

Town of Northumberland Zoning Board of Appeals

Wednesday,

August 7, 2019 7:00 pm

Subject to Correction by the Zoning Board

Page 1 of 6

Zoning Board Members Present: Sarah Mojzer, Paul Becker, John Amidon, Aimee Smith and Mark Boyce, Chairman

Zoning Members Absent: Gary Applegate, Bruce Bemis and Carl Harrison, Vice Chair

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

Mark Boyce, Chair, called the meeting to order at 7:25 PM

All in attendance stood and recited the Pledge of Allegiance.

Quorum established, Chair Boyce announced the first item on the agenda, Appeal of a lot line adjustment and asked if someone was representing the application, Amanda Kukle, Esq. stated she was an attorney with the firm Caffrey & Flower representing Mr. Robert Walsh, she then asked if they wanted her to go through the appeal.

Chair Boyce responded yes they would like to review and have her explain. Ms. Kukle explained; they are appealing the May 21st decision of the Code Enforcement Administrator, Richard Colozza, for a quick background Ms. Dennis owned land on the bank of the Hudson River and Mr. Story owns Thompson Island, Mr. Story purchased a .53 acre portion of Ms. Dennis's property across from Thompson Island. Thompson Island and the 1/2 acre parcel are separated by 300' of the Hudson River that is owned by New York State, earlier this year, May 21st, the Code Enforcement Administrator made a decision this transaction did not have to go through the subdivision process so long as the 1/2 acre parcel was combined with Thompson Island and was given the same tax lot #, on behalf of Mr. Walsh they are appealing the decision to this Board because under New York State Town Law 267B, the ZBA has the authority and can reverse, modify part or in full the entire decision. The law charges the ZBA with looking at the law and facts and making a decision of the correct Town Law. It is not beholden to assertion made in the May 21st decision, we believe once the Board looks at the Law and facts it will determine this was an illegal subdivision and the May 21st decision should be reversed. The reason it should be reversed is 2 main points;

1st, the division of the property was not eligible for an exception from the subdivision process.

2nd, that even if it did qualify for exception from the subdivision process under subdivision regulations the Planning Board had the authority to make the decision on the Code Enforcement Officer. After the 1st decision that the transfer was not eligible for the exemption the applicant can apply for a waiver of the full subdivision process. The May 21st decision refers to the boundary line adjustment but that is the same thing as a lot line alteration as called in the subdivision regulations. For example: a neighbor transfers a portion of property that borders your won to you, this kind of transfer can be exempt from subdivision process but it has to meet 4 requirements set forth in the subdivision regulations;

1st, It does not result in an additional lot being formed, this alteration does result in an additional lot being formed because the property is being transferred from Ms. Dennis to Mr. Story and that portion is not being merged with Thompson Island for Zoning purposes, so by cutting off a portion of her property there is a new lot created. Out appeal letter dated August 1st looks at the definition of a lot in the Zoning Ordinance and explains why the 2 properties cannot be considered a legal lot for Zoning purposes and she stated she can further discuss that if the Board wishes.

2nd, Requirements for lot line alteration exception it is a conveyance of a portion of one parcel to an adjoining

Town of Northumberland Zoning Board of Appeals

Wednesday,

August 7, 2019 7:00 pm

Subject to Correction by the Zoning Board

Page 2 of 6

parcel, Thompson Island does not adjoin the lot Ms. Dennis owned, it is separated by 300' of property owned by someone else. When Ms. Dennis sold a portion of her lot to Mr. Story she was not conveying to an adjoining parcel because he didn't own property on that side of the River at that time.

3rd, Requirement results in lots that are equal to or exceed the minimum Zoning requirements for the district, as discussed in the appeal, that portion of property transferred to Mr. Story cannot be considered part of Thompson Island and thus considered on its own and apply the Zoning Regulations to it. The .53 acre lot did not meet the minimum lot size requirements or the lot width requirement for the Agricultural Protection District and also does not qualify as a keyhole lot. This transfer fails 3 out of 4 of the requirements that are necessary to be exempt from subdivision approval, even failing one of these means it needs subdivision approval before the planning board.

2nd major reason why this should be reversed even if the transfer met the exemption requirements the Code Enforcement Officer didn't have the legal authority to make that decision under the subdivision regulations only the Planning Board had the authority to decide the transfer didn't have to go through the subdivision approval.

To summarize; Illegal subdivision not eligible for exemption from subdivision process, the decision that it was exempt was made by an officer without the legal authority and resulted that there is an illegal under sized lot in the Town, therefore the May 21st decision should be reversed. We are asking the Board to find it as an illegal subdivision, the lot as an illegal lot that shouldn't be allowed to stand, the illegal lot should be conveyed back to Ms. Dennis at which time she can then go through the proper channels if she did so desire to get subdivision approval from the Planning Board.

Ms. Kukle then stated if the Board has any questions about tonight or what was discussed in the letter she would be happy to discuss it further and at this time also request the Board schedule a public hearing.

Chair Boyce stated he had questions for Ms. Kukle and Mr. Colozza, the Zoning Board of Appeals looks at an application referred to them by either the Code Enforcement Administrator for the Town or the Planning Board, he understands the argument she made about the legal or illegal subdivision, before they can schedule a public hearing they need an application, basically either asking them for an interpretation or a variance from the Town Zoning Requirements, he stated he did not think they had anything on record for that.

Mr. Colozza stated he could not say what Tia Kilburn, Clerk to the Board has in the file. He requested some paperwork but doesn't know if it was passed out to the members of the Board.

Chair Boyce stated he is struggling with the interpretation subdivision listing, and he doesn't even know if they can call it a subdivision, the division of property that has occurred and ultimately that would have been the Planning Boards authority to review and then to refer to the Zoning Board of Appeals if they considered that to be not a proper division of property within their legal authority. I am speaking, not for the board but he is not ready to go into a public hearing until he sees an application that spells out what they are taking action against.

Ms. Kukle stated they are taking action against the determination of the Code Enforcement Officer in interpreting the Laws.

Chair Boyce said that is not this Boards authority to overrule the Code Enforcement Officer, the Boards authority is to provide a variance against the Town's Zoning Regulations.

Ms. Kukle stated under New York State Town Law 267A, Governing Authorities of Zoning Board of Appeals,

Town of Northumberland Zoning Board of Appeals

Wednesday,

August 7, 2019 7:00 pm

Subject to Correction by the Zoning Board

Page 3 of 6

jurisdiction includes review of decisions made by the administrator officers who are charged with the enforcement of the Laws of the Town, that is why we are coming before this Board.

Chair Boyce responded he understands they brought forth a letter that challenges a division of property.

Ms. Kukle said it challenges a decision of division of property.

Chair Boyce stated his understanding of it, everybody else speak up including Rich, but his understanding is this letter should have gone to the Code Enforcement Officer to the Town for referral to the ZBA to either take action of an interpretation or the decision on division of property that gets into the Planning Board review of this, ultimately that would have been the channel that had gotten it to the ZBA.

Ms. Kukle she asked if she were to bring an appeal of a decision to the person that made the decision before bringing it to this Board?

Chair Boyce stated you would be bringing this to the Town, Mr. Colozza asked Chair Boyce if he wasn't clear with the application because on the application its either a referral from the Planning Board or his self, and is it the application what you are specifically asking for, and he asked Ms. Kukle if the Clerk had handed her one. He added he received their letter as an interpretation, this is where it would end up because it is an appeal, he said he thinks the Chairman is looking for the application saying specifically what you are looking for, not something on a subdivision, he added it was his decision to allow the subdivision, and this is an appeal of that.

Chair Boyce stated he is trying to back up to what should have been the process, right now the question is, is this a proper division of property. Normally, that division of property would have resulted in an application to Planning and if they want an interpretation.

Mr. Colozza stated it didn't go that way, he hasn't explained everything on how he came to his decision, that's what they are asking, they are saying he did not have the right to allow it. That is basically what this appeal is about. Mr. Chairman are you looking for the application asking the ZBA to hear this appeal and the letter goes attached to that. Chair Boyce agreed.

Ms. Kukle asked if the Board would like them to file an application with Mr. Colozza. Chair Boyce responded normally does.

Mr. Colozza stated actually it goes to the Clerk and then she gives it to him to look at, he signs off whether it should go to an appeal, to the Planning Board or the ZBA. It's just an application explaining exactly what you are asking for.

Chair Boyce agreed, an application of what you are asking for and part of that is why you are asking for it?

Mr. Colozza said with the letter attached saying what the appeal is about.

Chair Boyce stated he would rather have application in front of him with the explanation why Ms. Kukle is representing Mr. Walsh, Mr. Walsh is not one of the 2 parties in the purchase agreement, so Mr. Walsh is challenging whether or not this should have been a subdivision going through notification to him during the review.

Ms. Kukle agreed.

Town of Northumberland Zoning Board of Appeals
Wednesday,
August 7, 2019 7:00 pm
Subject to Correction by the Zoning Board
Page 4 of 6

Chair Boyce said so that gets the why behind it to be part of the application, then you identified why it should have been through the Planning Board review and what the Planning Board had the authority to do or send it to this Board if they felt they did not have that authority, that is his understanding of where it stands today, rather than jump in the middle of what could be a Planning Board decision or could go that Route, if we disagree with the decision made, but still can be pursued as a subdivision, potentially the transaction is complete.

Ms. Kukle again agreed the sale is final.

Chair Boyce asked if it is already registered with the County.

Mr. Colozza responded yes.

Chair Boyce stated anybody else should speak up if they are thinking something he is not.

Ms. Kukle reiterated the 1st step of the process would have been to go to the Code Enforcement Administrator to determine that his own decision was incorrect and then go to the Planning Board from there?

Chair Boyce stated not so much his decision was incorrect, basically to file the application for the interpretation of the decision and yes, it would get Mr. Colozza signature on it and referral to the ZBA for review by going through the proper steps, then he asked what the impact is to Mr. Walsh.

Ms. Kukle said because the decision was made by the Code Enforcement Administrator and not the Planning Board Mr. Walsh was not given the opportunity to have any input or say at a public hearing to raise concerns to the Board.

Chair Boyce stated he understood that impact, he is asking now because it is already a legally registered property and if they take the time to get the application what is the impact to Mr. Walsh?

Ms. Kukle repeated What's the impact to Mr. Walsh?

Chair Boyce said if it takes an extra month to go through, Ms. Kukle stated she has not talked to Mr. Walsh about the impact if it takes another month.

Chair Boyce stated it is proper to get a completed application referencing the letter. Ms. Kukle agreed, he then asked if anybody else had any questions.

Mr. Becker stated what they are saying is not logical to him, it's not going through the correct steps and he wonders what the impact would be on Mr. Story, he bought a piece of property and it's like they are trying to negate that he bought the property and he is not sure that is correct.

Chair Boyce said that is the reason they want an application, part of the public record, sending out notifications there will be a public hearing once they have reviewed the application so not just Mr. Walsh but anybody within the notification distance of the property including the County who already has a legally recorded transaction is notified of this pending appeal.

Ms. Kukle agreed however, just because it has been recorded with the County it is still an illegal lot and can still be undone. Someone breaks the Law and registers it is still up to the authority to correct it.

Town of Northumberland Zoning Board of Appeals
Wednesday,
August 7, 2019 7:00 pm
Subject to Correction by the Zoning Board
Page 5 of 6

Chair Boyce agreed it's in the authority to correct, however, right now he is not thinking about it as whether it's legal or not, that is ultimately what this decision is going to be about, he stated they just want the documentation and all the proper reviews to occur parallel to moving to a public hearing.

Ms. Kukle asked if the application would be for an interpretation of the lot line alteration and not for challenging an existing decision.

Chair Boyce responded challenging the decision would be part of the application, but it still would be the lot line alteration interpretation performed by the Code Enforcement Officer.

Ms. Kukle agreed and stated they would co-ordinate that and get it to the Board.

Mr. Phillips, Esq. stated he was representing Irony Alliance, LLC / George Story in this matter and in listening to the conversation, he agrees with it on behalf of Irony Alliance being part of the process, he said they would like to be heard as well, they feel they have some points to support the action of the Zoning Administrator. They disagree with many of the points contained in the appeal letter, they are requesting an opportunity to be heard so this Board as they make a decision will have all points of view.

Chair Boyce asked what the interest of the application was, Mr. Phillips stated he is representing the applicant that wants to construct the bridge across the Hudson River. Chair Boyce stated that was the purpose of the original transaction. Mr. Phillips responded yes, procedurally we ask this matter be tabled tonight and re-scheduled for a public hearing at some point in the future.

Chair Boyce stated it is not so much being tabled, normally they would say the application is complete and move to a public hearing or the application is incomplete, they need additional information, right now it is not a table matter, it's normal process when the application gets before the Board they will review and establish a public hearing, notifications will go out, they would have the opportunity to speak at a public hearing and they will follow the standard process to bring it to a resolution.

Mr. Phillips stated for clarity at this point, as far as this Board is concerned the application is not complete? Chair Boyce agreed, it is not complete because there is no application in front of the Board.

Mr. Phillips replied, because of the formal nature of it, when the time comes the applicant for the bridge would like to put matters into the record so the Board has a complete record.

Chair Boyce agreed and asked if there were anyone else in attendance for this application, none were noted, he then said back to the question of an application, the Clerk listed it on the agenda as 0002-19.

Mr. Colozza stated he was not sure if they actually filled out the form or not, normally he said they fill it out and he has to sign it.

Chair Boyce asked if there were any additional questions or comments from the Board, none were noted. He then announced the next item on the agenda, Area Variance for Matt Butch, application # 0005-19.

Mr. Butcher addressed the Board and said he recently purchased property at 100 Virginia Place off from Homestead Road, the house is very plain and doesn't fit in with the rest of the neighborhood, he said he would

Town of Northumberland Zoning Board of Appeals
Wednesday,
August 7, 2019 7:00 pm
Subject to Correction by the Zoning Board
Page 6 of 6

like to get a variance to put a 6' porch on it, he stated he has architect/engineered plans for the Board's viewing.

Discussion on design and the visual appearance to blend with the neighborhood.

Chair Boyce asked how many feet is he asking for as a variance? Mr. Butcher said the house is 50' from the road but he is not sure. Mr. Becker stated it must be 6' then if the house is 50' from the road, and he asked Mr. Colozza how much of a variance is he asking for.

Mr. Colozza said he knows they discussed it, 6' is what he needed, and he asked Mr. Butcher if he brought a survey map? Mr. Butcher read off the septic plan layout and said it stated there is 59.7' to the garage and 50.2 feet to the point of the house, the corner of the basement so he is asking for a 6' variance for the porch. Mr. Colozza added it is an odd lot, triangular. Chair Boyce asked if there would be any overhang so he would need 7 or 8' for the construction. Mr. Colozza said he already has 2' if he gets 6' it gives him 8' for the porch. Chair Boyce said it is at 50.2' right now, Mr. Colozza said he thought it was 52'. It was then determined the house was 50.2' from the road.

Mr. Colozza explained the lots are good size in that subdivision about 1 acre and there is a little vegetation between each one so it is not like he is looking right at a neighbor.

Ms. Mojzer asked if it would be 6' to the center line, Mr. Butcher stated there is a little overhang because of the roof, Chair Boyce asked if he was requesting a 6,7 or 8' variance so they know exactly what he is asking for.

Mr. Colozza stated the house has been sitting there since they built it, it has no character and he bought it unfinished, he is trying to dress it up to match the neighborhood. Mr. Becker responded it has been unfinished for a while, Mr. Butcher replied yes, 3 years.

Chair Boyce made a motion to accept the application as complete.

Ms. Smith asked if he could add the amount of the requested variance to the application. Mr. Butcher replied sure,

Chair Boyce made a motion to accept application # 0005-19, 7' front yard variance as complete,

Ms. Mojzer 2nd the motion,

All in attendance unanimously agreed.

Chair Boyce stated they would schedule a public hearing for the next monthly meeting.

Meeting was adjourned at 8:10 PM.

Respectfully submitted,
Tia Kilburn, Zoning Board Clerk