

**TOWN OF NORTH HARMONY  
ZONING BOARD OF APPEALS  
WEDNESDAY 6/25/08 7:30 PM**

**BOARD MEMBERS PRESENT:**

**DICK BARTON  
ROGER VAILLANCOURT**

**JOE KOMAR  
GREG MICHALAK**

**Brad Lawson, Zoning CEO  
Dave Stapleton, Attorney**

**Others Present:**

**Robert Kanouff  
Jerry & Mary Colf  
James Gibbons  
Craig Jackson (Attorney for Craig Johnson)  
Robert Rauh**

**Jack Murtaugh  
Kathleen Kelly  
Lynn Smith**

**Emmett Tenpas  
Todd Cioppa  
Peter & Rose Stark  
Norm Olson**

**In the absence of Mr. Levesque, Mr. Barton presided over the hearing.**

**#1. Emmett Tenpas requesting a Height Variance to construct a garage 25' tall at property located at 3717 Victoria Road, Specifically Section 332.10-1-20 (old# 18-2-11.2) which does not comply with Sec. 402 of the Zoning Code.**

Mr. Barton asked Mr. Tenpas what he wanted to do. Mr. Tenpas said he wants to build a garage with a roofline 25' in height (zoning is 18') matching the existing house which is 30' high. The board members spent some time reviewing the drawings provided by Mr. Tenpas. Mr. Tenpas said provisions for water and electric will be made for future use. Mr. Barton asked if all setback requirements are met. Mr. Lawson said yes. Mr. Barton asked if there were any plans for living space in the garage (bathrooms, bedrooms, etc.). Mr. Tenpas said the building would be used only for storage and the second story would be used for mechanical space. Mr. Stapleton asked if the checklist had been completed. Mr. Tenpas said he would be doing the construction himself for under \$20,000 and would like to eventually heat the garage. Mr. Tenpas provided a survey and a Chaut. Co. GIS map of the area. Mr. Stapleton asked if there was deeded lake access to the property. Mr. Tenpas said no. Mr. Tenpas said the garage door would be approximately 10-12' high and wide. Mr. Stapleton asked if this was large enough for equipment use. Mr. Tenpas said he would like to park a boat in there at some point. Mr. Lawson said a set of plans would need to be provided in order to establish that code is being met before construction begins. Mr. Barton asked if the size of the garage door would be a problem. Mr. Stapleton said it had to be in the context of accessory use to the house and not created in the way of a commercial structure which is improper in this district. Mr. Lawson said usually a car garage door is 7-8' high and 10-16' wide. Mr. Stapleton asked if there were any view or drainage issues. Mr. Lawson said no. Mr. Tenpas said he would probably not install a driveway. Mr. Komar asked if there were any neighbors who wanted to speak about the proposed construction. There were none. Mr. Barton read into the record **Town Law Sec. 267B and it was reviewed: (1) no (2) no (3) yes (4) no (5) yes.**

**Mr. Barton motioned to grant Mr. Tenpas' application for an Area Variance as outlined above and in his application provided the following criteria are strictly adhered to:**

- **garage height not exceed 25' from grade**
- **no living space created either now or in the future**
- **no hookup to septic**
- **garage door size be in keeping with residential accessory use standards**

**Mr. Vaillancourt seconded and the motion was carried unanimously.**

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**#2. Jerry and Mary Colf requesting an Area Variance for setbacks on property located at 3588 Watson Rd., Specifically Section 332.160-1-36 (old# 20-6-2) which does not comply with Sec. 401 of the Zoning Code.**

Mr. Barton asked the Colf's what their intentions are. Mr. Colf said they had originally applied to build a 30-40' home and were granted setback variances by the ZBA (ref. ZBA 1/08). Mr. Colf said that they would like to change the dimensions to 30' wide x 46' long (additional 6'). It was noted that the extra 6' is on the road side and is still within code allowances for roadside setbacks. Mr. Lawson said that at the time of the approval for the initial variance it was stated to the Colf's that if any changes were made to the dimensions of the home, they would have to appear before the ZBA for approval. Mr. Stapleton asked if there was any height change on the house. Mr. Colf said no. Mr. Barton asked if anyone present wished to speak on the request. Mr. Barton read into the record **Town Law Sec. 267B and it was reviewed: (1) no (2) no (3) no (4) no (5) yes.**

**Mr. Barton motioned to allow a 6' increase on the roadside in the length of the house dimension allowed in the variance granted to the Colf's at the ZBA hearing in 1/08. Side setbacks are to remain at 10' on both sides of the home. Mr. Komar seconded and the motion was carried unanimously.**

**#3. John Murtaugh requesting an Area Variance for setbacks on property located at 60 Loomis Bay Rd., Specifically Sec. 34-1-1.12 which does not comply with Sec. 401 of the Zoning Code.**

Mr. Barton asked Mr. Murtaugh to state his intentions. Mr. Murtaugh said he wants to convert their cottage into a permanent residence. He said they plan to tear down and replace approximately 2/3 of the cottage and replace it with a two story addition which will be 20.7' in height from grade. Mr. Murtaugh said the existing cottage is approximately 20' wide x 35' long and the new cottage will be 24' wide x 50' long. Mr. Lawson reviewed the setbacks for those present.

	<u>Existing Setbacks:</u>	<u>New Setbacks:</u>
west side	11.8'	5.9'
east side	9'	9'
road side	30.5'	30'
lake side	40'	40'

Mr. Murtaugh said Norm Olson has drawn the plans. Mr. Stapleton asked if setbacks include the over hang. Mr. Murtaugh said no and Mr. Olson said the over hangs are 12". Mr. Lawson said NYS Code requires 3' or more between structures or fire preventive materials must be used. Mr. Murtaugh said he has installed a drainage line which can be used for roof line drainage. Lynn Smith asked if water and sewer are available at the location. Mr. Murtaugh said yes. He said currently they have well water, but they plan to hook into water during the renovation. Mr. Stapleton asked if the garage on the east side was 3.6' from the property line. Mr. Murtaugh said the distance to neighboring cottage on the west side from the property line is approximately 12-15'. Mr. Stapleton asked if the home was located on the lake itself and if there were any view issues. Mr. Lawson said the house is located directly on the lake and there are no view issues. He further indicated that all lots in the Loomis Bay area are typically substandard but a lot of upgrades have been made to many of the cottages in the area and it has been an improvement. Mr. Barton asked if anyone wished to speak on the matter. Mr. Stapleton noted that in 1/09 NYS code will be requiring minimum 40,000 sq. ft. lots for septic systems. Mr. Barton reviewed **Town Law Section 267B (1) no (2) no (3) no (4) no (5) yes.**

**Mr. Barton motioned to grant Mr. Murtaugh's Area Variance request as set forth above provided the proper drainage is installed and there is no further encroachment on property lines than that which has been granted. Mr. Michalak seconded and the motion was carried unanimously.**

**#4. Bill Lesiw requesting a Special Permit to construct a protective roof over a trailer located at Lakeside Campgrounds, 3280 Hadley Bay Rd., Specifically Sec. 21-1-44.2.**

Mr. Lesiw was not present to present his case. Mr. Kanouff, owner of Lakeside Camping did state that the proposed roof over the trailer would not include a porch.

**On a motion made by Mr. Barton and seconded by Mr. Vaillancourt, Mr. Lesiw's case was tabled until he is able to appear before the board. The motion was carried unanimously.**

**#5. James and Kathleen Gibbons requesting an Area Variance to install a surface level block patio closer to set backs than allowed in Sec. 401 of the Zoning Code at property located at 3382 Elm Ave., Specifically Sec. 22-1-5.**

Mr. Barton asked Mr. Gibbons what he was interested in doing. Mr. Gibbons said he had received a letter from Mr. Lawson stating that the patio work he had done was not in compliance with Sec. 401 of the Zoning Code. Mr. Gibbons said the patio is surface level. Mr. Lawson said Mr. Gibbons had appeared 2 years ago requesting an area variance for a house addition which was denied. Mr. Gibbons said he was not aware he was not in compliance and through research of the zoning law found a section concerning 40% of setback. Mr. Barton said you cannot exceed 40% of the setback. Mr. Gibbons asked if this means if the setback from the property line is 20' you cannot go any further than 12'. He said he had not known this and the reason it encroaches by 10" at the house is that they tied the patio into a crawl space into the house (photos were provided to show all aspects of the construction). He said the patio had a curve for aesthetics and at that curve the setback from the line is 9'. He said it all stays within the footprint of the house. He said Mr. Lawson's letter also mentions the loose stack stone wall which surrounds some plantings (includes a birch tree and some shrubs). He said he did not feel that was out of compliance because according to zoning a wall or fence cannot be closer than 2' from the line and no higher than 4'. Mr. Lawson said he had included the wall in the letter in order to allow the board to decide if it was part of the patio. Mr. Gibbons said he had installed the wall to capture any runoff from the patio and keep it on his property rather than on his neighbors or into the lake. He said this also eliminated the need to bring in an estimated 30 cubic yards of fill because as the patio came out from the house the land slopes down toward the lake. Mr. Stapleton asked what the topography of the area is. Mr. Lawson said the house is at the same elevation as before and there was a concrete patio there before. Mr. Gibbons said previously there was a 16" high, 8x16' cement patio with one side step to the patio and his yard had always been higher than the neighbors. He also said the current patio is ground level. Mr. Gibbons said he had also addressed the roof line drainage issue in Mr. Lawson's letter with installation of drainage to the lake and there is a swale between cottages. Mr. Stapleton asked if there was any issue other than the 40% setback. Mr. Lawson said not in his view because there was an existing open patio and the installation of fill to level the new patio would in his estimation probably help with runoff issues. Mr. Cioppa, Landscaper said it was his idea to construct the wall in order to eliminate pushing water onto the neighbor's property. He said there is a 2-3" pitch on the patio from the house toward the lake which took away the need for a large amount of fill for grading and they felt the wall would be less obtrusive. Mr. Stapleton asked what would happen if the neighbor to the Mayville side did the same thing in terms of drainage. Mr. Lawson said the property is lower and if it were built up, they would have to do the same

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thing in terms of drainage to the lake. Mr. Lawson said the variance would be for the extension of the patio at the curved portion. Mr. Barton asked if anyone wished to speak on the matter. Craig Jackson, Attorney for Craig Johnson (neighbor) said he wished to speak on Mr. Johnson's behalf. Mr. Jackson said Mr. Johnson is adamant in opposing the area variance and with the history between the neighbors if the variance is allowed, it could have a "slippery slope" effect. He provided photos and said if the patio had been constructed the way it was before, the changes would not have to be made. He said that bushes and trees had been put in the way and since Mr. Johnson's property is set further back they will obstruct his view. Mr. Barton asked if the tree had been there previously. Mr. Jackson said no, it had been planted. Mr. Stapleton said there have been major issues on the lakeshore involving bushes as barriers closer than 50' from the shore. Mr. Jackson said when you go outside the setbacks on lakefront property you change the character and open the door for others to do the same and you can affect the value of the neighboring properties. Mr. Barton asked what the issue on the tree is. Mr. Stapleton said it can be perceived as a barrier to the view. Mr. Gibbons said none of the plantings are within 50' of the lakeshore and they are all deciduous. Mr. Gibbons said the construction had been done in the fall of 2007 and asked why Mr. Johnson had waited to contact Mr. Lawson until February, 2008. Mr. Jackson said he understood Mr. Johnson had contacted an attorney in the fall but the attorney apparently stalled. Mr. Jackson said the retaining wall was not within code and this could send the wrong signal to lakeside property owners. Mr. Barton asked if it is determined that the plantings are obstructing the view, what would be the next step. Mr. Lawson said that zoning requires nothing be placed within 50' of the lake that is a barrier (i.e. fences, shrubberies taller than 4'). Mr. Gibbons said the loose stone wall is over 6' from the property line. Mr. Gibbons said the tree is approximately 60' from the lake and Mr. Lawson said it would meet the code criteria. Mr. Barton said the patio is quite nice, but he does have issue with the shrubbery and tree. Mr. Jackson said the patio did not seem to be issue the Mr. Johnson wanted to address. He said the shrubs and retaining wall are the issue. Mr. Barton asked if the height of the wall was an issue. Mr. Stapleton said none that he was aware of and indicated there have other instances of structures higher including pools. Mr. Lawson said in his opinion the patio and retaining wall do encroach further than the 40% setback and he views the wall as part of the patio area. Mr. Stapleton said this was the issue in question regarding the violation of Sec. 508. Mr. Stapleton asked how far the house is from the lake and how far the patio extends from the house. Mr. Gibbons said the house is 76' from the lake and patio extends about 15.5' from the house. Mr. Lawson said he had not measured the distance but he would guess it was close to the 50'. He said the shrubs are approximately 10-15' back from the edge of the stone wall and more than 2' off the property line. Mr. Stapleton asked how tall the shrubs would get. Mr. Cioppa said the birch could be kept to 15' and the shrubs would reach 5' but could be kept to an acceptable height. He said they are columnar in shape and will not fill in. Mr. Barton said it appears that the question is whether the stone wall is a part of the patio or not. Mr. Gibbons said if he had not built the wall all you would have would be a pile of dirt that would cause runoff. Mr. Barton said he has no problem with the stone wall but he feels the trees and shrubs will cause view problems for the neighbor. Mr. Lawson said if Mr. Gibbons had wanted to fill in and build his property up from the house to the lake he did not think any permits would be required by the town. He said in terms of runoff into the lake what Mr. Gibbons has done would be advantageous to the watershed. He said in regard to the tree and shrubs, in zoning anything 50' from the lake puts you pretty much in the clear. Mr. Jackson there is an issue of obstructing the neighbors view. Mr. Stapleton asked if the individuals could compromise. There was further lengthy discussion of the issue. Mr. Barton asked if anyone else wished to speak on the application. Mr. Stapleton stated for purposes of the record that other properties on the Mayville side of the lake have existing trees and shrubs in the line of sight view of Mr. Johnson. Mr. Cioppa stated that the patio is not a permanent structure because it was dry laid and no concrete was used. Mr. Jackson said it is not acceptable to do construction and then get a variance. Mr. Gibbons agreed, but said until Mr. Lawson sent the letter in May, he was not aware of the 40% setback code. Mr. Gibbons said the wall is within code and he is asking

for the setback variance although his hardship is self-created. Mr. Komar stressed that Mr. Gibbons' neighbor is objecting and the purpose of zoning is so this process can take place.

**Mr. Barton motioned to grant Mr. Gibbons request for an Area Variance to install a surface level block patio 9' from the property line which is closer than setbacks allow in Sec. 401 of the zoning code provided the following criteria are strictly adhered to:**

- **shrubbery is not to exceed 4' in height from grade**
- **distance of the tree to the lake be measured by Mr. Lawson in relation to the 50' requirement and if it is closer it must be removed**

**Mr. Vaillancourt seconded and the motion was carried unanimously.**

For the record Attorney Craig Jackson objected to the granting of the variance on behalf of his client.

**#6. Robert Rauh requesting a Special Permit to construct a storage facility on property located at 4821 Ceder Ave. and facing South Maple Street, Specifically Section 33-2-3.3**

Mr. Barton asked Mr. Rauh what his intentions are. Mr. Rauh said he owns the old elementary school in Ashville and has recently demolished it. He would like to put up a 48'x40' pole building with a height of 26' for storage. He said previously he had used the old gym building for storage. He said he would like to store his rollers and pavers there in the winter. He said the building would also be used for personal storage. Mr. Stapleton said as a Special Permit application any structure of this type that is within 500' of a county or state road must be referred to the County Planning Board and might also be referred to the Town PB for their review and recommendation. He said also since the proposed building would be in the R-2 District there would be a question as to how to characterize this type of structure and if it is a permitted use. Mr. Stapleton said the board had to decide if the building is a permitted storage for personal use or a commercial style use by virtue of the nature of the structure itself. He said if it is for commercial use it would come under the heading of Use Variance instead of Special Permit. Mr. Rauh said he needs the building as soon as possible for personal storage and although he would like to store equipment which would be only moved once each year, he would abide by the boards decision regarding the storage of paving equipment. He said he has been storing many items for the Jr. Miss pageant, the Ashville Free Library handicap items, supplies for the Youth Rec program, boats and cars. Mr. Lawson said he does not know the dimensions of the lot. Mr. Rauh said they had tried to save the gym (80x65') for storage when the school was demolished, but it was not feasible. Mr. Stapleton asked if the gym had been used for commercial storage previously. Mr. Rauh said the gym had been used for storage during each of its previous ownerships. Mr. Lawson said he had faxed a 20 point checklist to Mr. Rauh. Mr. Stapleton asked if there was anyway to reduce the size of the building since it is in a residential area. Mr. Rauh said that is why he had not yet purchased a blue print. He said he had chosen the size because he had hoped to use the doors that had been used in the old gym. Mr. Rauh said the proposed building would be smaller than the gym had been. Mr. Lawson asked if the building was not going to be used for equipment storage, then, the question is if the size is appropriate for a residential area (i.e. normal customary accessory use). Mr. Lawson noted that the allowed height for an accessory use building is 18'. Mr. Lawson said he thinks the lot is large enough, but he would need to see a survey. Mr. Stapleton asked if there was any other access to the property other than the driveway on S. Maple. Peter Stark said Mr. Rauh has done a good job maintaining and improving the property. He said their only complaint is the equipment storage and said when they are moved by commercial vehicles it is very loud at their property across the street. He said also the hours they are moved are not always between 8:00am and 5:00pm. He asked that if the building is allowed, whatever is stored there not moved by Kingsview vehicles. He said the driveway off S. Maple was constructed by Mr. Rauh to gain access to the gym. He said there is access from the rear of the property. Mr. Stapleton asked Mr.

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Rauh if the doors he wanted to save were installed in the gym by him. Mr. Rauh said yes. Mr. Lawson said a normal accessory use building is 24x32' and 18' high, but if something larger were asked for, he would use his discretion. Mr. Barton said he felt it best to keep the building in the accessory use category. Mr. Rauh pointed out that the County Building is right across the street. There was general discussion of the aesthetics of the building. Mr. Barton said from past experience of the type of work Mr. Rauh does he feels the building will be nicely done. Mr. Stapleton said that if Mr. Rauh and Mr. Lawson want to discuss a scenario that Mr. Lawson would be willing to permit, the application could be tabled. Mr. Lawson said at this point an area variance would be needed for the height and expressed concern about the size of the structure. Kathy Kelly (neighbor) stated that she had no objections to the Rauh's project. Mr. Barton also noted that without drawings the board would be at a standstill. Mrs. Rauh pointed out that the new building was replacing a building that was structurally hazardous. Mrs. Rauh also noted that the school building had been huge in comparison to the proposed structure.

**It was agreed by the board that the application would be tabled so that Mr. Rauh and Mr. Lawson could further discuss the project in a more specific fashion.**

**Mr. Barton adjourned the hearing at 10:30 PM.**

*Nancy Thomas*  
*Town Clerk*