

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
WEDNESDAY, 4/28/10, 7:30 PM**

ZBA MEMBERS PRESENT: **James Levesque** **Joe Komar** **Roger Vaillancourt**
 Richard Barton **Paul Silzle** **Bill Adamson**
 Louise Ortman **Greg Michalak**
 Brad Lawson, Zoning CEO
 Dave Stapleton, Attorney

Others Present: **Janice Fardink** **Greg Hurlbut** **Juanita Rublee**
 Donald Butler **Brenda Knipe** **Denise TeWinkle**

Mr. Levesque opened the hearing at 7:30 PM.

1. Jan Fardink requesting an Area Variance to install a handicap accessible ramp closer to the roadside setback than allowed in Zoning Code Sec. 401 at property located at 2187 N. Maple St., Ashville, NY, Specifically Section 384.10-1-28.

Mr. Levesque asked Mrs. Fardink to explain to the board what she would like to do. Mrs. Fardink said she wants to install a handicap ramp for her husband who has had a leg removed. Mr. Levesque asked if the ramp would extend 7' from the house and be approximately 20' long. Mrs. Fardink said yes. Mr. Hurlbut said the distance from the road edge to the house after the installation of the ramp would be 27' (current roadside setback is 34'). Mr. Barton asked if the ramp would be permanent. Mr. Hurlbut said yes. He said a 4x4' section of tin roof will cover the ramp/porch entrance so that ice will not come off the existing roof onto the ramp. Mr. Levesque asked if the addition of the roof on a section of the ramp affects any other portion of the zoning law (i.e. porch). It was clarified in discussion that the structure includes not only a ramp, but also a covered porch/entrance into the home. Mr. Levesque asked if anyone wished to speak regarding the application. Mr. Lawson suggested that the application be changed from 27' to the road edge to 26' from the road edge because of the turn from the ramp to the porch. Mr. Stapleton clarified that roadside setbacks in the R-1 district are 50' from the paved edge of the road.

Mr. Levesque motioned to approve the request for an Area Variance of Jan Fardink to install a handicap ramp/porch entrance as outlined in the application submitted, with a roadside setback distance of 26'. Mr. Barton seconded and the motion was carried unanimously.

2. Mike Giarrizzo requesting an Area Variance to install a removable 10x12' building onto the south end of the Hogan's Hut sporting goods store closer to the roadside setback than allowed in Zoning Code Sec. 408 at property located at 3503 Old Bridge Road, Stow, NY, Specifically Section 332.16-1-48.

Brenda Knipe appeared to represent Mr. Giarrizzo (Hogan's Hut). Ms. Knipe said they would like to construct and install a portable 10x12' building to house the stores live bait tanks. She said the building will be on skids because it will sit over the septic/leach field system and may need to be removed on occasion. Mr. Barton asked if the structure would have electric. Ms. Knipe said it would have both electric and plumbing for the tanks. Mr. Levesque asked if there would be any windows. Ms. Knipe said no. Mr. Levesque asked how far the building would be from the road edge. Mr. Lawson said it would be 17' to the southwesterly street line (50' is required setback). There was general discussion of the location of the structure and it was established that it would be located on the end of the building where there is currently a

dirt driveway between Hogan's and the Post Office. Ms. Knipe said the building would be rustic in appearance. Mr. Lawson said he would make sure that all code requirements were met. Mr. Barton stated for the record that the owners of Hogan's had done a good job of making the appearance of the store blend nicely with the existing area. Mr. Levesque asked if customers would be coming in and out of the structure. Ms. Knipe said no, it would strictly used to house the live bait tanks. Mr. Levesque said that would be best since there would not be any type of exit in case of emergency. He said perhaps some type of door for safety reasons should be considered. Mr. Stapleton noted that the property is zoned commercial. He asked if the existing business is being run under any particular special use permit or if a special use permit had been grandfathered in with no prior history with this township in terms of special use permit requirements. Mr. Lawson said that was correct. Mr. Stapleton clarified the record by stating that normally when you have a business you have to look at the special use permits and conditions, especially if you are looking to change or expand in any way the nature of the business. Mr. Stapleton asked if there would be any additional lighting outside, additional hours of operation or large increase in business as a result of this structural addition. Ms. Knipe said no. Mr. Levesque said it appears the structure is more of a convenience expansion than a use expansion. Mr. Stapleton said yes and there will be no impact in terms of population density or use. Mr. Levesque asked if any one wished to speak regarding the application. Mrs. Ortman asked if there would be any windows or ventilation. Ms. Knipe said they would probably install vents and there will be a door from the main store into the addition. Mr. Levesque asked if the bait shed was to be used year round, how it would be heated. Ms. Knipe said probably some type of electric heater. Mr. Lawson said he would address that issue. Mr. Stapleton asked Mr. Lawson if the applicant had satisfactorily completed the check list. Mr. Lawson said yes. He also asked that the setback from the property line to the fence (even though the applicant owns both properties) be noted and included in the application for the record (closest point of proposed structure to the property line). Mr. Stapleton asked Mr. Lawson if the Health Dept. had any issue with placing the building over the septic leach field. Mr. Lawson said no. The board reviewed **Town Law Article 16, Sec. 267-b., 3. Area Variances (a), (b) 1. No; 2. No; 3. Yes; 4. No; 5. Yes.**

Mr. Levesque motioned to grant an Area Variance to Mike Giarrizzo to install a 10x12' movable building onto the south end of the Hogan's Hut sporting goods store (Sec. 332.16-1-48), closer to the roadside setback than allowed in Zoning Code Sec. 408 and as outlined in the application, providing the criteria as specified in the hearing are adhered to:

- **No additional exterior lighting or signage**
- **New structure blend with existing structure**
- **Safety factors be addressed and to code**

Mr. Silzle seconded and the motion was carried unanimously.

3. Donald Butler requesting a Special Permit to install an above ground 21' round swimming pool at property located at 2188 N. Maple Ave., Ashville, NY, Specifically Section 384.11-1-92.

Mr. Levesque asked Mr. Butler to explain to the board what he wants to do. Mr. Butler said he wants to install a 21' round above ground swimming pool with a proximity alarm and removable ladder, 38' from the property line on the north side of his property. He said the pool will be approximately 68' from the neighboring home on that side. Mr. Levesque asked about drainage. Mr. Butler said it would drain away from the house but would not affect the neighbors because their property is 3' higher than his. Mr. Butler said the exterior pump and filter would be toward the rear of the property with lattice and bushes for aesthetic and noise reduction purposes. Mr. Levesque asked if the pool were to burst, where the water would go. Mr. Butler said it would flow toward the back of his property, not toward the neighbors. Mr. Stapleton asked how deep the pool is and what the water capacity is. Mr. Butler said it is a 52" wall, water is 45-48" deep (about 10,000 gals.). Mr. Levesque asked if anyone wished to speak regarding the application.

Mr. Levesque motioned to approve the Special Permit application of Donald Butler to install an above ground 21' round swimming pool at property located at 2188 N. Maple Ave., Ashville, NY, Specifically Section 384.11-1-92 as outlined in the application. Mr. Barton seconded and the motion was carried unanimously.

4. Denise TeWinkle requesting a Special Permit to install a candle making shop in an existing garage at Candle-Escents Gift Shop at property located at 2777 Rt. 394, Ashville, NY, Specifically Section 367.00-1-21. (ref. ZBA minutes 7/28/04).

Mr. Levesque asked Ms. TeWinkle to explain to the board what she wishes to do. Ms. TeWinkle said she would like to put up metal fire proof walls/ceiling in an 11x15' section of the existing garage for the purpose of candle making in that area. She said the old garage door will be replaced with a glass window so that customers can view the candle making process. She said customers will not be allowed to enter the room, just view it from the window. Mr. Levesque asked when the garage door is changed to the window will it become a solid wall type structure. Mrs. TeWinkle said yes. She said a new garage door will replace the other garage door on the existing structure. Ms. TeWinkle said there are no open flames involved in the operation. She said the wax melting is done in a type of tank at lower temperatures, similar to a crock pot. Mr. Levesque asked if this would come under the fire marshal or building code. Mr. Lawson said in this example it would come under the building code, but he has not looked up the specific example in the code yet to see if what is proposed would meet the code for that type of operation. He said he would refrain from going on the record as stating that the construction is "fire proof" because he does not know that yet. Mr. Levesque said the board is charged with considering the expansion of the business. He said how it is done and safety issues are a code function. Ms. TeWinkle said she would meet OSHA standards. Mr. Levesque asked if plumbing would be installed. Ms. TeWinkle said no plumbing is necessary to the operation. Ms. TeWinkle said a window fan would be installed in an existing window for ventilation. She said no smoke is produced because the temperature to melt the wax is only 190°. There was further general discussion of the application. Mr. Stapleton asked if he was clear on the fact that Ms. TeWinkle is not creating the wax, she is simply melting it and pouring it into molds. Ms. TeWinkle said yes, that is correct. Mr. Stapleton asked if there would be any combining of chemicals or any discharge into the environment (i.e. liquids). Ms. TeWinkle said no. Mr. Stapleton said at this point he is not asking that a SEQRA form be submitted. Mr. Levesque asked if Ms. TeWinkle will be manufacturing for any other businesses. Ms. TeWinkle said no, not at this time. There was discussion of the amount (lbs.) of wax that would be melted daily. Ms. TeWinkle said she would be melting 50 lbs. of wax per day and molding 250 candles. Mr. Stapleton said if the manufacturing business expands further than the scope which has been outlined Ms. TeWinkle will need to apply to the ZBA for a Special Use Permit or possibly go into the Use Variance process. A letter was received from neighbor Bill Reynolds stating no objections to the planned expansion of the operation. Mr. Levesque noted that Ms. TeWinkle had provided a very in depth letter outlining her request and intent. Mr. Stapleton stated the application is an expansion on a Special Use permit that was issued before (*ref. ZBA minutes 7/28/04*). He said Sec. 905 deals with the special permit laws and it appears that aspect has been covered.

Mr. Levesque motioned to approve the Special Permit request of Denise TeWinkle to install a candle making shop in an existing garage at Candle-Escents Gift Shop at property located at 2777 Rt. 394, Ashville, NY, Specifically Section 367.00-1-21, as outlined in the application and provided the following criteria are adhered to:

- **Production of candles on site limited to 1,750 candles per week during regular business hours**
- Mr. Vaillancourt seconded and the motion was carried unanimously.**

Nancy Thomas, Town Clerk