

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
Wednesday, 8/25/10, 7:30 PM**

ZONING BOARD MEMBERS PRESENT: James Levesque Paul Silzle

**Louise Ortman Joe Komar
Richard Barton Greg Michalak
Brad Lawson, Zoning CEO
Dave Stapleton, Attorney**

Others Present: Sheila Saxton Norm Czubaj Jim Wroda

**Sally Carlson Mary Cunningham Laurie Wroda
Loretta Swanson Audrey Derby Tom Wroda
Melissa Johnson Diane Territo Michael Pfoutz
Gayle Martin Frank Stow Katherine Brooks
Mike Gleason Wendy Ryan**

Mr. Levesque brought the hearing to order at 7:45 PM. Mr. Stapleton swore in all present who expressed intent to speak at the proceedings.

1. Sheila M. Saxton requesting a Special Permit to install a 24' round above ground pool at property located at 2143 S. Maple St., Specifically Section 384.10-1-39.

Mrs. Saxton said that she had submitted an application for a permit to install 24' round, 4' deep above ground pool on her property as indicated above. She said while she had been away from home the installers had come and put the pool in 3 days after she had submitted her application. Mr. Levesque asked how far from the property line in all directions the pool is located. Mrs. Saxton said the pool is approximately 45' from Hoag Road on the one side. Mr. Levesque asked if she planned to install fencing. Mrs. Saxton said yes, along the driveway by Hoag Road for privacy purposes. Mr. Barton noted that if the fence is to be higher than 4' Mrs. Saxton will have to get a permit. Mrs. Saxton said the stairs to the pool are freestanding and are removed, folded and locked when the pool is not in use. She said the pool does have an alarm system. Mr. Levesque asked if the pool is electrically grounded. Mrs. Saxton said not yet. Mr. Levesque asked if it was running. Mrs. Saxton said no. Mr. Levesque asked where the pump and filter are in relation to the nearest residence. Mrs. Saxton said it is on the Hoag Road side and is not enclosed. Mrs. Saxton said the closest neighbor is on the corner across the street. Mr. Levesque asked if the pool were to burst, where the water would flow. Mrs. Saxton said in her yard. Mr. Lawson noted that if the pool is 45' from Hoag Road and Area Variance will be required. The board reviewed Town Law Sec. 267b. 1.) no; 2.) no; 3.) no; 4.) no; 5.) yes. Mr. Levesque asked if anyone wished to speak regarding the application. Mr. Lawson noted that there is a small shed located between the pool and Hoag Road.

Mr. Levesque motioned to grant a Special Permit and an Area Variance to Sheila Saxton to install a 24' above ground pool closer to a setback than allowed in Section 401 of the Zoning Code at property located at 2143 S. Maple St., Sec. 384.10-1-39 provided the following condition is met:

- **An accurate measurement from the pool to Hoag Road is provided to the Zoning CEO along with the application for the area variance**

Mr. Komar seconded and the motion was carried unanimously.

2. Norman W. Czubaj requesting an Area Variance to construct a detached 12x10' storage shed closer to property line setbacks than allowed in Section 401 of the Zoning Code at property located at 3484 Mason St., Specifically Section 332.20-1-31.

Mr. Czubaj said he would like to place a 12x10' shed on skids 30" from the property line for storage. He provided photos showing 2 existing sheds; one wooden and one plastic. He said the plastic shed shown in his photos will be removed and the new one will set right next to the existing wood one. Mr. Levesque asked if the sheds would be connected in any fashion. Mr. Czubaj said no. Mr. Barton asked if the shed will have electric. Mr. Czubaj said no. Mrs. Ortman asked where the nearest neighbor is located. Mr. Czubaj said the nearest neighbor is Mr. Cluchey and their house is set back at least 25-30'. He said their access is from Hadley Bay Road. Mr. Komar asked how the neighbors felt about the shed. He said he has spoken to the Cluchey's and they have no objection to his plan. Mr. Lawson clarified that the shed because of its size is permitted by right; the issue is the set back from the property line (5' is required). Mr. Silzle said aesthetically the new shed will be nicer than what exists. Mr. Levesque asked if anyone wished to speak regarding the application.

Mr. Levesque motioned to grant an Area Variance to Norm Czubaj to place a 12x10' shed 30" from the property line on property located at 3484 Mason St., specifically Sec. 332.20-1-31. Mrs. Ortman seconded and the motion was carried unanimously.

3. Jim Wroda requesting a Special Permit to operate an auction house at property located at 2118 Magnolia Ave., Ashville, Specifically Section 384.11-1-21.

Mr. Wroda said he has a purchase contract on the property located at 2118 Magnolia Ave. and would like to use the building as an auction house. Mr. Levesque clarified that the building in question is the Ashville Fire Dept. Training Center. Mr. Wroda said he is based in Greenville, Ohio and what they do there is the same thing they want to do at the Ashville location. He said they had looked at locations across New York State and kept coming back to the Ashville location. He said they deal in high end antique collections from around the country (mostly glassware) on consignment and catalog these and offer them at auction. He said at the Ashville facility they would probably hold 16-21 auctions per year. He said they hope to make this area their home when his wife graduates from school in about one year. Mrs. Ortman asked how long a typical auction lasts. Mr. Wroda said the auctions generally start at 9:45 AM (doors may open at 8:00 AM for preview) and typically run from 5-6 hours per session. Mrs. Ortman asked if there would be a lot of truck traffic. Mr. Wroda said no and they never use tractor trailers. He said there are no late night deliveries. He said his company is very community oriented. Mr. Silzle asked what the facility would be used for other than auction purposes. Mr. Wroda said he intends to use the facility in the same fashion as it was used previously and plans to honor all existing contracts (i.e. wedding receptions, fund raisers, Cummins, BSA, etc.). He said the only activity that will be eliminated is Bingo. Mr. Levesque asked what the legal capacity of the building is. Mr. Gleason said 299. Mr. Levesque asked what the typical attendance at the auctions is. Mr. Wroda said typically around 150 people. Mr. Levesque cautioned that the allowable occupancy not be exceeded. Mr. Barton asked the aesthetics of the building will be changed. Mr. Wroda said they will probably replace the ceiling tiles and may paint the exterior and add a sign. He said what exists there now is exactly what they are looking for with all the amenities they need to operate their business by state standards. Mr. Levesque asked if the type of materials auctioned will change at any point. Mr. Wroda said financially it would not profit them to sell \$2.00 box lots and they would close it before doing anything of that nature. *There was general discussion of estate auctions and the cost of packing and moving those types of items for auction.* Mr. Levesque asked if anyone wished to speak regarding the application.

Sally Carlson said she lives in the town and spoke in support of the application. She said it will relieve the Ashville Fire Dept. of the financial burden of the Training Center; mean fewer receptions with loud noise that disturbs neighbors; create business for Ashville and perhaps jobs; and return the building to the tax roll. Mr. Wroda said his company likes to work closely with the community. He said his company in

Greenville has provided about \$12,000.00 to local schools and charities in the last 3 years. He said they also like to employ workers locally. Mr. Wroda said his auctions are attended by people from all over the world and their biggest concern is hotel space.

Frank Stow asked what his typical hourly wage is. Mr. Wroda said \$10-12.00/HR. Mr. Stow asked if he could estimate the amount of sales tax an auction would generate in the area. Mr. Wroda said last week they had a convention and 262 hotel room nights were rented; cars were rented; gas was purchased; meals were eaten and shopping was done. He said they have 21 auctions booked for next year and guaranteed that 18 of them would occur in Ashville. He said the auctions should be just over \$1,000,000.00 in sales. Some dealers will be tax exempt but he estimates that 40% of the sales would generate sales tax revenue. Mr. Wroda said his inventory comes from all over the United States. He said there are no local auction companies in the area that provide the type of venue that his company does and he does not feel that he will be competing for their business. He said for the most part they are auctioning antique collections. Mr. Wroda said they will probably hold about 126 auctions at the Greenville, OH facility this year.

Mr. Barton asked Mr. Wroda if business really works in Ashville will he want to hold more auctions. Mr. Wroda said no because the facility could not handle that amount of merchandise. He said the Greenville facility has 12,000 sq. ft. which allows room to sort boxes, etc. and still conduct an auction (using 3,500 sq. ft.). He said the Ashville building is only 7,200 sq. ft. with about 5,000 sq. ft. usable for sorting boxes and holding the auction and it simply could not handle more than the number of auctions he plans.

Mike Gleason said the sale would be good for the fire department. He said they have struggled to maintain the building and keep up the payments. He said the building is used every Friday night for 48 weeks of the year for Bingo and generates a lot of traffic on those nights. He said there will be less traffic in Ashville, tax revenues will be generated and a huge burden on the AFD will be relieved. Mr. Wroda said the building and grounds will be kept up as he has very high standards in that regard and his customers demand it. Mr. Wroda estimated that his 2009 payroll was about \$126,000.00 and he employed about 75 high school students and some adults to set up, etc. for the auctions at the Greenville facility.

Mr. Stapleton said this is a unique property and asked Mr. Lawson to provide some background information. Mr. Lawson said prior to 1996 the Fire Dept. came to the ZBA and requested a Special Permit under the quasi public law of the towns zoning to construct a training center in an R-2 District for typical training exercises and to be able to rent the building for functions. He said at the time the application was approved the department was informed that the permit was specific to their organization and use and if the building were to change hands in the future the new owners would have to apply to the ZBA for a Special Permit based on the type of activity they wished to use the building for. Mr. Lawson said he does not believe he has had any complaints regarding the facility while it has been owned by the Fire Department. Mr. Stapleton noted that Residential – 2 District is covered under Section 402 of the Zoning code. Mr. Lawson said by special permit there are still very limited uses and he personally looks at as a public library, museum or gallery; not so much a commercial entity. He said that type of building could be there with respect to the size and traffic. Mr. Stapleton said essentially you are looking at the intensity of use in terms of trying to fit it into some common type of characterization relative to what is on the special permit list and what has been used in the past. Mr. Lawson said yes. He said the property is set back off the road with plenty of parking and the nature of the use is similar to that which is within our zoning. Mr. Levesque asked what he would describe as the current use of the building, with weddings, Bingo, etc. Mr. Lawson said that falls under the quasi public (fire dept., telephone co., gas co.,) category which can go into most any district that the town has underneath those rules and regulations. Mr. Levesque clarified that these would be public auctions, not private. Mr. Wroda agreed they were public. Mr. Stapleton said our zoning allows the board to consider uses that aren't specifically put into the document, because of the impossibility of listing all of the uses. He said this was not a request to morph the building into a large commercial enterprise. He said if the property is sold in the future the buyers will be subject to the same permitting process as the Fire Dept. and Mr. Wroda's request. Mr. Wroda said he had no interest in trying to change the nature or zoning of the property.

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Mr. Levesque asked if Mr. Wroda intended to put any signage at the building. Mr. Wroda said he intends to

put a sign on the building after applying for the permit. He said the sign usually goes up 2 weeks prior to an auction and comes down immediately after and they also place real estate size "Auction Today" signs on the day of the auction which are removed at the end of the day. He asked if it might be possible to place a sign two weeks prior to the day of the auction at the corner of Cedar and South Maple (CR-43), providing the owner of the property has no objection, to direct customers to the building location. Mr. Wroda said he did not want to continue the Bingo games because they have a permit to smoke in the building on those occasions. He said the building will be smoke free because he is allergic.

Wendy Ryan said that reservations for the building only extend into October and the Bingo permit expires in December. She said they have a Christmas and New Year's party scheduled and about 3 fundraisers. She said none of these events should interfere with scheduled plans for the building.

Mr. Stapleton asked about the septic and well. Mr. Gleason said the AFD pays a \$100 fee every year to have the septic system monitored. He said the system cost about \$50,000.00 and the AFD was told the system was large enough to handle the hamlet of Ashville. He stated that the average number of people in the building for a wedding is 250 and on Bingo nights about 100. Mrs. Ryan said the rental agreement for persons who reserve the building states that if the occupancy goes over 299 they are liable. Mr. Wroda agreed to stay within the 299 occupancy limit. He said the first couple of auctions may draw more people because of curiosity.

Mr. Levesque read into the record **Zoning Code Section 601- General Development Conditions B. Areas of Concern.** Each item was addressed to the board's satisfaction.

Mr. Stow asked about Ashville Day, a local celebration which occurs on the 3rd Saturday of the month of July. Mr. Wroda said they had been in Ashville on that day. He said there is some scrap land behind the building that he might someday clean up and turn into a small park for clients with children provided it is not any type of protected land. Mr. Levesque asked again if anyone wished to speak regarding the application.

Mr. Levesque motioned to grant a Special Permit to Jim Wroda to operate an auction gallery as outlined above at property located at 2118 Magnolia Ave., (Ashville Fire Department Training Center) Ashville, Specifically Section 384.11-1-21. The board requested that the applicant appear in one year to review the permit. Mr. Silzle seconded and the motion was carried unanimously.

The hearing was adjourned at 9:45 PM.

Nancy Thomas
Town Clerk