

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
WEDNESDAY, 6/22/11 7:30 PM**

ZBA MEMBERS PRESENT: James Levesque Greg Michalak Louise Ortman
Bill Adamson Dan Thomas – Alt. Helen Emick – Alt.
Paul Silzle
Brad Lawson, Zoning CEO
Dave Stapleton, Attorney

OTHERS PRESENT: Mike Mangione John Jablonski Caroline Adamson

Mr. Levesque brought the hearing to order at 7:40 PM. He stated that case number two (2), the request of Richard and Victoria Cole would be dismissed because no permit was necessary. Mr. Stapleton swore in all present who expressed intent to speak.

1. Chautauqua Watershed Conservancy (CWC) requesting a Special Permit to place a 5' x 2 ½' sign at property located at Loomis Bay on Rt. 394, Specifically Section 367.00-2-15.

Mr. Jablonski said the sign would stand about 7 ½ feet tall to be visible above low lying road edge and waist high vegetation and is very similar to the one located at Dobbins Woods. Mr. Thomas asked if the parking lot was in yet. Mr. Jablonski said they are waiting for DOT permit approval on the parking lot. Mr. Lawson said the setbacks are good and the sign size is in compliance, but zoning requires ZBA approval. He said the sign will be located in the Commercial District and typically signs are there for on premise businesses. He said the CWC owns the land and that is why it is categorized as an on premise sign. Mr. Levesque asked if anyone wished to speak regarding the application. Mr. Lawson noted that there will be a small informational kiosk located in the back. Mr. Jablonski said there may also be some small informational watershed signs on the property as well as a site map of the area at the parking lot.

Mr. Thomas motioned to grant a Special Permit to the Chautauqua Watershed Conservancy to place a 7 ½' tall sign (actual sign size being 5' x 2 ½') at property located at Loomis Bay on Rt. 394, specifically Section 367.00-2-15. Mrs. Ortman seconded and the motion was carried unanimously.

2. Richard & Victoria Cole requesting a Special Permit to place a 24' round swimming pool at property located at 2103 Gesaman Road, Specifically Section 384.00-1-53.

Application was dismissed as no permit approval required in that district.

3. Goose Creek Corporation requesting an Area Variance for substandard lot sizes through the approval of a sub-division plat for property located at 2429 Route 394, Specifically Section 15-1-26.1.

Mr. Levesque asked Mr. Mangione (representing Goose Creek Corp.) what he would like to do and noted for the record that Mr. Mangione had appeared numerous times before the Planning Board and the Town Board with respect to the application. Mr. Mangione said that Goose Creek Camp has been in existence for over 40 years and provided a map of the parcels which was reviewed by the board. Mr. Levesque noted for the record that the survey map project number 2011156 was dated 4/9/11, and drawn up by Manguso. Mr. Levesque asked if some of the structures encroached on the current map setbacks. Mr. Lawson said some do not meet the 20' setback requirements. He said they have gone through and where parcel lines were very close to structures they have separated some things and made some larger lots. Mr. Mangione said they had combined 4 lots and pushed some lots back further into the woods. Mr. Levesque

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asked Mr. Mangione if he was aware of the Town Board resolution adopted at the 6/13/11 meeting and asked if he understood and was willing to comply with that resolution. Mr. Mangione said yes and they have already started to cut back and remove some trees for emergency access. Mr. Lawson said he understood that the Town Supervisor and Planning Board Chairman will not sign the plat until all the requirements outlined in the resolution are met. Mr. Stapleton said all the conditions the town board requires must be met as well as any additional conditions that the ZBA wishes to place on the approval of the application prior to the Mylar being signed. He said one of the larger items to be addressed is the declaration of restrictive covenants that he and the corporation's attorney must work together on to get into a form that will be approved for filing. He said the corporation has included in prior applications conditions that they intend to attach to deeds but for the towns purposes they want it in a form that will be filed along with the survey maps that effects the entire parcel from the beginning regardless as to whether any lots or parts of lots are transferred out and affects everything within the subdivision. He said that is the town's only protection.

Mr. Stapleton gave a brief history of the case. He stated the application has been in process through Town Board and Planning Board review for probably a year and a half. He said there have been multiple sessions as the corporation has modified its survey to address various concerns that both of the boards have. He said the board agreed that with the current map that is about the best that these lots can be configured for the corporation's purposes. He said the Town Board accepted a full form EAF; went through a SEQR hearing and made a negative declaration of impact on the project. He said prior to the hearing, review and recommendations were sought from Chautauqua County Planning, NYS DEC, NYS DOT, Town of Busti and various other agencies. He said all agency replies indicated no issue and stated it was a matter of local concern. He said County Planning's only concern was the nonconforming nature of the lots that would require zoning approval from the ZBA in order to semi-comply with the Zoning Ordinances of both North Harmony and Busti. He said the Town of Busti indicated in a letter from their attorney that the individual lot owners or corporation would have to come to the ZBA in Busti for the three lots that are bisected by the town lines. He said those owners will have to get approvals from both towns. He said since the N.H. Town Board has no jurisdiction in the granting of variances they decided to give the entire map to the ZBA seeking approval of all of the 14-15 lots that are nonconforming including the various area encroachments that are reflected on the survey where the buildings do not meet setback lines and lots do not meet minimum size requirements. He said that would all be decided tonight with the ZBA's approval or disapproval of the application. He said after that, the corporation as it complies with the rest of the resolution conditions, would then begin the process of deeding out the individual title rights of the lots to the owners of the structures on the lots. He said this will allow owners to obtain fire insurance; apply for financing for improvements; or sell the lots if they desire. Mr. Stapleton said the record should reflect an inclusion of all Town Board and Planning Board minutes and activities and the resolution passed by the Town Board involving the application. He explained that one of the conditions in the resolution indicates that all the areas beyond the lots are to remain as permanent open green space (about 18 acres). He said Section 280(a) of Town Law does not allow the building inspector to issue permits on properties that do not front a public road. He said there are 14-15 lots on a private driveway that is gated off Rt. 394 and this would prohibit the Zoning CEO from issuing any permits. He said that is why the town board in the resolution declared it an open development area. Mr. Stapleton said two things that are not in the resolution conditions and should be considered as additional provisos. First, currently the land is assessed under one owner at this time and will evolve into individual assessments on each individual lot as title transfers. He said since it is located on a private easement, a condition should be included that the applicant always grant access to the town assessor and town building inspector to perform their functions. Second, should any applicant wish to build beyond their footprint in the future, they be required to appear before the ZBA for additional area variances. Mr. Levesque stated with the existing map referenced in the minutes, nowhere are there any dimensional references to the dwelling/property lines on the lots. Mr. Lawson said that as time goes on if an owner wishes to add on, etc. it would require an individual property survey be done which will establish current

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dwelling/property line setbacks. Mr. Stapleton said applications will be handled the same way they are at Loomis Bay where all properties sizes are noncompliant. There was discussion as to the distance of dwellings to the creek. Mr. Lawson said probably the closest is about 25' and most of them are about 60-70' away. Mr. Levesque asked if there are two residences on lot 3. Mr. Mangione said yes, one is a mobile home with a roof over it. There was further discussion of the easement and the need for access for emergency vehicles. Mr. Levesque asked if the Area Variance is approved will ownership of the road transfer to the town. Mr. Stapleton said that currently the town has no wish to take over the road. He said they have asked that the surveyor note on the Mylar and copies something giving the town the two utility easements running from the center line of the road out 20' in both directions so that the South and Center Sewer District and BPU can have lines if they are required in the future. Mr. Lawson said there are several private roads in the town and it is the owner's responsibility to keep those roads clear in winter for fire access. Mr. Mangione said they must be kept clear in order to obtain fire insurance. Mr. Levesque asked if anyone wished to speak regarding the application. Mrs. Emick asked if there is anything in the conditions placed on the corporation that should there be a default it would come back on the town. Mr. Stapleton said no. Mr. Stapleton asked Mr. Mangione if he understood all of the conditions and that the declaration of restrictive covenants is essentially taking the conditions they will put on their deed and it is going on a separate document; the corporation principles, shareholders and President sign off on it and it is one overreaching document that impacts all the properties. Mr. Mangione said yes.

Mr. Levesque motioned to accept the request for an Area Variance of Goose Creek Corporation for substandard lot sizes through the approval of a sub-division plat for property located at 2429 Route 394, Specifically Section 15-1-26.1 with the addition of the following conditions:

- (1) All minutes, correspondence and agreements of Town Board and Planning Board prior meetings be made part of the record for this application and be adhered to.**
- (2) Conditions of the Resolution of the Town Board at the 6/13/11 board meeting be adhered to and become part of the record.**
- (3) The applicants allow access to the Town of North Harmony Building Inspector and Assessor for performance of their professional functions.**
- (4) The access road to all dwellings be maintained year round (including snow plowing) for open access to any vehicles that may require access.**

Mrs. Emick seconded.

Discussion:

Mr. Stapleton asked if before a vote was taken, Dan Mangione who was appearing before the Town of Busti ZBA on the same application and had just arrived at the meeting would share what had occurred at that meeting. Mr. Mangione said the Town of Busti had approved the Area Variance for substandard lot size on the 3 lots that are jointly located in both towns.

Mr. Levesque reviewed in its entirety Town Law Section 267(b) Area Variances items 1.-5. (1) no; (2) no; (3) yes; (4) no; (5) yes.

The motion was carried unanimously.

Nancy Thomas
Town Clerk