

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
WEDNESDAY, 9/23/09 7:30 PM**

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

Others Present: **Jonathan Wood** **Lynn Seeley** **Diane Hendrix**
 David M. Carr **Warren Rowe** **Douglas Barger**
 Paul Silzle

In the absence of Mr. Levesque, Mr. Barton chaired the hearing. Mr. Stapleton swore in all present.

1. Lynn Seeley (re-hear) 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 and at a height of 22' which does not conform to Zoning Code Section 402.

Reference ZBA minutes 8/26/09. Mr. Barton said at the last hearing additional information had been requested from Mr. Seeley which included drainage plans, well location and average grade of the proposed garage. Mr. Seeley said the well is about 6' from the rear (actually closer than anticipated) where the garage will be located. He also provided a hand drawn map of the proposed drainage plan for the board's review. Mr. Lloyd said he is basically putting a double 4' tile around the garage; one down at the base of the garage and one slightly higher that will pick up any additional water. He said the 4" will drain into the 6" going down the south side of the garage which will connect with the 15" installed by the town which goes along the town ROW. He said it looks like a pretty good plan as far as getting the water from the rear of the garage into the pipe. Mr. Barton said that Mr. Lloyd as former highway superintendent has some expertise in this area. Mr. Seeley provided photos showing the layout of the proposed garage in relation to the existing structures on the property and indicated that the addition will be no closer to the road than the existing house. Mr. Barton asked Mr. Lloyd and Mr. Vaillancourt if they were satisfied with the drainage plan presented. They both indicated that it appears to be a good plan. Mr. Seeley said he feels the drainage will help to prevent ice buildup on the road which is an existing condition. Mr. Lawson agreed. Mr. Seeley said he had spoken to Mr. Ryan and was instructed on how to hook up the drain pipe to the sluice pipe on the town ROW. Mr. Barton said it appears that the garage will not be taller than the house even at the 22' requested. Mr. Barton asked if anyone wished to comment on the application.

Warren Rowe said Mr. Seeley still does not have an exact location for the well. He said the exact location of the casing needs to be determined even if he has to dig it up. He said the drainage problem is only a "guesstimate". Mr. Rowe asked what the exact dimensions of the garage are. Mr. Barton said 32'x34' and 22' tall. Mr. Rowe said Mr. Seeley will want to add a lean to in order to store his camper. Mr. Barton said if he does, he will have to appear before the ZBA again. Mr. Rowe said he has problems with Mr. Seeley and his family.

There was further discussion of personality conflicts between the Seeley's and Rowe's. Mr. Barton cautioned that this was not the forum for those types of personal complaints.

Mr. Rowe agreed that the board had addressed the issue of drainage, but said that Mr. Seeley still does not know where his well and septic are. Mr. Barton said that if Mr. Lawson is comfortable with the location of the well in relation to the garage then the board is satisfied and will deal with the issues at hand.

Mr. Barton reviewed Town Law Section 267 b. Area Variances, items 1 – 5. Item 1) no; 2) no; 3) no; 4) no; and 5) yes.

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Mr. Barton motioned to grant Lynn Seeley an Area Variance to construct a garage 32'x34' and 22' tall at property located at 2267 Fardink Rd., Specifically Section 384.06-1-30 (old# 30-1-6) provided that the following criteria are adhered to:

- **no habitable space be created**
- **drainage be addressed as drawn and outlined**
- **no lighting be added which might disturb neighbors**

Mr. Vaillancourt seconded and the motion was carried unanimously.

2. Douglas Barger requesting an Area Variance for height to construct a storage building 21' 6 1/2" tall which does not comply with Section 408 of the Zoning Ordinance at property located at 6271 Magnolia-Stedman Road, specifically Section 314.00-2-8.1.

Mr. Barton asked Mr. Barger what his intentions are. Mr. Barger said he has recently purchased the Kennen property on the Stedman-Magnolia Road and would like to construct a 40'x80' pole barn style building on the 4.465 acres (745' depth, 268' width) for storage of family sail boats. Mr. Barger said it is the same size as the building located across from WeWanChu cottages on Rt. 394. Mr. Barger said there is a well already existing on the property and in the future he may build his home there. Mr. Lawson noted that the property is located in the C-1 district and the proposed height of 21 1/2' is the issue (18' is code). He said after speaking to Mr. Barger it appears the property will be used in a more residential style than commercial. Mr. Barton said that if the building were to be used as a commercial boat storage unit a Special Permit would have to be sought from the ZBA. Mr. Barger emphasized that the building will be used for family boat storage and he has no intent to go into boat storage as a commercial endeavor. He said the building will be metal, with a metal roof, concrete floor with drainage and electric. He said it will probably have a 12' garage door on the gabled end of the building to accommodate larger equipment. Mr. Barger said that he envisions sectioning off an area in the future for a work shop to include a wood stove/propane heater and will probably install pipe for a sink and bathroom to possibly be included in that area at some point. He said he has no current plans to add septic.

Mr. Stapleton asked Mr. Lawson which checklist he would be using, the residential or the commercial. Mr. Barger said he would continue to work with Brad to make sure that his project was done satisfactorily and to code. Mr. Barger said he will probably begin the project in the spring.

The board members reviewed the Residential Site Plan Checklist and all items were addressed to their satisfaction.

The board members reviewed Town Law Sec. 267 b. Area Variance, items 1 -5. Item 1) no; 2) no; 3) no; 4) no; and 5) yes. Mr. Barton asked if anyone wished to speak regarding the application.

Mr. Barton motioned that an Area Variance for height be granted to Douglas Barger to construct a pole barn style storage building 21.6 1/2' tall at property located at 6271 Magnolia-Stedman Road, specifically Section 314.00-2-8.1 provided the following criteria are adhered to:

- **building be used for residential purposes only**
- **Mr. Lawson be kept apprised when any changes to the interior are contemplated**
- **outdoor lighting be residential and unobtrusive in nature**
- **landscaping and plantings be included for aesthetic purposes**
- **no habitable space be created**

Mr. Michalak seconded and the motion was carried unanimously.

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3. David and Angela Carr requesting an Area Variance to construct an addition to their home closer to side setbacks than allowed in Section 401 of the Zoning Ordinance at property located at 3080 Chautauqua Ave., Specifically Section 350.13-2-11.

Mr. Carr appeared with his architect Diane Hendrix and they presented a large site plan, floor plans, elevation and photos of the area location. Ms. Hendrix said they also have a copy of the septic plans from the Health Dept. Mr. Vaillancourt reviewed the septic system specs and stated he has no issue with the plans. Mr. Carr said the system is an aeration system and he had installed it about 10 years ago and the system is on an automatic maintenance program. Mr. Lawson said the concern is that the system be able to handle any modifications to the home. Mr. Lawson said he would contact the Health Dept. to be assured of compliance. Mr. Lloyd asked if any additional bedrooms would be added. Mr. Carr said no, but they would be increasing the size of 2 of the bedrooms. Mr. Vaillancourt said the Health Dept. concern would be construction proximity to the septic and/or drainage systems. Mr. Barton said current setbacks are 29.9' from the property line on the west side and 14.9' on the east side. Mr. Barton said with the addition (15.6'x28.8') on the west side, the new side setback will be 12' from the property line and the addition of the covered entrance will make the roadside setback 13.3'. The lot is 75' wide and 132' deep on the west side and 134.03' deep on the east side. Mr. Stapleton noted that it is a non-conforming structure on a non-conforming lot size. Ms. Hendrix noted that the Carr's also own the lot across the road on Chautauqua Avenue. Mr. Stapleton said that would be considered in the 25% maximum lot coverage. Mr. Lawson said he can locate nothing on the town tax maps tying the property across the road to the lakeside lot and his calculations indicate they are at the threshold of the 25% lot coverage on the lakeside property, but he feels it is legal. Mr. Carr said a letter from the Ehrhardt's (neighbors to the west side) stating they have no objections to the construction is included in the application. Mr. Barton read the letter into the record. Mr. Komar noted that there used to be a house between the Ehrhardt and Carr properties. Mr. Carr said the Earharts home is approximately 32' from the property line. Mr. Barton asked if there were any drainage issues. Mr. Lawson said no but drains and roof leaders would have to be included to prevent runoff onto the neighboring property. Ms. Hendrix said plans were included for this.

The board reviewed the Residential Site Plan Checklist and was satisfied that all criteria had been met.

The board reviewed Town Law Sec. 267 b. Area Variance, items 1 -5. Item 1) no; 2) no; 3) yes, but within guidelines; 4) no; and 5) yes.

Mr. Barton motioned that an Area Variance for a 12' side setback and 13.3' road side setback be granted to the Carr's to construct an addition at property located at 3080 Chautauqua Ave., Specifically Section 350.13-2-11 provided the following criteria are adhered to:

- **4" drainage pipe be replaced with 6" and silt fencing be used during all phases of construction**
 - **lighting be residential in nature**
 - **no further encroachment be made on setbacks and location survey be provided to Mr. Lawson prior to construction as well as a new location survey when the project is complete**
- Mr. Komar seconded and the motion was carried unanimously.**

4. Jonathan Wood (re-hear) SEQRA review and request for a Special Use 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 both the July and August Zoning Board Hearings. He said at the 8/26/09, hearing the Zoning Board had taken lead agency status on the SEQR application for

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the project and at that time Mrs. Thomas had sent the application to interested agencies for their review and recommendation.

Mr. Stapleton agreed to do the verbal portion of the SEQR review. He asked the town clerk to identify the agencies that had received applications and their responses. Mrs. Thomas said she had completed and sent to Chautauqua Co. Planning Dept. a Municipal Zoning Referral Form and had received a response from Doug Jacobs on 9/16/09, stating the application is a matter of local concern and requesting that a copy of any permits issued be forwarded to County Planning. She said a copy of the application had been sent to Chuck Cranston of the NYS-DEC on 8/31/09, requesting that he review and make recommendation, as well as disseminate the application to any other agencies he felt might have an interest. Mr. Cranston replied on 9/21/09, stating his satisfaction with the Town of North Harmony as SEQR lead agent for the project as the proposal is primarily of local significance. She said Mr. Cranston stated that their original concerns were identified in a letter dated 8/7/09, but since that time in a letter dated 8/28/09, from Frank Price, Environmental Engineering Tech 2, with the Division of Air Resources, it was determined from the information provided that the potato chip manufacturing facility as proposed, would not require a department air pollution control permit or registration. Mrs. Thomas said a letter from Tolman Engineering dated 9/4/09, was received stating that an acceptable sanitary sewer treatment system is possible for the proposed project and waste water treatment should not be an issue. She said a letter dated 9/21/09, from Dave Wilson, Chautauqua Co. Soil and Water had been received stating that the proposed plan does not exceed the threshold of the Stormwater regulations of the NYS-DEC. A letter dated 9/21/09 from Nancy Herter, NYS Office of Parks, Recreation and Historic Preservation stating the project will have no impact on cultural resources in or eligible for inclusion in the State and National Register of Historic Places. Mrs. Thomas stated that the OPRHP opinion had been of specific concern in Mr. Cranston's initial letter of 8/7/09. Mr. Stapleton said he has a letter dated 8/24/09, from Gary Ryan, Highway Sup't. stating there will be no problem with the route for deliveries to the proposed site on town roads. A letter from Mark Stow, Chaut. Co. Health Dept. stating no objection to the connection to the existing septic system (built for a 2 bedroom house) at the proposed site but noting that the system is limited in its capacity and should not be overloaded, nor should waste be introduced in the system that it is not designed to treat. He also stated that the applicant may be required to obtain a SPEDES permit from the DEC should the waste water generated exceed 1,000 gallons per day. Mr. Stapleton referenced Mr. Cranston's letter of 8/7/09, and each issue 1. thru 7. was addressed and connected to the responding agencies reply for purposes of clarification for the board. Mr. Lawson stated that the N.H. Planning Board has reviewed the site plan.

Each item of the SEQR was addressed and answered within the format by the applicant and board.
Only areas of question or change will be noted for the record in the following minutes.

PART 1 – PROJECT INFORMATION

A. SITE DESCRIPTION

- 2. Total acreage of project area: 1/2 acres (changed from 2 acres)**
 - 3. a. Soil drainage: Well drained 100% of site (“X” placed in box left blank)**
- 20.B. Project Description**
- 1.b. Project acreage to be developed: 2 acres (changed from 4 acres)**
- 25. Approvals Required: State Agencies No (changes to Yes)**

Paul Silzle was sworn in and asked why Mr. Wood has stated there will be no effect on traffic but also intends to seek tourism for the facility which will affect traffic. Mr. Wood said he does not expect the

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increase in traffic to be significant. He said the parking lot at the golf course holds only 70-80 cars and that is usually on Saturdays or Sundays. Mr. Wood said he does not expect the traffic will come by Mr. Silzle's home.

PART 2 – PROJECT IMPACTS AND THEIR MAGNITUDE

Questions 1. thru 20. were answered “NO”.

PART 3 – EVALUATION OF IMPORTANCE OF IMPACTS

Since no large impacts were identified, the board deemed it unnecessary to complete Part 3 of the SEQR.

Mr. Barton motioned for a negative declaration of impact on the SEQR application of Jonathan Wood requesting a Special Use 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). Mr. Adamson seconded and the motion was carried unanimously.

Mr. Barton asked Mr. Wood if there is any new information on the project which the board does not have. Mr. Wood said no. Mr. Stapleton asked if the building plans have been created with exact dimensions. Mr. Wood said yes; the building will be 40'x100' of factory area and a small office space 20'x28'. Mr. Stapleton referenced Zoning Ordinance Section 905, Special Use Permits and said there are also general conditions under Section 601 that should be addressed after review of the 28 point checklist. Mr. Wood said the noise created by the exhaust fans would be minimal, certainly no louder than the expressway.

The board reviewed the 28 point Checklist for Commercial Projects and was satisfied that all criteria has been or will be met.

Mr. Wood said he, the IDA and NYS Ag and Markets will try to collaborate with local small or “tourist” farmers to allow planting and harvesting the potatoes on unused land which might give them a small income as well as a possible agricultural exemption on their taxes. Mr. Barton asked if anyone wished to speak regarding the application.

Mr. Barton motioned to grant a Special Use Permit to John Wood 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) provided the following criteria is adhered to:

- **landscaping (trees, plantings, etc.) be done in an aesthetically pleasing fashion with emphasis on the I-86 side of the project**
 - **public hours of operation be limited to 6:00 AM – 4:00 PM**
 - **All permits be obtained, in place, and provided to Mr. Lawson and the County from all permitting agencies**
 - **signs and lighting be unobtrusive and done according to zoning code**
 - **Mr. Lawson be kept advised during all phases of construction**
- Mr. Vaillancourt seconded and the motion was carried unanimously.**

The hearing was adjourned at 11:10 PM.

Nancy Thomas, Town Clerk