

ZBA

4/27/11 (Pg. 2)

allowed to improve their properties it will devalue their properties and they will have reasonable cause to object to their assessments. He asked the board that in making their decision they consider that he feels a modest, tasteful structure that has a minimal impact to the neighbors view is not unreasonable.

The board took some time to review and discuss view angle and degree drawings presented by Mr. Query and Mr. Kuntz.

Mr. Levesque said if Mr. Kuntz is proposing a new footprint that it would need to be submitted. Mr. Stapleton said one of the issues is giving the public prior notice and access to plans specific enough that anyone wishing to review them has at least 10 days in which to do so. Mr. Levesque asked if anyone would like to speak regarding the application.

David Groth, 3638 and 3640 Watson Road said their properties are to the north and northwest and stated that the width is not the only issue. He said the depth of 45' (5' increase) will also have an impact on their view. He said the angle from the center of their front porch from which they view the lake will be affected. He said the board had offered a number of suggestions to change the footprint and Mr. Kuntz's solutions did not change the footprint in any way. Mr. Groth provided photos taken from their front porch in which he feels is a representation of what will be taken from their view and said they are not minimal or marginal. He said the Planning Board had suggested many avenues (i.e. two stories with a chair lift; floor joist heating system; on demand hot water heater) that would narrow that footprint. He expressed his dissatisfaction with the 3' reduction in side setback. He said that in the Planning Board minutes Mr. Rice had stated that "he thinks the property owners in the rear have a right to rely on the setbacks set forth in the zoning codes if in a case like this it takes away part of the reason they purchased their property". He also said Mr. Senske said there is enough of an impediment that he would not recommend that the project be approved. Mr. Groth said theirs is a unique situation with 7 homes on what are basically 3 lots and he does not feel reducing the side setback by 3' mitigates the variance impact.

Scott Kyser said they still own the home that the Eckert's are purchasing on a land contract. He said a 7' increase will have a negative impact on his property and it is not minimal.

Mr. Kuntz said that Mr. Kyser had made the statement twice that his front yard would be impacted by the proposed structure. Mr. Kuntz said it is not Mr. Kyser's front yard, it is his property. He said he drives across their property to get to his property. He said with no offense to Mr. Kyser, in the second row properties, what is in front of you is not your property.

Mr. Levesque referred to the Planning Board minutes and said the Zoning Board makes its decisions based on the lowest area variance possible and takes into consideration the neighbors viewpoint but reminded them the neighbors do not sway that decision. He said what that refers to is the board has rules and a code to guide them and they take into consideration all the other aspects of the application including the neighbors' concerns. He said to fairly assess the application, the applicant needs to present an entire full and comprehensive plan in detail to the board that includes where the current dwelling is located and its exact dimensions; where the proposed dwelling will be and its exact dimensions (use of overlays suggested); and showing where the new setbacks will be in relation to property lines.

Mr. Kuntz asked if the board had been satisfied with his initial application and if that was what they were looking for in his new application. Mr. Lawson said the original application had all the information set forth in the zoning requirements. Mr. Levesque said yes along with what was requested in the previous paragraph. Mr. Kuntz asked if the board members would please take time to visit the property and review it.

Mr. Michalak said that Mr. Groth had indicated that they only received the new information shortly before the meeting and suggested that Mr. Kuntz provide the new info to neighbors a little earlier. Mr. Kuntz said he would provide copies of the site plan as quickly as he has them.

Mr. Levesque motioned to table the application of Jay Kuntz and Lori Benson requesting an Area Variance to demolish an existing home and replace it with a new home closer to setbacks than allowed in Sec. 401 of the Zoning Code at 3636 Watson Rd, Specifically Sec. 332.16-1-11

(Old# 20-6-2.2) until a new application with information as outlined in the minutes is received. Mr. Thomas seconded. Levesque; Barton; Silzle; Michalak; Adamson; Thomas; Emick; Yes. Ortman; Abstain. The motion was carried.

2. Walter Feldt requesting a Special Permit to install a 27' round, 54" high, swimming pool at property located at 2111 Hoag Road, Specifically Sec. 384.10-1-59 (Old #32-2.5).

Mr. Feldt said he would like to install an above ground swimming pool as described above with a 10'x15' deck (not attached to home) at his property. He said it would have a self-closing lock at the bottom of the gate for safety and will be located 20-25' from the house. He said no back filling will be done around the pool. Mr. Barton asked if there would be electric to the deck. Mr. Feldt said yes, and a ground fault interrupter will be installed by Dan Sullivan. Mr. Levesque asked how close the pool would be to the closest neighbor's property. Mr. Feldt said his closest neighbor is Mr. Turnquist whose property is about 120' away.

Mr. Levesque asked where any runoff from the pool might go. Mr. Feldt said it would go onto his brother's wooded lot. Mrs. Emick asked how close the pool is to Goose Creek. Mr. Lawson said at least 300' and any spills would go toward the old mill pond on Mr. Feldt's brother's property. Mr. Levesque asked if anyone wished to speak regarding the application.

Mr. Levesque motioned to grant Walter Feldt a Special Permit to install a 27' round, 54" high, swimming pool at property located at 2111 Hoag Road, Specifically Sec. 384.10-1-59 (Old #32-2.5). Mr. Barton seconded. Levesque; Barton; Silzle; Michalak; Adamson; Ortman; Emick; Yes. The motion was carried.

3. Vern Johnson (renter) requesting a Special Permit to operate an auto repair shop at property owned by William Adamson, located at 5591 Eke Road, Specifically Section 332.00-2-39 (Old # 6-1-17.1).

Mr. Lawson requested that he be allowed to give some background on the application. He said that the application had come before the board in January, 2011, and the applicant had failed to appear at the hearing and no action was taken. He said since that date he had informed Mr. Johnson and Mr. Adamson that Mr. Johnson would not be allowed to work on any vehicles for commercial purposes except for his own personal vehicle. He said Mr. Johnson did not adhere to that and was working on and had brought many other vehicles to the property. He said he had tried to contact Mr. Johnson several times and on 4/10/11, he had issued a Stop Work Order to Mr. Johnson and to Mr. Adamson (as property owner). He said that means that no work can be conducted on that property. Mr. Lawson said on 4/10/11 he had also issued a violation notice to Mr. Adamson which cites the Junk Vehicle Law, Debris Law in Section 409 of the Zoning Code and required that the property be cleaned up by 4/30/11. Mr. Lawson said since the time of the re-application by Mr. Johnson, Mr. Adamson has written a letter to the board rescinding his signature on the application. He said with no signature of the property owner, the application cannot come before the board and no action can be taken. Mr. Stapleton gave the legal opinion that the application cannot be acted on.

Mr. Levesque asked Mr. Johnson if he understood that. Mr. Johnson said he was shocked and upset to have learned about this at the meeting. Mr. Levesque asked Mr. Johnson if he understood the violations before him and the timeline involved. Mr. Johnson said yes there are some unregistered cars at the location. Mr. Lawson clarified that the violation is on Mr. Adamson as the property owner and it is his responsibility to take care of the matter. Mr. Adamson agreed that he understood the timeline.

The hearing was adjourned at 9:30 PM.

Nancy M. Thomas, Town Clerk

To the North Harmony Zoning Board,

I apologize that my schedule did not allow me to attend tonight's meeting, but I have asked Jay to read this letter to you. Please consider my input along with his as you review our variance request.

When we started this process of requesting a variance, we naively thought that our plan to improve the property by replacing a dilapidating cottage with a small attractive new structure that fits nicely with the neighborhood would be embraced by the zoning and planning boards. It seemed logical that if the goals include encouraging reasonable development and increasing the tax base, our plans should have been approved. I don't think anyone here disagrees that what we are proposing is attractive, blends in well and will be an overall improvement to the neighborhood.

What is at issue is whether reasonable development should be denied when it marginally impacts someone's view.

In reviewing our options over the past few weeks, we determined that if we can't build what we are proposing tonight, we will sell the property. This was a difficult decision but what I want to tell you about tonight is a story of something that happened while I considered our options.

While collecting information to help with making the decision I turned to Craig's list. There I found "a ½ acre buildable lot with lake rights" on Wells Bay Road. The picture of the lot from the dock was beautiful so I picked up the phone and called. A pleasant gentleman who owns the lot answered. As it turned out, his lot is not on the lake front but he assured me that it has a beautiful view of the lake. I explained that I was only interested in lake front property. His response was, "Why would you want to pay the taxes associated with a lake front lot? This lot has a beautiful view of the lake but the taxes are much lower." This clearly was an honest response on his part. He didn't just want to sell his lot, he genuinely wanted to understand why anyone would make such a decision.

Indeed. Why would anyone make such a decision?

As I hung up the phone I thought about his question. Why did I want a lakefront lot? If we can buy his lot, build what we want on it, be steps from the lake, have a beautiful view while paying less for the property and less in

taxes, wouldn't we be fools to do anything else? Up until a few weeks ago I would have thought "No. No. I want to be on the lakefront to control the view." Everyone knows that when you buy a second row lot you can't control the view. In exchange for less expensive property and lower taxes, you accept the risk that your view can change.

This was generally accepted knowledge...until tonight. If the board decides that reasonable development on the lake front will not be permitted because it has a fractional impact on someone's view, we would be foolish to purchase lake front property. Instead, we should purchase the gentleman's lot that sits back from the lake, gives us all the advantages of a lakefront lot and costs much less. After all if someone in front of us wants to enlarge their home we can complain that it will impact our view and they will not be allowed to make that improvement.

I hope you realize that this is the decision in front of you.

If you decide to deny our modest improvement, you will be making your decision based primarily on concern for the view of 2 properties and you will be changing the status quo for a lot of the lake property in North Harmony. You will be devaluing lake front property while increasing the value of second and third row property. The lot on Wells Bay Road will become much more attractive if we know we can buy it and prevent anyone from doing anything that reduces our view.

I urge you to think carefully about the impact of what you are about to decide. It goes beyond our simple request. You are deciding whether a fractional impact to someone's view can prevent reasonable development and improvements on the lake front. If you deny our request you will be saying that lake front property can't be improved if someone's view is even moderately impacted. Please take some time to think if this is really the message you want to send.

Thank you for your time and consideration of our request.

Tom Sencer

4/26/14

April 16, 2011

Town of North Harmony
3445 Old Bridge Road
Stow, NY 14785

ATT: North Harmony Zoning Board

Dear Zoning Board:

This letter is in support of the variance request by Jay Kuntz and Lori Benson, owners of 3636 Watson Road, Stow, New York.

We own lake front property at 3752 Lakeland Road, Stow, New York.

We believe the request is extremely reasonable and will drastically improve the value of all homes in the area.

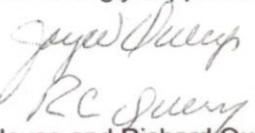
In reviewing the minutes of the Zoning Board meeting of 3/23/2011, it is stated that Mr. Groth claims he will lose 2/3 of this lake view.¹ In actuality, Mr. Groth loses approximately 1/6 of his total lake view. (see attached drawings). And the board should be aware that Mr. Groth's home (3638 Watson Road) sits less than 1.5 feet from the southern property line, which is a right of way. Additionally, Mr. Kyser stated that Mrs. Erkert was concerned because she was losing 30% of her view, when in actuality she is losing 24.6% of the view.² (see attached drawings).

After construction, the distance between the houses (3636 Watson and 3632 Watson Road) will be 26' 6", which far exceeds the average distance between homes in the area today.

We understand and appreciate the concerns of these two 2nd row homeowners, but also do NOT believe their rights preempt those of ALL 1st row homeowners. And if approved, this variance (and once the new home is built) will increase the value of ALL lake front homes in the area.

As front lake home owners, we are highly concerned over what precedence your ruling will have on other properties in the area and how that ruling will prevent other improvements.

We strongly support this request for variance and urge the members of zoning board to do the same.


Joyce and Richard Query
3752 Lakeland Road
Stow, NY 14785

PS If the board would take a minute to walk the property, they could see for themselves the relatively low impact the change will have on 2nd row home owners and the tremendous increase in value for the whole area,

¹ Pg. 1 Minutes of TOWN OF NORTH HARMONY ZONING BOARD OF APPEALS HEARING WEDNESDAY, 3/23/11 7:30 PM
David Groth stated that he co-owns 3640 just north of Mr. Kuntz and his father owns 3638 Watson Road which is northwest of Mr. Kuntz. He said they understand Jay and Lori's need and desire to build a new home. He said his house is ten years older than theirs and he understands their problems. He said their real issue is with 3638 Watson which is to the rear of Mr. Kuntz. He said he had sent an extensive package to the ZBA which explained that 2/3 of their view of the lake will be lost with the proposed addition.

² Pg. 3 Minutes of TOWN OF NORTH HARMONY ZONING BOARD OF APPEALS HEARING WEDNESDAY, 3/23/11 7:30 PM
Mr. Kyser said that Mr. Kuntz needed to speak to the Eckert's. He said Mrs. Eckert is upset at what they thought was an 8' addition on the south side and 10' would be even worse. He said 10' is 30% of their view and that is not acceptable.

C. Edward Eckert, PhD

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Mr. James Levesque, Chairman
Zoning Board
Town of North Harmony
3445 Old Bridge Road
Stow, NY 14785

April 27, 2011

RE: Kuntz/Benson Variance Request for Lot 3636

Dear Mr. Levesque:

My wife Michele and I have known the Kuntz family for over forty years. We enjoy a very convivial relationship with Jay and Lori, which was *the* determinant in our selection of this cottage to purchase. During the 1960-70 time period, my family actually rented this cottage (#3634) from an individual that I knew as Dean. I knew and highly respected Jay's parents, in addition to the then owners of Jay's current cottage, John and Gail. The entire Kuntz family and Watson Road factors prominently and pleasantly in our Chautauqua history. We were therefore elated when the opportunity to purchase the cottage became available and demurred on other properties, including those on lakefront lots, which were being considered by my wife.

Prior to the purchase of our cottage, Jay honorably informed us that he may be making changes to his property that could negatively impact on our view of the lake. Our cottage is lake view while the Kuntz lot is lakefront. We recognize that the latter has certain benefits and prerogatives over the former, and earnestly desire for Jay and Lori to take full advantage of this more favorable alignment. We understand their desire to protect a past investment and any future investments in the property.

Conversely, any decrease in our view of the lake permanently depreciates our property value. Absent the relationship with Jay and Lori, Michele and I would earnestly object to any property modifications that would compromise our view of the lake and correspondingly reduce property value. Given the longtime close relationship, however, the situation is not straightforward. Our obvious desire is that Jay remain within his existing structural footprint for any new construction. We recognize that his present 16 foot wide structure has certain limitations. Jay's originally proposed 26 foot (63%) increase in structure width would have reduced our centerline front porch lake view by essentially 38% which is substantial. During a recent meeting, Jay's compromise structure width proposal was a 7 foot (44%) increase that reduces our view by 26%. We would have preferred at least a middle ground compromise of a 5 foot structure increase to 21 feet total and reduce our lake view by approximately 19 percent.

Michele and I do not want to permanently injure the very relationship that stimulated our purchase of this particular property in the first place. We will therefore agree to a 21 feet total width of the proposed new Kuntz structure, and accept a 23 foot total width with traverse.

Respectfully,



C. Edward Eckert