcement Officer, Tia Kilburn, Planning / Zoning Clerk

Absent: Carl Harrison, Patricia Brennan, Alternate

Meeting was opened at 7:03 PM, by Chairperson, Mark Boyce. Those in attendance stood and recited the Pledge of Allegiance.

Mr. Boyce opened the public hearing for;

Application #: 0002-07

Applicant: Guy Murphy / Anne Decker

Location: 401 Colebrook Rd

SBL# 129.1- 20

Acres: 1.295

Zoning: R-3

Mr. Boyce requested applicant(s) to step forward. Mr. And Mrs. Decker stepped forward on behalf of Mr. Murphy and themselves.

Mr. Boyce explained the procedure of questions and comments for the public hearing to Mr. And Mrs. Decker.

Mr. Bemis asked if they were still planning on incorporating the old barn into the design of the dwelling. Mrs. Decker stated after they researched the cost of renovations to the barn to achieve this, it was not feasible at this time. However, they still want to rehabilitate it in the future. Mr. Decker stated it will be separate from the house, however it will remain on the parcel.

Mrs. Hodgson inquired about the age of the barn. Mrs. Decker stated they are having the County Historian research the exact age, however they believe it is over 100 years.

Mr. Leone asked Mr. And Mrs. Decker where they reside currently, Mrs. Decker responded in Saratoga.

Mr. Boyce asked if any letters were received from the public with any comments or concerns. The Clerk stated a letter was received from the Planning Board with a positive recommendation for the area variance. A letter from the Saratoga County Planning Board pertaining to the review of this Subdivision and Area Variance for Anne &

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Randall Decker to build a single family residence on Colebrook Rd, stated it was decided by the Saratoga County Planning Board, “*No Significant County Wide or Inter Community Impact*“ .

Mrs. Hodgson asked if they owned the parcel across the road. Mrs. Decker stated Mr. Murphy owns both parcels in question at this time.

Mr. Boyce then asked the public in attendance if there were any questions or comments.

Mr. Dave Little, Esq. of Little and O’Connor, introduced himself as Legal Representation for Mr. Rooper, and made an opening statement containing the following;

The Environmental Impact Assessment Form does not take into account a lot of things. Mr. Rooper is the owner of the parcel surrounding the Murphy / Decker parcel in question and is not very happy about this proposition.

Mr. Little explained the reasons for Mr. Rooper's disapproval in part as follows;

Mr. Little put up a map to review showing Mr. Rooper's current construction in process, and the proposed Murphy 1.29 acre subdivision. Pointing out the buffers and the parcels in question do have wetlands. Mr. Little discussed the buffers and wetlands of the parcels and drainage issues. Mr. Little stated if to many septic systems are installed in the base of this water table area it will contaminate the wells due to drainage issues.

Specifically, Mr. Little wanted to point out this parcel is part of a larger parcel across the road owned by Guy Murphy and any hardship created was caused by Mr. Murphy himself. Mr. Murphy has chosen for many years to leave this as a single parcel. Prior to Mr. Rooper purchasing his parcel he attempted to purchase this 1.29 acre parcel to create one contiguous parcel of his own to build on. Mr. Murphy declined to sell this parcel, Mr. Rooper claims Mr. Murphy’s reasoning for not selling this parcel was he did not want any dwellings built across from his dwelling. Mr. Rooper's plan was to build nice homes on his parcel and create a private semi-rural neighborhood in R-3 zoning and any hardship created by the denial of this area variance was caused by Mr. Murphy himself. Mr. Little stated the area variance sought is substantial in that it is more than a 50% reduction in the size of the lot required (R-3) for this zoning area. Mr. Little then stated he believes this is a more complex situation than the original presentation by Mr. And Mrs. Decker and he supplied the Board with copies of comments written by Mr. Rooper addressing several factors, (please see attached, *Item 1 - Murphy / Decker Public Hearing Comments*) and he asked the Board to take a moment to review and discuss after review.

(The Clerk at this time made copies of the presentation and retrieved the Murphy / Decker plan from the file)

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After review the Board discussed the setbacks and buffers. Mr. Barber asked Mr. Colozza, the Town Code Enforcement Officer, about the appropriate setbacks, buffers and road frontage for this parcel. Mr. Colozza stated they were all within the parameters of the Towns ordinances. A dwelling may be built on this parcel even without the area variance approval. Mr. And Mrs. Decker would have to take the additional acreage from across the road, creating a second substandard lot, however they could still build on this lot.

Mr. Rooper stated in long term the wells in that area will be affected.

Mr. Strong stated to Mr. Rooper in part, basically the issue is, you don't want to see another home in front of you.

Mr. Rooper responded with, and every other issue that would obscure other homes around it. He then stated it would be a detriment to him. Mr. Rooper said he wanted to build at least two more homes and the buyers would expect privacy in R-3 zoning. Mr. Rooper stated the building of this parcel would be a detriment to him because people expect privacy and room.

Mr. Little pointed out there is one thing in the comments from Mr. Rooper that is erroneous, the boundaries of the septic, cannot put a tank within 40' of the property line and that should be 10' from the property line.

Mr. Strong stated that #3 on Mr. Rooper's comments stated that *"This area suffers from a lack of quality well water."*

Mr. Rooper responded with, there is still viable water quality there, down the road about a ¼ mile there is two houses within 500' it still doesn't matter. A lot of people have shallow wells 30' to 50' that's the result.

Mr. Strong then asked what the plans were for the wells of the "proposed" new homes Mr. Rooper wanted to build.

Mr. Rooper said probably shallow wells would work, but typically they would be exacerbated by an additional house there.

Mr. Little said it is not the same problem, its entirely a different problem, the simple area is that the ground conditions and water situation is similar, the difference is, there is plenty of free area across the street if they don't want the kids crossing the street. On the other side of the road there is acres and acres. Mr. Little asked if he has 50 acres there and 1.29 acres here, is he allowed to change the size of the lots permitted in that district to build on the 1.29 acres. Mr. Little pointed out it would be a substantial change in lot

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size (1.29 acres) in an R-3 zoning district. Why not build across the road with 3 acres. Due to soil conditions and the density of the neighborhood, it does not make sense to approve an area variance for this 1.29 acre parcel. . Septic systems, water systems and everything else will be effected by a self created hardship. Mr. Little reiterated that Mr. Rooper wanted to purchase the property in question, was declined due to Mr. Murphy and it is a self created hardship of Mr. Murphy because he says he cannot sell it now. Mr. Little referenced Mr. Rooper's written comments and how Mr. Rooper wanted to purchase this property and Mr. Murphy declined making the self created hardship. At this point it doesn't make sense to change the lot size. Mr. Little stated he is a Town Attorney in Queensbury and he knows how this stuff work.

Mr. Strong asked Mr. Rooper, how he feels the neighborhood would be adversely affected by placing a home on this property.

Mr. Rooper responded it's a semi rural area, more density, is more density. Someone looking to buy a home with 3 acres, they look for something different. Mr. Rooper then mentioned the subdivision nearby but stated Colebrook Road was quite.

Ms. Hodgson asked Mr. Rooper if his plans to subdivide were conceptual or if he had filed plans.

Mr. Rooper responded that his plan was still conceptual.

Mr. Barber asked what stage the Disiena Subdivision plans where in.

Mr. Colozza responded the Disiena Subdivision has been approved, it is 14 lots. Discussion ensued about the size of house lots. Mr. Colozza stated some of the parcels are one acre because of a CDS design. The parcels were allowed to be reduced because the developer conserved 20 acres (to the State) for the "Butterfly" and more acreage was left as open space.

Mr. Rooper said he understands a CDS design is allowed under statue if land is set aside to mitigate factors and you are allowed to reduce the lot size. However it does not apply to this case. He wanted to make sure the Board understood the distinction.

Mr. Barber asked Mr. Beagle, a long time well driller in the public attendance, about the water quantity and quality on Colebrook Road.

Mr. Beagle stated he has drilled wells for over 60 years. Mr. Beagle stated Colebrook Road is a problem in the Town of Northumberland for sanitary water. Mr. Beagle stated he did not know why the "Boards" of the Town of Northumberland did not come to him or other well drillers with questions about the water before they allow property to be subdivided. Mr. Beagle stated he made Mr. Murphy move his septic system. This parcel

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needs to be 80,000 sq ft to ensure a perfect septic and water system. Mr. Beagle said if this Murphy / Decker subdivision was approved Mr. Rooper would have to cut some of his property lines back to ensure safe water.

Mr. Strong asked Mr. Colozza what the distances were for septic and wells to be apart.

Mr. Colozza stated on this lot they may have to drill a sealed well with a casing and there must be 100' between the septic and wells, most of the problems are from the shallow wells not the sealed casings. This lot they may have to go deep well and not be able to draw the shallow water. The Engineer will handle the final draft of the septic and wells. They already have had percolation testing and soils and they are fine. Their engineer has to go within the confines of the building envelope that is there. This site can be built on regardless if this area variance is approved or not. They can get the access acreage across the road and create an additional substandard lot and build on this one. The variance is only saying they don't need the additional property across the road to build on this lot.

Mr. Strong asked if the setbacks are ok, and stated he does not like the idea of creating a second substandard lot across the road.

Mr. Colozza said yes all the setbacks are within the regulations of the Town ordinances and regulations.

Mr. Little then stated there is still an environmental impact on the remaining property, it just doesn't make sense with construction on that side of the road with the existing construction going on there and the intentions of building on the remaining property. The septic has to go somewhere, the septic isn't going down 300' or 400'. The septic is going to effect all the shallow wells in the area so there is definitely an environmental impact on the adjacent property and all the way around. Mr. Little stated all he is suggesting is, it makes more sense to build across the road. The septic and well over there, where it is not creating a problem on the opposite side of the road and it is further away from the wetlands.

Mr. Strong asked, if they build on the other side of the road would the filtration be the same, isn't the soil the same.

Mr. Little responded yes it is the same but, because of the distance, it would not be as big of a problem.

Mr. Boyce asked if there were any other subdivision plans or open permits currently surrounding this parcel.

Mr. Colozza stated the only permit currently open is Mr. Roopers' he is building on another lot adjoining the lot surrounding Mr. And Mrs. Decker's. Mr. Rooper owns two

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lots side by side.

Mr. Boyce asked for any other questions or comments.

Mr. Beagle spoke and asked if the Board understood the difference between “deep wells” and the “packer system”. Mr. Beagle then explained;

The “deep well” is an iron pipe pounded into the ground without any protection outside from ground chemicals. Chemicals can seep into the well from the ground surface on the outside of the pipe. The “packer system” is a 2” casing put down and packed with clay and a packer inside and draw the water from down below. The “packer system” is much safer than a deep well.

Mr. Beagle then stated he knew of an approved business on Colebrook Road that the water is contaminated.

Ms. Hodgson asked what business?

Mr. Beagle refused to name the business.

(note: some of Mr. Beagles’ additional comments were inaudible)

Mr. Rooper submitted to the Board copies of 5 points he wanted to make, obtained from Governor Spitzers’ office, Zoning and Planning Law, titled *What must be fair in order to grant an area variance*.

Consider:

1. Whether this is a radical change reducing the character of the neighborhood or a detriment to nearby property will be created by granting the area variance.

Mr. Rooper: *“It is, no doubt, a detriment to my property, the only surrounding property”*.

2. Whether the benefits being sought by the applicant can be achieved by some method feasible for the applicant to pursue that would not require an area variance.

Mr. Rooper : *“There is 54 acres across the road”*.

3. Whether the request for the area variance is substantial as the intention is greater than a 50% reduction under the current law.

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4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district.

Mr. Rooper : *“There is some dispute about that but I believe there would be“.*

5. This difficulty was self created.

Mr. Rooper: *“It is nothing other than that. Mr. Murphy selected the way this land was plotted in order to keep houses from being built across from him. He understands he can change his mind, but he created this, in 1972 he could have separated this lot it would have been “grand fathered” in he could have paid property taxes on it as a build able lot, he did not. There is no reason it should be a build able lot“.*

Ms. Deb Hall introduced herself as Mr. Roopers’ wife, stated it was their intent to move into the house they are building. It was her understanding there is a 3 acre zoning so that was desirable to live in that area where there is a little more space. They could have moved somewhere else. But they felt reassured by the Town that is was a 3 acre district and her husband wanted to buy the (1.29 acre) lot from Mr. Murphy, not to build there, but because there would be extra land there. It is very discouraging that it (the 1.29 acres) could be built on.

Mr. Boyce asked for any additional questions or comments.

Ms. Hodgson stated it appeared Mrs. Decker filled out the SEQR form, and she believes the Board needs to complete Part II, not the applicant.

Mr. Boyce stated he would fill out Part II of the SEQR when the Board decides to take action on the application.

Mr. Strong asked Mr. Rooper who he purchased the property from.

Mr. Rooper responded he purchased his parcels from John Costa in 2004. He thinks they had plans for a camp there. At that time he also asked Mr. Murphy to sell this 1.29 acre lot to him, and Mr. Murphy declined.

Mr. Strong wanted to reiterate that when Mr. Rooper purchased his parcel that surrounds this particular (1.29 acre) parcel the (1.29 acre) parcel was already there.

Mr. Rooper responded with yes, but he wanted to purchase Mr. Murphys’ 1.29 acres and make one contiguous parcel of his own. Mr. Murphy declined the sale and reassured Mr. Rooper no one would build on it.

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Mr. Boyce asked if there were any other questions or concerns for this subdivision.

None were noted.

Public Hearing was closed.

Chairperson, Mark Boyce opened the public hearing for the following;

Application #: 0003-07
Applicant: William Freitag / Larry Ball
Location: 4 Stormy Ln
SBL: 116.7-1-23
Zoning: R-1

Mr. Boyce asked the applicant(s) to step forward.

Mr. Freitag and Mr. And Mrs. Ball stepped forward.

Mr. Strong asked whose name the right of way was in.

Mr. Freitag stated it was in his wife's name and it would transfer with the deed.

Mr. Bemis researched at the County Clerks office for anything filed on the right of way, however did not find anything recorded.

Mr. Freitag said he would get a copy for the Board and he did not know why it was not recorded.

Mr. Colozza said it was on the maps for the subdivision and it was 15' wide.

Mr. Bemis thought it was 25'. Mr. Colozza confirmed it was only 15'.

Mr. Boyce asked if there were any other comments or concerns from the Board or the public.

No other comments or concerns were noted.

Mr. Leone made a motion to close this public hearing at 8:44 PM.
Mrs. Hodgson seconded the motion, unanimous by all in attendance.

Chairperson, Mark Boyce opened the regular monthly meeting at 8:44 PM.

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Old Business:

Application #: 0002-07

Applicant: Guy Murphy / Anne Decker

Location: 401 Colebrook Rd

SBL# 129.1- 20

Acres: 1.295

Zoning: R-3

*Denial of Building permit from Rich Colozza, Code Enforcement Officer, due to an area variance is needed from ZBA and subdivision review is needed because 3 acres is required, 1.29 is available.

Mr. Boyce requested the SEQR form. Due to the comments at the public hearing a change in item #5, for the purpose on the SEQR form is needed. Mrs. Decker stated they have limited money for the entire project.

Mr. Little addressed the Board with concerns about Mr. And Mrs. Decker reproaching the Board. He stated the public hearing is closed and it is up to the Board to make a decision without any further discussion with Mr. And Mrs. Decker.

Mr. Boyce made a motion to go into executive session.

Mr. Leone second the motion, unanimous by all in attendance.

The Board went into executive session at 8:55 PM (time changed to 7:55 PM, by motion, October 3rd, 2007)

All applicants, the public in attendance and the Clerk left the room.

The Board came out of executive session at 8:45PM

Mr. Boyce explained there was no decision made in the executive session and then he addressed SEQR reading the responses from section II (please see attached *item - 2 Murphy - Decker*) Mr. Boyce changed the answer to C4 - in section II to read *yes, there is an area variance on file*. He then asked the Board if there were any disagreements with declaring a negative declaration on the SEQR with no significant affects and there were none, it was unanimous by all in attendance

Mr. Boyce signed the SEQR form and asked for the application from the Clerk.

Mr. Boyce asked the Board if there were any additional comments or discussion on this file.

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There were none.

Mr. Strong made a motion to approve the area variance based on the following reasons/conditions the Zoning Board of Appeals has deemed necessary:

The variance will not adversely impact the character and physical conditions of the area and plans currently filed with the Town of Northumberland. The lot is separated by a Town Road from the Major portion of the parcel.

Mr. Leone second the motion.

Mr. Boyce asked for a roll call vote
Rebecca Hodgson "Aye"
Hugo Leone "Aye"
Gordon Strong "Aye"
Clinton Barber "Aye"
Bruce Bemis "Aye"
Chairperson, Mark Boyce "Aye"
Motion Carried.

ACTION TAKEN:

Approved as proposed, 6-0. (*motion form was placed in the file*) This file needs to go to the Planning Board for approval of the subdivision. Negative declaration declared on SEQR.

Application #: 0003-07

Applicant: William Freitag / Larry Ball

Location: 4 Stormy Ln

SBL: 116.7-1-23

Zoning: R-1

**Building / Zoning permit denied by Rich Colozza, Code Enforcement Officer, due to no longer an allowed use, previous manufactured home was removed over 18 months ago.

Mr. Boyce asked for the application and reviewed it. Mr. Boyce asked if there was any further discussion necessary from the Board.

There was none.

Mr. Boyce asked for the SEQR form. Mrs. Ball filled out the SEQR form and gave it to the Board. Mr. Boyce then read section II and his answers of the SEQR. Mr. Boyce then

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asked the Board if they all agreed with his negative declaration on the SEQR, it was unanimous by all in attendance.

Mrs. Hodgson wanted to confirm the old mobile and debris was removed. Mr. Freitag responded it was.

Mr. Leone made a motion to approve this application based on the following reasons/conditions the Zoning Board of Appeals has deemed necessary:

I also believe this lot is of no useful value other than a single family dwelling with all set back requirements being met per applications preliminary drawing and in compliance with all relevant building codes.

Mr. Strong second the motion.

Mr. Boyce asked for a roll call vote

Rebecca Hodgson "Aye"

Hugo Leone "Aye"

Gordon Strong "Aye"

Clinton Barber "Aye"

Bruce Bemis abstained due to his daughter owns the property containing the Right of Way.

***** (changed to recused himself, and strike "due to his daughter owns the property containing the Right of Way" due to a motion, October 3rd, 2007.)

Chairperson, Mark Boyce "Aye"

Motion Carried.

ACTION TAKEN:

Approved as proposed, 5-1 (*motion form was placed in the file*) (abstained, changed to recused by motion, October 3rd, 2007). Negative Declaration declared on SEQR.

Next Meeting:

The next scheduled meeting for the Zoning Board is August 1st, 2007.

Adjourn:

Mr. Leone made a motion to adjourn the meeting at 9:15 PM.

Mr. Strong second the motion
unanimous by all in attendance.

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The motion carried.

Respectfully submitted,
Tia Kilburn
Planning/Zoning Clerk