

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
Wednesday 5/26/10 7:30 PM**

ZBA MEMBERS PRESENT:

Greg Michalak

Jim Levesque

Bill Adamson

Roger Vaillancourt

Louise Ortman

Joe Komar

Brad Lawson, Zoning CEO

**Others Present:
Johnson**

Jim Saxton

Joanna Saxton

Ryan

Jeffrey McKane

Dick Thayer

Mr. Levesque brought the hearing to order at 7:30 PM.

- 1. Richard & Sandra Thayer requesting a Special Permit to place a 24' round above ground swimming pool at property located at 5121 Spring St., Ashville, Specifically Section 350.13-2-41 (Old# 24-2-8).**

Mr. Levesque asked Mr. Thayer what he would like to do. Mr. Thayer said he would like to install a new 24' round above ground swimming pool at his home. Mr. Levesque asked if the pool would be 8' from the property line. Mr. Thayer said yes and he owns the lot it will be next to. Mrs. Ortman asked if there were any plans for drainage if the pool were to accidentally leak. She said it appears that the land slopes downward. Mr. Thayer said it slopes down between Spring and Ash Streets. Mr. Thayer said there is one home located on the lakeside, but the rest of the lots are vacant. Mr. Thayer said if there were any type of leak/spill, the water would not affect any neighboring homes. Mr. Levesque asked if anyone wished to speak regarding the application.

Mr. Levesque motioned to grant a Special Permit to Richard and Sandra Thayer to install a 24' round above ground swimming pool at property located at 5121 Spring St., Ashville, Specifically Section 350.13-2-41 (Old# 24-2-8). Mr. Komar seconded and the motion was carried unanimously.

- 2. Jeffrey D. McKane requesting a Special Permit to place a 35x13' park model manufactured home at property located at 6308 Baker Rd., Ashville, Specifically Section 364.00-2-7.2.**

Mr. Lawson asked to give some background on Mr. McKane's application. He said that he had previously issued a violation to Mr. McKane for placing a mobile home on the property, constructing a building and constructing a pond without a permit. He said when Mr. McKane had received the violation he had immediately responded that he was willing to comply and has

not done anything further to the property. He said Mr. McKane has subsequently submitted applications for building permits and the Special Permit application for the trailer. He said the reason the application for the trailer is before the board is that a single wide mobile home in the AG District requires a Special Permit. He said the unit is not a manufactured mobile home but a park model trailer. He said our zoning addresses RV's (that can be driven under their own power or towed behind a normal vehicle) but does not address park model trailers. He said zoning allows inhabitation of these for 90 days during a one year period. He said he had spoken to Mr. Stapleton extensively regarding this. He said he feels that the 35' long x 8' wide (13' wide with bump out) 1986 park model trailer is more a mobile home than an RV and in that case if the permit is issued, it would have to be hooked up to septic, water, etc. He said Mr. McKane has indicated he does have a privy/outhouse that he built on the property. Mr. Lawson said he had asked Mr. McKane if he had a permit from Chautauqua Co. Health Dept. for the construction of the privy and Mr. McKane indicated that he did not. Mr. McKane said

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he had called the DOH twice and they had indicated that the privy should have a container underneath so that waste could be contained and would not leach into the water table. Mr. Lawson said he has not heard anything from the DOH at this time indicating whether or not a permit was issued. Mr. Levesque stated that the legal notice indicates that the trailer is a park model manufactured home and asked if that was a correct definition. Mr. Lawson said yes. Mr. Levesque asked if the trailer is currently on a frame, with wheels and a trailer hitch. Mr. McKane said yes. He asked Mr. McKane if he intends to remove the wheels and put it on a foundation. Mr. McKane said no, not unless the board wants him to. He said he intends to pour footings and use concrete blocks up to the frame if the board approves it. He said he would skirt it if the board wants him to. Mr. Lawson asked if it is fully contained with a holding tank. Mr. McKane said yes, one for gray water and one for waste. Mr. Lawson asked what would be done when the tanks get full. Mr. McKane said they do not use the bathroom and he brings in water for consumption. He said when the trailer is placed at the location indicated in his plans it will not be visible from the road. He said the only place it will be visible from is the Ball's whose home is located on the hill. He said the second small trailer located on the property will be removed when the larger model is placed. Mr. McKane said the area will look good because he landscapes on the side. He said his goal is to buy the property to the back fence from Mrs. Carlson and eventually build a home (5-10 years). He said when that happens he will remove the park model. Mr. Levesque asked what the definition of the unit should be. Mr. Lawson said in the true sense of a manufactured home; it is not a manufactured home and in the true sense of our zoning calling it an RV does not apply because it has to be hauled with a ¾ ton pickup truck; it is not something that can be hooked up and driven somewhere easily. Mrs. Ortman said if you look at the intent of the zoning language and definition, it appears to be more of a manufactured mobile home than an RV. She said the definition of RV is more indicative of something that can be taken to a campground. Mr. Levesque asked what the square footage of the unit is. Mr. McKane said zoning indicates 600 sq. ft. to be classified as a manufactured home and his unit

has 435 sq. ft. Mr. Vaillancourt noted that these types of park model trailers are located at camps all along the lake and they stay there year round. Mr. Levesque asked if anyone would be living in the trailer year round or if it would be rented out. Mr. McKane said no, and he only uses the trailer on weekends and very seldom in the winter. Mr. Lawson referenced Section 631 of the zoning which relates to temporary dwelling units. Mr. Vaillancourt asked if it will be located there permanently should it have tie downs like a mobile home. Mr. Lawson said RV's do not require them. Mr. Lawson said Mr. McKane must have a permit for the privy from the county and other than that, if he uses the trailer bathroom, it will have to be pumped out on site as the trailer cannot be taken to the dump station. Mr. McKane said the trailer will not be moved once it is placed in its final position. Mr. McKane stated that the privy does have containment. Mr. McKane said he had spoken to Mr. Stow at the county DOH and explained how the privy was built. He said Mr. Stow indicated he would try to have someone come out and look at it. Mr. Lawson asked if Mr. McKane had filled out an application for the county and if he had paid any fees. Mr. McKane said no. Mrs. Ortman asked if there was anything else to be taken into consideration in the application. Ryan Johnson said the board's first decision should be whether they will allow this as a non-RV and second if he uses the bathroom in the unit it should be stipulated that he use a professional service to pump it. Mr. McKane said he would do whatever the board requires as he needs to move the trailer from the driveway. Mr. McKane said there is no access to water at the site and he brings in bottled water for drinking purposes. Mr. Levesque said you cannot operate the bathroom in the trailer without water. Mr. McKane said Mrs. Carlson, who had sold him the land, borders him on 3 sides and provided a letter stating she has no issue with his plans. Mr. Lawson said he had spoken to the Ball's and they were opposed to Mr. McKane's plan. He said they had stated they would be at the meeting, but were not present. *There was further discussion of the Ball's property in relation to Mr. McKane's.* Mr. Lawson said Zoning Section 631 and 632; Uses by Special Permit include temporary dwelling units in accordance with those sections. He said the board could place any conditions on the permit they wish. Mr. Levesque asked if anyone wished to speak regarding the application.

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Mr. Levesque motioned to approve the Special Permit application of Jeffrey McKane to place a 35'x13' 1986 park model trailer at property located at 6308 Baker Rd., Ashville, Specifically Section 364.00-2-7.2 providing the following criteria is strictly adhered to:

- **Requirements of Zoning Ordinance Section 631 apply to the application in its entirety.**
- **Evergreen style shrubs (of a nature that retain their foliage year round) at least 4' in height be planted no more than 15' apart in proximity to the trailer, and at least the full length of the trailer on the Ball property side in order to buffer their view.**
- **Compliance with the County DOH and permit for the self contained unit or privy must be obtained within 30 days.**

Applicant will appear before the Zoning Board of Appeals in one year for review of the Special Permit application.

Mrs. Ortman seconded and the motion was carried unanimously.

3. James Saxton requesting a Special Permit to construct an 8' tall privacy fence at property located at 2146 Linden Ave., Ashville, Specifically Section 384.11-1-53 which does not comply with Zoning Code Sec. 618.

Mr. Saxton said he would like to construct an 8' tall x 200' long privacy fence 3' from the rear property line of his property bordering the Johnson property. Mr. Levesque asked how far from the property line is Mr. Johnson's home. Mr. Saxton said about 20' and the finished side would face the Johnson's property. Mr. Lawson said Zoning Section 618 allows for fencing heights of 4' and that is the reason for the Special Permit application. Mrs. Ortman asked if any views would be affected. Mr. Saxton said no. Mr. Johnson said he has no objection to the fence as outlined in the application. Mr. Levesque asked if anyone wished to speak regarding the application.

Mr. Levesque motioned to approve the Special Permit application of James Saxton to construct an 8' tall privacy fence as outlined in his application at property located at 2146 Linden Ave., Ashville. Mr. Komar seconded and the motion was carried unanimously.

Mr. Levesque brought to the board's attention a compliance issue with regard to the self storage units located on Rt. 394 and Wells Bay Road (*Ref. ZBA minutes 3/24/09 & 4/22/09*). He said he believed one of the conditions under which the application was granted was the height of the evergreen plantings. He said the ones planted are only about 1' tall and not in compliance with the stipulations of the motion. Mr. Lawson said he had held up the certificate of occupancy on the property because 1) plantings were not tall enough 2) filtering system in parking lot had not been installed. He said Mr. Tordello had called him and because of the situation he was in, he had released the C/O, but qualified that with a letter to Mr. Tordello and Mr. Sampson outlining the items they had agreed to at the time of the hearing. Mr. Lawson said there are also issues with the signage (signage is too large and there are signs in many locations). He said he had heard (not directly) that Mr. Sampson had no intention of remedying the non-compliant situation. He said he had not sent a letter of violation because he wanted to discuss it with the ZBA before he took action. He said the board has the power to recall the case for re-hear by unanimous vote. Mr. Lawson said he would send out the notice of violation on the plantings and signage and give the applicant 2 weeks to respond/correct the cited issues. He said if the applicant does not respond he would request that the board recall the applicant for a re-hear. Mr. Levesque suggested that Mr. Lawson issue the violation as stated and the board members were in agreement.

The hearing was adjourned at 9:00 PM.

Nancy Thomas, Town Clerk