

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
WEDNESDAY, 12/16/09 7:30 PM**

ZONING BOARD MEMBERS: **Jim Levesque** **Bill Adamson**
 Joe Komar **Dick Barton**
 Greg Michalak **Paul Silzle**

Dave Stapleton, Attorney

Others Present: **Michael Nowicki** **Tad Wright**
 Clayton & Helen Emick

Mr. Levesque opened the hearing at 7:45 PM. He stated that since no one was currently present to represent Karen P. Snyder, the case would be moved to the end of the agenda.

#2. Michael R. Nowicki requesting an Area Variance for lot size for property locate on Chautauqua Avenue, Specifically Section 367.05-1-7 and 367.05-1-8. Pursuant to Section 401 of the North Harmony Zoning Ordinance area standard building lot size is 20,000 sq. ft. Pursuant to NYS and Chautauqua Co. Dept. of Health, effective 1/1/09, building lot size is 40,000 sq. ft.

Mr. Nowicki stated that he had entered into a land contract in 2006 to purchase lots on Chautauqua Ave. and the sale had been delayed until recently. He stated that he was requesting an area variance and that he had worked with Rex Tolman of Tolman Engineering to put together a plan to address the issue of the new Co. Health Dept. standards where you had to have either public water or sewer to build on a 20,000 sq. ft. lot. He said Mr. Tolman had provided a septic plan and the Co. Health Dept. had approved and granted a variance to him on 11/19/09 (*ref. Chaut. Co. Health Dept. letter dtd. 12/8/09*). Mr. Nowicki stated that the combined square footage of the 2 lots is 26,179 sq. ft. which was well in excess of the required 20,000 building lot size. He said their intent is to start building a home on the property in 2010. He said that they would like to close on the land contract next week, but would like to have a variance in place even though they are not quite ready to apply for a building permit. He stated that the value of the lot is dependent on it being buildable. Mr. Nowicki stated that his package includes a drawing of the elevation and a survey showing the approximate footprint of the proposed home as well as the setbacks which are in compliance with area standards.

Mr. Levesque reviewed for the record the Town Ordinance Standards and Mr. Nowicki's parcel standards as provided in his 12/16/09 letter (*copy in file*). Mr. Nowicki stated that the first floor of the house would be 1,970 sq. ft. He said that the reason they had not built on the property sooner was because the land sale had been in litigation.

Mr. Stapleton asked Mr. Nowicki if he is intending to build in 2010. Mr. Nowicki said that is their plan at this time. Mr. Stapleton asked if the variance request was for some future activity that might be several years down the road. Mr. Nowicki said no, but at the same time things happen and there might be some unforeseen circumstances that could delay it into 2011. He said they are in meetings with builders and if there are no glitches they will build in 2010.

Mr. Levesque asked if the variance is granted would it only be for this specific applicant. Mr. Stapleton said technically it runs with the land but in this particular case if the board wants to put a condition that the variance be only for this applicant knowing the current flux of the law they can.

Mr. Komar asked what the major street the property is on is. Mr. Nowicki said it is off of Rt. 394 and on Neits Crest that also has a private road that goes to a number of other properties.

Mr. Stapleton said the board could place the condition that the construction is permitted in 2010.

Mr. Levesque said in his estimation 16 months would be enough time to get the project started. He asked if anyone would like to speak regarding the application.

ZBA

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There was general discussion of the NYS and Chautauqua Co. 40,000 sq. ft. regulations for building lots.

Mr. Silzle asked if the application had to also be reviewed by NYS. Mr. Stapleton said no.

Mr. Stapleton asked if when you are looking at the west line on the survey provided by Mr. Nowicki is the blacktop area on the west side by Federico's an encroachment onto the Nowicki property. Mr. Nowicki said yes. He asked if the dotted line on the survey represents the tax parcels. Mr. Nowicki said yes. Mr. Stapleton asked what the dotted line that runs close to the Federico's property represents. Mr. Nowicki said there are actually 2 initial old parcels and part of a 3rd going back to the original survey. Mr. Stapleton asked if all of this would be deeded in with one deed. Mr. Nowicki said yes.

Mr. Levesque clarified that the board is dealing with 2 tax lot parcels. Mr. Stapleton said apparently there is a subdivision that has different lot numbers set up by the original developer that don't necessarily comply with the tax map. He said that the assessor will probably assign one number to the property after it is conveyed.

Mr. Levesque motioned that the application of Michael Nowicki for an Area Variance as stated in his plans and the application be granted with the following conditions:

- **variance is granted only to Mr. Nowicki and if the property ownership or any other changes are made, the Area Variance will have to be reapplied for**
- **construction must begin within 16 months of 1/1/10, or the case will have to re-heard by the Zoning Board of Appeals**

Mr. Komar seconded and the motion was carried unanimously.

Mr. Levesque formally requested for the record that the Planning Board review the current Town of North Harmony Zoning Ordinance standards in order to comply with the new county standards regarding parcel sizes.

#1. Karen P. Snyder requesting an Area Variance to place an 8x12' shed closer to the road side setback than allowed in Zoning Code Sec. 406 at property located at 5147 Bly Hill Road, Specifically Section 367.00-1-55.

Mrs. Thomas said that the Snyder case was to have been heard at the November hearing but they had called and cancelled. She said she had sent notification of the re-hear scheduled for 12/16/09 and had not received any request for a change in venue from Ms. Snyder.

Mr. Levesque motioned that the application of Karen P. Snyder for an Area Variance as outlined above and in the application be denied based on the applicants failure to appear. Mr. Komar seconded and the motion was carried unanimously.

Mr. Levesque noted that if the applicant wishes to pursue the variance it will have to the reapplied for.

Mr. Levesque adjourned the hearing at 8:02 PM.

*Nancy Thomas
Town Clerk*