

**FINDINGS AND DECISION
TOWN OF LANSING ZONING BOARD OF APPEALS**

BACKGROUND INFORMATION

Applicant and Owner:
Town of Lansing
29 Auburn Rd
Lansing, NY 14882

Variance No: 22-08
Zoning District: IR
Public Hearing Published on: N/A
600' Notices Mailed: N/A

Property Location: 10 Town Barn Rd
Tax Parcel # 30.-1-16.12 and 30.-1-16.11

RESOLUTION AND FINDINGS

WHEREAS, the Town of Lansing is a municipal corporation duly organized and existing pursuant to the laws of the State of New York and having such powers and responsibilities pursuant to the provisions of the New York State Town Law and the Highway Law in conjunction with the Town's Highway Superintendent to provide for the care and maintenance of the Town's highways and bridges and to provide suitable places for the housing and storing of vehicles, machinery, tools and equipment owned by the Town for the effectuation of such purposes; and

WHEREAS, the Town of Lansing is the owner of a parcel of real property (Tax Parcel Nos. 30.-1-16.12 and 30.-1-16.11), located on Town Barn Road, constituting approximately 17 acres of land that has been previously acquired and utilized by the Town and designated for municipal purposes ("subject premises"); and

WHEREAS, the existing Town of Lansing Highway Department Building was constructed in 1968 and is in need of an adequate repair, storage, and administrative, Salt/Sand Storage, and Fuel Storage facility in order to meet the needs of maintaining the public roadways of the Town of Lansing; and

WHEREAS, the Town of Lansing, after an extensive multi-year process of selecting a qualified consultant and examining site selection options for constructing a new Town Highway facility, recently affirmed the existing location at 10 Town Barn Road as the subject parcel for the purposes of constructing a new Highway Department Building Replacement and Campus Renovation Project for the storage and operations needed by the Town of Lansing Highway Department, and;

WHEREAS, the Town has, in accordance with the 2020 request for proposals process, selected Bergmann Architects, Engineers, and Planners, P.C. ("Bergmann") to prepare the required plans for a Highway Department Building Replacement and Campus Renovation Project to be constructed on the subject property; and

WHEREAS, Bergmann has prepared preliminary plans for said facility which will be constructed in three phases, with Phase 1 consisting of construction of a 46,515 sf Facility including, but not necessarily limited to, administrative offices, break room, vehicle storage, maintenance and parts storage; and Phase 2 consisting of Staff / Equipment Relocation; and Phase 3 consisting of the existing building partial demolition and conversion to unheated Storage for trailers and other equipment; and

WHEREAS, the subject property is located in the Town's Industrial/Research (IR) zoning district in which such a highway facility is not a permitted, or specially permitted, use and it further, appears that some of the required construction for the facility on the site will not be in accordance with certain setback requirements for structures and improvements within the IR zoning district ("Bulk Regulations"), as set forth in the Town of Lansing Zoning Code; and

WHEREAS, pursuant to the decision of the New York State Court of Appeals in the *Matter of County of Monroe*, 72 N.Y.2d 338 (1988), a "balancing of public interests analysis" ("Monroe Balancing Test") is required to determine whether and to what extent, this project shall be exempt from the Town's Zoning Code and use and bulk regulations and administrative approval from the Town of Lansing Zoning Board of Appeals; and

NOW, THEREFORE, BE IT

RESOLVED, that the Town of Lansing Zoning Board of Appeals has analyzed, considered and discussed the following criteria as required by *Matter of County of Monroe* in relation to the construction associated with the new Highway Department Building Replacement and Campus Renovation Project on the subject premises, and the Town of Lansing's land use regulations, and hereby finds as follows with regard to each of the nine Monroe Balancing Test criteria:

Factor #1: Whether there is an expression of legislative intent for the proposed action to be immune from local zoning oversight.

The Town of Lansing Town Board is the municipal body solely responsible for the legislative and executive functions of the Town of Lansing. The Town of Lansing Planning Board and Zoning Board of Appeals are administrative boards of the Town of Lansing, whose members are appointed by the Lansing Town Board. This project is to enable a fully governmental task—the operation of the highway department—including to fulfill its duties to repair and maintain public highways and municipal building campuses, and further including the emergency services of snow and ice removal and treatment. The legislative scheme of the Town Law and the NYS Highway Law make this a core public service that is very much an emergency service in many aspects. Under NYS statutes, therefore, it is generally understood that these are the very functions that are considered exempt from local zoning and land use review under the County of Monroe standard (as was the case with the NYSDOT highway facility as well).

Further, the town board, by including planners, consulting planners, the town engineer, consulting engineers, and many others upon these review committees, has evinced an intent to fully review and proceed with this project as designed, and not to have a critical governmental facility project subjected to discretionary review or delays, particularly given that the site plans are detailed and complete at this time and fully address any known issues that would normally be considered under any land use review process.

Finally, it is suspected (but not definitively known) that the reason this particular governmental use is not an allowed use in the zone in which it is situate is because the town has always understood that this governmental use was not subject to local zoning and land use review. In fact, there is no known record of zoning reviews or approvals for this site, including for recent projects, such as the re-design and expansion of the storage yard, or the older solar facility installations. It thus seems that the town has also considered this use and facility a governmental use that is not subject to land use review.

Factor #2: The kind of function of land use involved and the extent of the public interest to be served.

The construction associated with the Highway Department Building Replacement and Campus Renovation Project as a repair, storage, and administrative facility for the Town of Lansing Highway Department is a non-proprietary, governmental function which will serve the public interest by ensuring the continued and improved maintenance of public roadways under the jurisdiction of the Town of Lansing's Highway Department for the benefit of members of the public using said public roadways and the citizens of the Town of Lansing. Included services address emergency services, road maintenance, and maintenance and repair of public utilities like water and sewer. The maintenance of public roadways under the jurisdiction of the Town Highway Department is a statutory governmental function and obligation of the Town of Lansing Highway Department, and many of the services are emergency and utility services.

Factor #3: The effect local land use regulation would have upon the enterprise concerned and the impact upon legitimate local interests.

If the Town of Lansing Zoning Code Schedule I for the Industrial/Research (IR) Zoning District was to be applied "as written" to this project, the Town would be prohibited from siting the Highway Department Building on the subject property where it already exists unless either a variance to expand a lawful pre-existing use or a use variance could be obtained from the Town's Zoning Board of Appeals. While this is perhaps non-sensical for a governmental use that has been in place for over 50 years and which is clearly consistent with uses in the zone in which the same is situated, being essentially a commercial-industrial use (e.g., a truck depot), subjecting a project that is necessary for the performance and delivery of core municipal purposes makes little sense, including in light of the above analyses already undertaken.

Atop this, the process could be expensive and time consuming, with the outcome uncertain, at best (particularly under variance standards). The cure—to amend the zoning to fix a multi-decadal error—is equally problematic in terms of being speculative and untimely, particularly for this type of County of Monroe use. In addition, the facility, as preliminarily designed, could not be sited on the subject property in a manner fully compliant with the setback requirements of the Town of Lansing Zoning Code Schedule II for the Industrial/Research (IR) Zoning District and would also require area variance applications and approvals from the Zoning Board of Appeals, a process which would also be expensive and time consuming, with the outcome uncertain. Moreover, this variance could also require certain project modifications that are not feasible given the needs of the highway department and the town for a larger facility, all resulting in the potential for a highway facility which does not adequately meet the needs of the Town of Lansing Highway Department, with resulting adverse impacts upon the Town's ability to maintain and improve their municipal highway systems in accordance with the requirements of New York State law, resulting in possible dangers and other adverse impacts to the citizens of the Town and those travelling on the Town highways.

Factor #4: The applicant's legislative grant of authority.

New York State Town Law and Highway Law authorize and require the Town of Lansing to provide adequate facilities for the Town of Lansing Highway Department in aid of its responsibility to maintain those public roadways utilized by members of the general public which fall under the jurisdiction of the Town Highway Departments. Article 7 of the Highway Law specifically vests the Town Highway Superintendent with jurisdiction over the care of the town highways. The authority of the town to provide for these facilities and services is statutorily plenary, including under Town Law Article 4.

Moreover, as noted above, the town also is imbued with substantial experience in project review and siting and causing redundant reviews by alternate agencies of the town does nothing relative to the governmental purposes here fulfilled that falls within the exceptions to the County of Monroe test. The town is not the type of agency that is incapable of undertaking a review, or which has no substantial experience in a land use planning, as may require additional internal reviews. See, e.g., Matter of County of Monroe, 82 NY2d 338, 343 [1988]; Volunteer Fire Ass'n of Tappan, Inc. v. Town of Orangetown, N.Y.L.J. May 2, 2007, p. 22, col. 3 (Sup. Ct. Rockland Co. 2007), aff'd, 54 A.D.3d 850, 863 N.Y.S.2d 502 (2d Dept. 2008) (fire departments have no intrinsic experience or authority with land use planning and thus may not fall under the County of Monroe standard when all factors are duly balanced).

Factor #5: Alternate locations for the Highway Department storage facility in less restrictive zoning areas.

The subject premises is the only Town-owned parcel located within the Town of Lansing suitable for the construction and maintenance of the facility and represents the most reasonable and efficient use of Town owned property in furtherance of the objectives of providing the Town of Lansing Highway Department with a consolidated highway facility location within the Town. Despite this, and as part of the project investigation, the Town evaluated several potential alternative sites for a new Highway Department facility. At least 3 other sites were evaluated, and several site configurations considered as to this site. Consultants Bergmann Associates and the Town RFP Committee determined that there are no feasible alternate locations which meet the necessary objectives of the Town of Lansing Highway Department, and that this layout was the best overall layout given cost, traffic flow, needs, and available land.

Moreover, it is believed that there are no zoning districts within the Town of Lansing in which a highway facility could be constructed in full compliance with the requirements of the Town Zoning Code (perhaps suggesting this is a "non-permitted" use precisely because it was not ever subjected to zoning, thereby explaining the exclusion of this use as an allowed use from its zone). Finally, the proposed Highway Department facility at the Town Barn Site is consistent with the existing current public service/highway department use and infrastructure at the site.

Finally, the least amount of impacts, changes, and costs are incurred by using the existing site, including because of its location, being in a high-impact IR zone, and not needing to disturb other lands or sites and build more roads, lots, and impervious new surfaces. Additionally, the town board approved a consolidated water district improvement specifically to get an additional main to Town Barn Road to be able to service the new facility with sprinklers for fire and risk management purposes. In sum, there are years of planning in play here, even beyond the 5 years these facilities have been evaluated and laid out.

Factor #6: Alternative methods of providing the needed improvement.

The construction of the new Highway Department facility as proposed represents the minimal infrastructure improvements necessary to promote increased use of the subject premises as a centralized Highway Department facility. There are no viable alternative methods of providing these improvements, and there is no way to catch-up with the past 50 years, including in building design, maintenance, energy efficiency, or fire suppression than to upgrade and re-use some parts of the existing facility and construct a new operations barn and office space.

This decision was made based upon thorough examinations of town needs, town equipment, personnel, operations, and the design and function of the proposed facilities by Bergmann Associates and the RFP committee, with approval from the town board, and thereafter from the Capital Investment Committee, with further general approval from the town board. To re-visit over 5 years of planning and site design, all at the cost of more time and money, would serve no valid land use purpose. Indeed, this is the precise point of the County of Monroe test, and why so many core governmental projects like this are in fact immune from such reviews. A review by a town agency of a town project already reviewed would be likely to be more of a redundancy than anything else (see Factor #5 analyses, above).

Factor #7: Intergovernmental participation in the project development process.

The past study, locational analyses, and site layout and design were subjected to rigorous review at multiple levels of the town government, with key personnel serving on both committees. This includes the town board, town engineer, town planners, town clerk, highway department, parks and recreation department, town bookkeeper, planning board, and town attorney, with additional input from others, such as Bergmann Associates and Municipal Solutions (finance). Atop this, the construction of the new highway facility will be overseen by members of the Town Board of the Town of Lansing, its engineers, and other retained professional consultants. The project will also require the review and approval of several outside jurisdictional agencies including the New York State Department of Transportation, New York State Department of Environmental Conservation, Army Corps of Engineers, and Tompkins County Department of Health. The Tompkins County Business Energy Advisors (BEA) Lansing, a program of the Tompkins County Department of Planning & Sustainability, has been engaged with project development since April 2021. The Town intends to utilize the energy analysis services offered by BEA Lansing for the development of the building.

In addition, the development of plans for this facility will be fully vetted, discussed, and considered by the members of the Town Board and its legal, planning, and engineering staff and consultants, and Town of Lansing citizens have been and will be permitted to offer comments and suggestions upon the review and development of this project.

RESOLVED, that the Zoning Board of Appeals hereby declares that the proposed Town Highway Department Building Replacement and Campus Renovation Project shall be exempt from the use and bulk requirements and restrictions of the Town of Lansing Zoning Code; and be it further

RESOLVED, that the proposed Town Highway Department facility shall be deemed to be a use permitted, constructed and maintained on the subject property, subject to the approval of the Lansing Town Board; and be it further

RESOLVED, that the Town of Lansing Schedule I and Schedule II Regulations for the IR Zoning District to the extent that they may restrict or prohibit the proposed facility shall not apply to this project.

THE VOTE ON THE FOREGOING DECISION, DETERMINATIONS, AND RESOLUTION OF THE TOWN OF LANSING ZONING BOARD OF APPEALS WAS AS FOLLOWS:

Motion by: Mary Stoe

Seconded by: Susan Tabrizi

Richard Hayes – Absent
Mary Stoe – Aye
Susan Tabrizi – Aye
John Young – Aye
Judy Drake – Aye

Dated: 13 December 2022

Received in the Lansing Town Clerk's Office on December 14, 2022

Jessica Hall
Jessida Hall, Deputy Town Clerk
Town of Lansing
Tompkins County, New York

ZBA RESOLUTION 2022-08