

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
WEDNESDAY, 8/26/09, 7:30 PM**

ZBA MEMBERS PRESENT: **DICK BARTON** **BILL ADAMSON**
 GREG MICHALAK **JOE KOMAR**
 DAVE LLOYD
 Brad Lawson, Zoning CEO
 Dave Stapleton, Attorney

Others Present: **Jody White** **Warren Rowe** **Joanne Sherman**
 Lynn Seeley **Scott Sampson** **Jonathan Wood**
 Paul Silzle

Mr. Barton brought the hearing to order at 7:40 PM.

1. Jonathan Wood (re-hear) requesting a Special Permit to build a Potato Chip Manufacturing Plant at property located at 3583 Wall Street Rd., Specifically Section 330.00-1-14 (old# 1-1-22) which does not comply with Section 407 of the Zoning Ordinance.

Mr. Barton said that Mr. Wood had appeared at the July ZBA hearing at which time the board had forwarded Mr. Wood's application to the Planning Board for their review and recommendation. He said at that meeting the PB had unanimously recommended in favor of the project. He asked Mr. Wood where he was at this point on his project. Mr. Wood said he has contacted Tolman Engineering and they have agreed to help design a solid wastewater treatment system for the project, but they cannot move forward without the Special Permit. He provided a list of agencies which he has previously contacted and discussed the project with. Mr. Stapleton said the application had originally been filed as a Special Use Permit and the PB has agreed to consider it a Special Permit because the use is similar to "fruit processing plant" which is allowable by right with a Special Permit in that district. He said Mr. Wood has moved forward and notified a number of agencies, including the DEC. He said the DEC sent a letter dated 8/7/09 in which they detailed a number of potential permits that Mr. Wood would need and specifically asked if he was asking the other agencies who might have permitting authority to do individual SEQRA processes on the application. He said the board can ask every agency to run their own SEQRA, or one of the agencies can indicate they are the primary focal point and take Lead Agency Status. He said typically that is handled in situations like this by the local board that also has the authority to grant the permit. He said both the short and long form SEQRA applications have been filed by Mr. Wood and they are available. Mr. Stapleton asked the board if they wished to act as the Lead Agency in the SEQRA process in a coordinated fashion. Mrs. Thomas said she would send complete packages of project and SEQRA applications to Chuck Cranston, DEC and Chautauqua Co. Planning for their 30 day review and recommendation process. Mr. Stapleton said these entities will advise of any issues they would like to have specifically addressed.

Mr. Barton motioned that the Town of North Harmony Zoning Board of Appeals act as Lead Agent under NYS statutes for a coordinated review of SEQRA on the application for a Special Permit requested by John Wood for a potato chip manufacturing plant to be located at 3583 Wall Street Rd., Specifically Section 330.00-1-14 and to conduct a SEQRA and Special Permit hearing on 9/23/09. Mr. Michalak seconded and the motion was carried unanimously.

There was further discussion of the SEQRA process and Mr. Stapleton advised Mr. Wood that it would be helpful to the board and neighbors to request a letter from Mr. Tolman explaining the engineering process involved in the wastewater treatment facility.

2. Benjamin Ludwig requesting a Height Variance to place a 6' safety fence at property located at 5128 Spring St., Specifically Section 350.13-2-62 (old# 24-4-1) which does not conform to Zoning Code Section 618.

Jody White appeared to represent Mr. Ludwig who is away on business. Mr. White said Mr. Ludwig wants to construct a 6' high fence similar to the type located at Sunrise Cove for child protection purposes. Mr. Barton asked if those present should be sworn in. Mr. Stapleton agreed and the oath was administered. Mr. White provided photographs and correspondence as an addition to the package the ZBA members previously received. He stated that in communications with the NYS DOT (copy included) it was determined that the portion of the fence facing Rt. 394 would not be in the road ROW. He said some of the trees/brush indicated in the photos would have to be removed in order for the fence to be installed. The photos were illustrated with colored lines; blue indicating the proposed location of the fence; red indicating the property line and also show ingress/egress of vehicle sightlines from Rt. 394 onto Cheney Point Rd. Mr. Barton asked if there would be any lights located on the fence. Mr. White said no. Mr. Barton asked if anyone wished to speak regarding the application. Mr. Lawson said the application is listed as a height variance, but in actuality it should be a Special Permit in accordance with **Sec. 401-c., Use by Special Permit, fences in accordance with Section 618-a.2.** Mr. Barton asked what type of material would be used for the fencing. Mr. White said it would be a 1x6 "dog eared" style similar to Sunrise Cove fencing.

Mr. Barton motioned that a Special Permit to construct a 6' tall safety fence be granted to Mr. Ludwig for property located at 5128 Spring St., Specifically Section 350.13-2-62 provided the following criteria are adhered to: 1) no lighting placed on the fencing 2) setbacks as indicated be strictly followed 3) finished side of fence face outward. Mr. Komar seconded and the motion was carried unanimously.

3. Lynn Seeley requesting an Area Variance to construct a garage with storage at property located at 2267 Fardink Rd., Specifically Section 384.06-1-30 (old# 30-1-6), closer to the road side which does not conform to Zoning Code Section 402.

Mr. Seeley said he would like to construct a 32'x34' two car garage with a gambled roof and is requesting a roadside setback variance because if the garage is moved farther back it will cover his well and septic systems. He said there are a number of houses on the road which do not set back the full 50' required by zoning. He said the garage will be 2 stories with a block foundation. Mr. Barton asked if the upstairs would be used only for storage and would any consideration be given to living space there in the future. Mr. Seeley said there would be no habitable space created in the future. Mr. Barton asked if there would be electric installed in the upstairs. Mr. Seeley said no. Mr. Barton asked what the set back from the road would be. Mr. Seeley said it would be 18.65' from the property line and another 8' to the road edge. He said there is a sluice pipe that runs underneath and along the entire front of the house. He said it would allow him to park his Dooley vertically in the garage. Mr. Barton asked if the 2 story structure would block any view shed. Mr. Seeley said the hill crowns and there is only woods to the rear. Mr. Barton asked if it would be a different issue if in the future Mr. Seeley wanted to convert the upstairs to an apartment. Mr. Lawson said yes, but the issuance of such a permit would be difficult because of the law prohibiting the creation of two habitable dwellings on one lot. Mr. Stapleton asked if it would be hooked to any type of septic system, bathrooms, water, etc. Mr. Seeley said no. Mr. Lawson said it appears that an additional variance will be needed for the height of the garage which will be 22' tall (18' is code). Mr. Seeley said it would be actually shorter than the existing house. Mr. Stapleton asked how close the garage would be to the south side of the

property line. Mr. Seeley said 17'. Mr. Stapleton asked what the 3 sheds currently on the property are used for. Mr. Rowe, a neighbor located across the road, said the one building is a 25'x50' pole barn on skids. Mr. Rowe said if the garage is built it will obstruct his view of the sunset. Mr. Seeley said that 2 of the buildings on the property are storage and the one in the back right corner is a small barn for 4-H animals. Mr. Stapleton noted that the lot size is 190' wide at the rear, 175' wide at the front, about 228' on one side and 158' on the other side. He said the maximum lot coverage allowed is 25%. Mr. Stapleton asked Mr. Seeley if he has photos of the lot. Mr. Seeley said no. Mr. Rowe said that a Day Care business is run out of the home which is located at the top of a knoll, and in the winter parents do not pull off the road far enough when picking up their children. He said the garage located closer to the road will create a further parking hazard. Mr. Seeley said his vehicles would be in the garage and parents will be able to use the driveway in front of the garage to park when picking up children. Mr. Barton asked what the difference would be in the peak of the garage and the house. Mr. Seeley said the garage would be approximately 6' shorter. Mr. Stapleton asked what the average grade is. Mr. Seeley said the property is uphill as you go up Fardink Road and estimated that the left rear corner is about 24' high from ground level. Mr. Lawson said he did not calculate the average grade because the one side the garage wall will open to the house, so the back portion will be at the height of the second story. Mr. Lawson said the average grade of the building setting to the property (height from grade level floor to height of lawn in the rear) is roughly 19' which is 1' over the 18' allowed and if the height in the rear is more than the 24' Mr. Seeley indicates it may be to the good of the average grade at 17 ½'. Mr. Seeley said the main floor of the house is actually set into the hill side. Mr. Michalak asked what the distance of the well to the house is. Mr. Seeley said the well casing is underground and not exposed, but estimated it is about 15'. Mr. Seeley said when they bought the house the only record of the well location is as indicated on the layout received from the Chaut. Co. Health Dept. which is included with the application. Mr. Seeley said he wants to take down the storage structure that is in the middle of the yard which currently holds toys, and other items used by the day care for safety reasons. He said those items would be stored in the area above the proposed new garage. Mr. Stapleton asked if the garage could be located anywhere on the property other than the area suggested and be in compliance with codes. Mr. Seeley said if it goes to the other side of the house it would severely impact the drainage because of the way the water runs down the hill. Mr. Rowe said that drainage is another issue. He said there is a spring on Mr. Seeley's land that runs across Fardink and when the county comes they have to heavily salt the road and scrape the ice buildup that occurs from there to Veteran's park. He said if he builds a structure located further toward the road how much more of the spring will leach out into Fardink Rd. Mr. Seeley said the structure would actually push the flow closer in line with the grade and the driveway itself would slow the water and it would take the ice instead of Fardink Rd. Mr. Stapleton asked what the Highway Departments opinion was. Mr. Seeley said two years ago the highway department had brought a loader down to break the ice on the road and they have known about the issue for sometime. Mr. Stapleton said there might be an issue for the highway because the spring is on private property. Mr. Lloyd said drainage tile and drains had been put down through there but have never seemed to hit the right spot to end the problem. He said if there was some provision for drainage around the building to pick up the spring and get the water directly to the pipe rather than it flowing over ground that could solve the problem. Mr. Seeley said the yard is full of springs. Mr. Lloyd agreed there are a lot in the area. Mr. Stapleton asked Mr. Rowe to identify his property on the tax map and he indicated the property directly across the road from the proposed garage. Mr. Barton asked if the second story is necessary. Mr. Seeley said he had designed the second floor with as low a pitch as possible and still allow for his height when using it. Mr. Stapleton advised the board that drainage is a part of the checklist and they can require that it be addressed. Mr. Barton expressed concern that road conditions not be altered for the worse by locating the garage at the chosen site. Mr. Lloyd said if Mr. Seeley and Mr. Lawson could meet and come up with adequate drainage for the spring and bring it directly to the road drain it should help the situation. He said further that area of Fardink Rd. has been a problem

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for many years and it would increase safety on the road if it could be taken care of. Mr. Barton said he feels the application would be viewed more favorably if there is some type of plan to address the drainage issue. Mr. Adamson said it would not be a great expense to have a plan drawn up.

Mr. Barton motioned that the application of Mr. Seeley requesting Area Variances for setback and height for a proposed garage located at 2267 Fardink Road be tabled until further information can be gathered to address the following issues: 1) drainage plan addressing the spring overflow onto Fardink Rd. 2) average grade issue determined and 3) exact location of well should be determined in relation to moving the garage further back. Mr. Adamson seconded and the motion was carried unanimously.

4. Scott Sampson requesting a Height Variance to construct a 22' at peak pole barn for storage at property located at 3412 Deerwood, Specifically Section 349.00-2-6.5 which does not conform to Zoning Code Section 406.

Mr. Sampson said he would like to construct a 24' high pole barn for storage on his property at Deerwood which is zoned AR. He said the one story building would have a 6-12 pitch roof and would be used to store recreation equipment. He said it would be similar to the Steffen's who live next door. Mr. Barton asked if there would be water and electric. Mr. Sampson said yes but he does not intend to create any habitable space. Mr. Stapleton asked what the topography of the location is. Mr. Sampson said it is the middle lot at the crest of the hill going up Deerwood Drive. There was further general discussion of the development area. Mr. Stapleton asked if there were homes built on the back flat area would his structure impede any views. Mr. Sampson said no. Mr. Barton reviewed Town Law Sec. 267-b Area Variance items 1-5: 1) no; 2) no; 3) no; 4) no; 5) yes.

Mr. Barton motioned to grant an Area Variance for height to Scott Sampson to construct a 24' storage building as outlined in his application on his property located at 3412 Deerwood Dr., Specifically Section 349.00-2-6.5. Mr. Komar seconded and the motion was carried unanimously.

The hearing was adjourned at 9:25 PM.

Nancy Thomas
Town Clerk

