

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
MONDAY 9/24/08 7:30 PM**

ZONING BOARD MEMBERS PRESENT: **Paul Marlinski** **Dick Barton**
 Greg Michalak **Roger Vaillancourt**
 Bill Adamson
 Brad Lawson, Zoning CEO
 Dave Stapleton, Attorney

OTHERS PRESENT: **Richard Thayer** **Charles & Patrice Spinner** **Louise Ortman**
 Bambi Roberts **Lee & Tuni Chilcote** **Pat Lucariello**
 Michelle Cummings **Dana Pettinato** **Beuna Winchell**

Mr. Marlinski brought the hearing to order at 7:45 PM.

#1. Richard Thayer requesting an Area Variance to place a 24x28' garage closer to setback than allowed in Section 401 of the Zoning Code at property located at 5121 Spring St., specifically Section 350.13-2-58 & 59 (Old #24-2-11 & 12).

Mr. Thayer said he would like to build a 24x28' (672 sq. ft.) single story detached pole barn style garage on the property identified above. He said the garage would have a concrete floor and would be used for vehicle storage. Mr. Thayer said although he has no architectural drawings, it would be sided like his home, have 2 standard garage doors, electric and possibly water at some future time. He said no living space (i.e. bathrooms, bedrooms, etc.) would be added. Mr. Marlinski stated for the record that there is space available at the site for the construction which would allow compliance with the zoning code and not require a variance for the roadside setback. Mr. Thayer said there are no houses located across from where the face of the garage would be. It was noted that the garage would be situated 32' from the edge of the pavement (2' from roadside property line). It was also noted that there is a large town ROW in front of the property line. Mr. Thayer said if the garage were moved back it would take up his back yard space. He also provided photos showing neighboring homes and said his set back would probably be about three times the size of some of the neighboring homes. There was general discussion of the site specifics. Mr. Stapleton asked Mr. Thayer if the corner would remain a green space. Mr. Thayer said yes. Mr. Stapleton asked if the green space behind the house was large enough to subdivide and build another house. Mr. Lawson said no. It was determined that the property across from the proposed site is just trees and undeveloped. Mr. Stapleton asked about the 50' road ROW and asked if power lines run through it. Mr. Lawson said yes. Mr. Thayer agreed with Mr. Stapleton that he is trying to concentrate his construction in one corner of the lot in order to maintain a green space on the other side of the lot. Mr. Lawson said that in order to create a buildable lot the remaining lots would have to be combined. Mr. Stapleton asked Mr. Lawson if he was aware of any plans by the town to increase the size of the pavement and expand into the area closer to the Thayer property on the ROW. Mr. Lawson said no. Mr. Stapleton asked about the site plan review. Mr. Lawson said generally with the pole barn type of construction, drawings are not required as long as proper footings are placed under the poles. Mr. Marlinski asked if anyone present wished to speak about the application.

The board reviewed **Town Law Sec. 267B, items 1.-5. (1) no (2) yes (3) no (4) no (5) yes.** There was further discussion of the site in relation to the well. Mr. Lawson asked how many of the pine trees would need to be removed for the current design to be completed. Mr. Thayer said 2. Mr. Lawson asked how many would have to be removed if the garage is moved 5' over. Mr. Thayer said at least 3.

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Mr. Marlinski motioned to grant an Area Variance to Richard Thayer to place a 24x28' garage closer the road setback than allowed in Sec. 401 of the Zoning Code. Mr. Barton seconded. Mr. Marlinski, no; Mr. Barton, no; Mr. Vaillancourt, no; Mr. Michalak, no; Mr. Adamson, yes. The application was denied.

#2. Andrew Finson requesting a Special Permit to construct an above ground swimming pool at 2918 Rt. 394, Specifically Section 350.17-1-47 (Old #24-8-2.2).

Mr. Finson was not present to state his case.

On a motion made by Mr. Marlinski and seconded by Mr. Barton, Mr. Finson's application was tabled until the October hearing. No notices to be sent to neighbors at that time.

#3. Beuna L. Winchell requesting a Special Permit to place a 1988 single wide manufactured home at 6633 Eiden Rd., Specifically Section 347.00-2-2 (Old #5-1-5).

Ms. Winchell said she wants to place a single wide 1988 manufactured home on 6 acres of land located on Eiden Road. She said the electric will be upgraded. Mr. Lawson said setbacks are sufficient and noted that there had previously been a manufactured home at that site which had burned in 1998. Mr. Lawson said there is septic which will have to be checked by the Health Dept. 6 months after habitation. Ms. Winchell said the skirting will have to be replaced. **Section 629 of the Zoning Code was reviewed by the board.** Ms. Winchell said the home comes with a covered porch, deck and ramp and a small shed. Mr. Lawson said the home meets HUD requirements. Mr. Marlinski asked if anyone wished to speak regarding the application.

Bambi Roberts said she has the home directly across the street from Ms. Winchell and expressed the concern that the manufactured home would devalue her property. Ms. Winchell's daughter Michelle Cummings promised that the home and property would be maintained or removed when her mother is gone. Ms. Roberts asked if any family members had plans to place additional homes on Ms. Winchell's property. Ms. Winchell said no. Mr. Barton said there are laws in place to protect Ms. Roberts's property.

Mr. Marlinski motioned to grant Ms. Winchell a Special Permit to locate a 1988 manufactured home at the property identified above provided the criteria outlined in Sec. 629 of the Zoning Code is strictly adhered to. Mr. Adamson seconded and the motion was carried unanimously.

#4. Charles Spinner requesting an Area Variance to construct a deck closer to side setbacks than allowed in Section 401 of the Zoning Code at property located at 3152 Chautauqua Ave., Specifically Section 350.13-1-17 (Old #23-2-7).

Mr. Spinner said he had previously been granted an area variance for an addition and deck (12x26'). He said he would like to extend the deck an additional 2' (new dimensions 35x14') toward the lake so that the height will be lower. He said this change would mean they would not need the railings originally planned for the deck since the front of the deck would be approximately 14.5" from the ground. It was noted that the deck would still be further than 50' from the lake. Mr. Spinner said his neighbors (Myers to the north) have sent a letter stating they have no objections. Mr. Chilcote (neighbor to the south) said his primary concern is encroachment on his view and green space. He asked if it was possible to limit the height of the deck to 15" to preserve his view. He asked if a condition could be placed on the variance that it be voided if anyone in the future requests a higher deck. He also questioned the 2' toward the lake because he said it might obstruct his view of Bemus Bay. Mr. Spinner said the 2' extension puts them in line with other

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neighboring properties decks. Mr. Marlinski said if you compare the original design granted in 2007 and the new design, it appears that the original design impinges much more on the view than the new design will. Mr. Chilcote said yes but was concerned that the deck might be added to later. Mr. Barton said that conditions could be imposed by the board to prevent this. Mr. Chilcote said he does support the Spinner's request, but is concerned for future overall requests that violate the 40% area requirement. Mr. Stapleton confirmed that any conditions the board felt necessary could be imposed. Mr. Lawson gave the actual dimensions of the setbacks requested according to the diagram provided as 2' further on the sides of the deck extending toward the lake (sides of the deck coming out 4' on the north side and 5' on the south side); 7' on the north 7' and on the south to the property line. Mr. Lawson said in general sidewalks are not considered in the variance setbacks. There was discussion of the number of steps necessary both on the sides and lakeside with the height of the deck being lower and Mr. Skinner said possibly less steps would be needed.

Mr. Marlinski motioned to grant an Area Variance to Mr. Spinner for the property identified above as outlined in the diagram and application provided the following criteria are strictly adhered to:

- **Top of deck flooring be no higher than the existing bottom level of the house siding. This condition is to remain in perpetuity to protect the neighbors view shed and no further additions to the height will be considered in the future for this property.**
- **No railings be installed**
- **4' deck extension walkway attached on north side of house leading to laundry room is no closer than 7.6' to property line.**
- **5' deck extension on south side is no closer than 7.1' to the property line.**
- **Dimensions of deck not to exceed the proposed 35'W x 14'L.**

Mr. Barton seconded and the motion was carried unanimously.

#5. Daniel Thomas requesting a Special Use Permit to construct an 8' high 20' long fence at property located at 2946 Panama-Stedman Rd., Specifically Section 348.00-1-43 (Old #9-1-8.2) which does not conform with Sec. 618 of the Zoning Code.

Mrs. Thomas appeared to represent Mr. Thomas. She said Mr. Thomas wants to construct an 8' x 20' stockade style fence with a gate from the corner of his garage for privacy purposes. Mr. Marlinski asked if anyone wished to speak regarding the application. Mr. Marlinski reviewed **Sec. 618 Fences/Walls of the Zoning Code**. Mrs. Thomas said the finished side of the fence would face out. Mr. Marlinski asked if anyone wished to speak regarding the application

Mr. Marlinski motioned to grant a Special Permit to Dan Thomas to construct an 8' high x 20' long fence at the property identified above provided Sec. 618 of the Zoning Code is adhered to. Mr. Barton seconded and the motion was carried unanimously.

The hearing was adjourned at 9:30 PM.

Nancy Thomas
Town Clerk