

Town of Northumberland Zoning Board of Appeals

Wednesday,

April 3, 2019 7:00 pm

Accepted by the Zoning Board

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**Zoning Board Members Present:** Aimee Smith, Gary Applegate, Sarah Mojzer, Bruce Bemis, Paul Becker, Carl Harrison, Vice Chairperson and Mark Boyce, Chairperson

**Zoning Members Absent:** John Amidon

**Town Employees Present:** Richard Colozza, Code Enforcement and Tia Kilburn, Zoning Board Clerk

Mark Boyce, Chairperson, called the monthly meeting to order at 7:04 PM

All in attendance stood and recited the Pledge of Allegiance.

Public Hearing

Chairman Boyce introduced application #0001-19, Area Variance, Keith Burch & Misty Stipe, Chairman Boyce invited the applicants to explain their request.

Mr. Burch stated they are requesting a 5.71-acre area variance to allow for 4 horses in the agricultural zone. looking to build a home and the request is to have horses. Chairman Boyce asked there were any questions or correspondence from the public, the Clerk stated a phone call was received from Jeff King, he spoke with Richard Colozza. The Clerk then stated Saratoga County Planning Board review was waived due to the agreement between the Zoning Board and Saratoga County Planning Board dated January 15, 1998. Mr. Colozza stated Mr. King just wanted clarification of the application request, he had no other issues. Mr. Boyce asked if there were any questions or statements from the public in attendance, none were noted. Mr. Boyce asked for the SEQRA, State Environmental Quality Review Form.

Ms. Smith made a motion to close the public hearing for application 0001-19, 4.8-acre variance request, Vice Harrison 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Chair Boyce opened the regular monthly meeting;  
New Business

Schuyler Hose is on the agenda for an interpretation, Fire Capt. Matt Derway and Frank Merrill, Secretary to the Board of Directors for the Fire House introduced themselves to the Board. Mr. Derway stated they are proposing to construct a fire substation at 256 Rugg Road, he explained there is a public need for a substation for the people in that area, he explained for the people out of the 5 mile radius it is difficult to obtain fire insurance due to the fact there are no fire hydrants and the response time because of the distance to the station. He stated they have contacted CT Male for assistance designing and engineering, he added it is a large lot however, they do not want to interfere with farm operations so they will only be utilizing about 2 acres. Mr. Derway then explained there are 2 barns that will be removed and they will install sewer and water, CT Male will engineer the drainage and 3,000-gallon tank to wash the fire trucks which will be pumped out and not leach into the field. He stated they propose a 2-bay wide and 2 deep, they have a 48" ladder truck and need the building long enough to fit in the building for maintenance, CT Male will engineer and follow all regulations.

Chair Boyce asked Mr. Colozza for his input, Mr. Colozza stated due to Zoning Definitions of public & private and the fact the R-3 district is the only one that allows for public utilities, semi & public use is also only in one district, however, anyone with a fire will have the need for a substation. He further explained, if you look at the

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definitions and the allowed uses or needing a variance. This still will need to go to the Planning Board for a site review and suggested this Board look at Attachment A in the Zoning Regulations, Schedule of Permitted Uses and Minimum Lot Sizes. Mr. Colozza stated he feels it was an oversight when the Regulations were created because no matter what district, if there is housing or structures there is a need for this, there are several subdivisions with housing, Terril Hills and Stafford Way and subdivisions off King Road are all in this fire district. Chair Boyce stated there is not an application for the Planning Board, Mr. Colozza responded not yet.

Mr. Derway stated they picked this property because of the location, it was hard to find and they have been looking for a while, it is only 2 acres and they have talked to several farmers. This location will fit for the distance issues for the ISE Insurance Rates for the homeowners, fighting a house fire they need 3,000 gallons of water this is the agricultural district close to residential however, there are no fire hydrants to utilize.

Chair Boyce stated they need an application for planning and an application for a variance, Mr. Colozza responded right now it is an interpretation to determine if it should be allowed or if a variance is needed.

Chair Boyce stated he was unsure if this Board has the ability to do an interpretation, he then reviewed the Zoning Regulations for an interpretation and added it is clearly in the agricultural zone close to the Residential 3 acre (R-3) district down the road. Ms. Smith and Ms. Mojzer reviewed the zoning map and R-3 district. Discussion ensued on the parcel of interest is 196 acres used for agricultural pursuits, public use and utilities.

Mr. Colozza stated the existing hydrants in Terril Hills cannot be used for public water supply, Mr. Merrill agreed and said the pressure would crush the pipes, if the need arises there, they would have to pump water from the Colebrook.

Chair Boyce stated it still needs 3 acres, Mr. Colozza said they could do an area variance and interpretation, basically, the lot qualifies because it is 196 acres. Mr. Merrill added they could take 3 acres and only use 2 of it or they could somehow subdivide it out of the full parcel and lease it from the Pecks, they will need an address for the utilities.

Chair Boyce addressed the Board and stated he was open for thoughts. Mr. Becker said they want an interpretation or the short route would be a variance, Mr. Colozza reiterated he felt it was an error in the Zoning Book because homes need a fire department and its residential area. Mr. Bemis asked how the water supply was on the parcel, Mr. Colozza responded they haven't started testing because they don't want to spend a lot of money until they know it is ok to proceed, but CT Male will plan it all out, Department of Conservation will regulate the holding tank and septic for the bathrooms, there will be a drilled well. Mr. Bemis asked if they would have the drilled well before anything else, Mr. Colozza responded CT Male will do all the planning and the drilled well will be installed after the site plan is approved.

Vice Harrison asked why a fire house cannot be considered a public utility, Mr. Colozza stated that is not up to him to determine. Chair Boyce stated R-3 allows for public utility.

Ms. Smith asked if the site plan can show 3 acres, Mr. Colozza responded yes.

Chair Boyce read the definition of a fire station and stated he understands the public and semi-public use are only in the Hamlet District, the Zoning Map was created and this Board can only define what is not clearly defined but this is. So back to the Regulations, the only thing would be a Use Variance and it would have to pass all the "tests" to get approved.

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Ms. Mojzer asked why they can't have a public utility in the Agricultural Protection District? Chair Boyce stated the Town Board could amend it, Mr. Colozza stated amending the Zoning Book takes a lot, they have to review it and hold a public hearing, there are certain steps that would have to be taken. He then added he could talk to the Town's Attorney.

Chair Boyce suggested they put an application in to the Planning Board, then if they say it needs a variance or interpretation they can come back to this Board.

Ms. Mojzer asked what the interpretation would be; public utility vs. public & semi public use? Ms. Smith asked if it were rural, Mr. Colozza responded extremely rural, Ms. Smith asked if it were all owned by The Pecks? Mr. Merrill said no, The Pecks own all around it, it use to be the Merchant farm, there is one home next to the lot, one across the street and one burned down, down the road there is a veterinary hospital.

Discussion ensued on the noise and sirens.

Chair Boyce read the definition of an interpretation; he stated the Town Board is the one that makes amendments to the Zoning Ordinance other than that he felt this Board did not have the ability to determine only to recommend to the Town Board that it should be applied to all Zoning Districts.

Chair Boyce made a motion to recommend an interpretation for the construction of a Fire House Substation on parcel located at 256 Rugg Rd as a public utility vs. public service.

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

All in attendance unanimously agreed.

Chair Boyce stated they can table it until they get an application, Mr. Colozza stated he can go to the office and get an application now.

Chair Boyce stated they will continue with application #0001-18 for a 5.71-acre variance and he read and answered the SEQRA, State Environmental Quality Review Form. He asked if there were any discussion on this application or SEQRA, State Environmental Quality Review Form, none was noted.

Chair Boyce made a motion to accept the SEQRA, State Environmental Quality Review Form as a Negative Declaration for application 0001-19,

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

All in attendance unanimously agreed.

Chair Boyce made a motion to approve Application 0001-19 for a 5.71-acre area variance to allow no more than 4 horses, 1 horse per acre, no other livestock will be allowed and agricultural waste will be disposed of as described in the application contingent upon the applicants purchasing the parcel.

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

All in attendance unanimously agreed.

Chair Boyce stated they would now address the interpretation for Schuyler Hose Substation, represented by Matthew Derway for Public Use vs. Public Utility, he added it was determined it is in the R-3 District per the Zoning Map, authorization has been granted by a property representative (Willard Peck) for Welcome Stock

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Farm, LLC. The parcel contains 196 acres at 256 Rugg Rd in the Town of Northumberland.

Chair Boyce asked if there were any discussion at this time. Vice Chair Harrison stated he found a Legal Memorandum from New York State's Department of General Counsel regarding a NY State Supreme Court decision regarding Firehouses and Zoning (see attachment) Vice Chair Harrison read and summarized the decision; Firehouses serve a vital public purpose, it was determined by State Supreme Court that construction of a firehouse, in a zoning district wherein it would otherwise require both an area variance and site plan approval, was subject to the "balancing of public interests" test set forth in Monroe rather than the unqualified application of the Town's Zoning and it was allowed to proceed when not an allowed use in the zone.

Chair Boyce asked if there would still be a special use permit / site plan review with the Planning Board, Mr. Colozza responded yes. Chair Boyce asked if there were any discussion or questions. None were noted.

Vice Chair Harrison made a motion to interpret the proposed fire substation to be construction at 256 Rugg Road, in the Town of Northumberland, SBL#: 130.-1-41.21 belonging to Welcome Stock Farm, LLC. be an allowable use in the R-3 District in regards to public utilities and public safety and qualify for site plan review by the Town of Northumberland.

Ms. Smith 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Ms. Smith made a motion to approve the January and March meeting minutes as submitted,  
Chair Boyce 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Chair Boyce made a motion to adjourn the monthly meeting at 8:30 pm,  
Ms. Smith 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

**FUTURE MEETINGS**

My 1, 2019, as needed.

Respectfully submitted,  
Tia Kilburn, Zoning Board Clerk



## Legal Memorandum LU07

### FIREHOUSES AND ZONING

**When a local government, fire district or fire company undertakes the construction of a firehouse within its own borders or within the boundaries of another municipal government, such construction may be subject to the requirements of the host municipality's zoning.**

In *Matter of County of Monroe*, 72 N.Y.2d 338 (1988), the Court of Appeals addressed the issue of whether projects undertaken by one municipal government within the territory of another municipality are subject to the latter's zoning laws. The Court abandoned the long standing "governmental vs. proprietary purposes" test in favor of a new "balancing of public interests" test for such circumstances, holding:

...This balancing approach subjects the encroaching governmental unit in the first instance, in the absence of an expression of contrary legislative intent, to the zoning requirements of the host governmental unit where the extraterritorial land use would be employed...Then, among the sundry related factors to be weighed in the test are: "the nature and scope of the instrumentality seeking immunity, the kind of function or land use involved, the extent of the public interest to be served thereby, the effect local land use regulation would have upon the enterprise concerned and the impact upon legitimate local interests"...In [a Florida case] the catalogue of potential factors to be considered by the reviewing court was expanded to include the applicant's legislative grant of authority, alternative locations for the facility in less restrictive zoning areas, and alternative methods of providing the needed improvement...Another important factor is intergovernmental participation in the project development process and an opportunity to be heard. Realistically, one factor in the calculus could "be more influential than another or may be so significant as to completely overshadow all others", but no element should be "thought of as ritualistically required or controlling"...(citations omitted).

A decade later, the State Supreme Court, in *Nanuet Fire Engine Co. No. 1 v. Amster*, 177 Misc.2d 296 (Sup. Ct. Rockland Co. 1998), determined that construction of a firehouse, in a zoning district wherein it would otherwise require both an area variance and a site plan approval, was subject to the "balancing of public interests" test set forth in *Monroe*. While this decision at first created a flurry among the fire services, analysis reveals that it is actually a beneficial result.

The petitioner in the case was a private, not-for-profit fire company. As such, it had its own board of directors, lacked taxing authority, and could not be considered as a separate unit of government as would be the case for a city, town, village or fire district. Under these circumstances, it could be concluded that the fire company was fully subject to the Town's zoning, as would be true for any other not-for-profit organization conducting its business in town. The court, however, looked to the relationship between fire districts and fire companies, and held:

A fire company... "is essentially under the control of the Fire District..." In order for the fire district to provide the services it is required to provide by law, it must function through fire companies...Thus, for purposes of determining whether property to be utilized for a fire station is subject to applicable zoning laws, a fire company stands upon the same footing as a fire district.

The court concluded that the construction of a firehouse by a not-for-profit fire company is subject to the *Monroe* "balancing of public interests" test rather than to the unqualified application of the Town's zoning, and returned the matter to the Town to conduct the balancing of public interests test. After Town Board did so, it determined that public safety and other factors warranted allowing the construction to proceed.

Firehouses serve a vital public purpose by allowing fire departments to protect people and property from the ravages of fire. Location is a crucial factor in the achievement of these purposes. Because these and other functions of firehouses may weigh more heavily in their favor in the "balancing of public interests" test, the decisions in *Monroe* and *Nanuet* may make it easier to locate firehouses in areas where they might otherwise raise zoning or site plan issues.