

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
WEDNESDAY, 2-22-2012, 7:30 PM**

ZONING MEMBERS PRESENT: **JAMES LEVESQUE** **DICK BARTON**
 GREG MICHALAK **PAUL SILZLE**
 DAN THOMAS **HELEN EMICK (ALT.)**
 Brad Lawson, Zoning CEO
 Dave Stapleton, Attorney

Others Present: **Dan & Sandy Saunders** **Jim Andrews**
 Tom Phillips **Bruce Pfeil**

Mr. Levesque brought the hearing to order at 7:35 PM. Mr. Stapleton swore in all present who expressed intent to speak.

1. Sally T. Bootey requesting an Area Variance to build a new home on a new substandard lot size which does not meet Zoning Code requirements set forth in Section 405 at property located at 5358 Bootey Bay Road, specifically Section 332.11-1-17.1 (Old # 7-1-1.1).

Jim Andrews of Heil Andrews appeared to speak on behalf of the Bootey's. Mr. Andrews said that Roger Vaillancourt is designing the septic system which has not been approved yet by the county. He said they would like to build a year round home on the property where their summer cottage had been. Mr. Lawson said the lot is 24,600 sq. ft. He said that NYS, Chautauqua County and Town Law now require 40,000 sq. ft. He explained that when the main property at Bootey Bay had been sold to Mr. McGraw who had intentions to build a hotel on the property, the Bootey's had carved out the lot to build their home on. He said this was before the 40,000 sq. ft. law was in effect. He said at the time it was carved out, our zoning called for a 25,000 sq. ft. building lot size. He said they need county approval for the septic system. Mr. Stapleton said he had spoken to Mark Stow, County Health Department today and was told that an application had been submitted to the Health Dept. board on 9/22/11, but no engineered drawings of the septic system had been provided. He said at that time the Health Department had declined to issue the variance permit to the Bootey's. He said they had told the applicant who had been represented by Jerry Erickson at that time that engineering plans needed to be submitted. He said it is his understanding that Mr. Erickson has been talking to Austin Wellman a sanitarian at the county level. He said Mr. Austin had apparently received from Roger Vaillancourt, a contractor an application to install the septic system. Mr. Stow checked with Mr. Wellman and found out the application is not engineered drawings as the county required. He said Mr. Wellman had a meeting set up with Mr. Erickson this morning and Mr. Erickson had cancelled. He said currently there are no engineered plans. Mr. Levesque asked how the original split of the property plays into this in legal terms based on the square footage prior to the change. Mr. Stapleton said the ZBA has always had the authority to grant an area variance after Section 267b. review (i.e. setbacks, heights, etc.) for the lot. He said the Health Departments criteria for the issuance of a permit for the septic system is strictly an environmental review. He said this is required before a building permit is issued due to the substandard size of the lot. Mrs. Emick said her calculations using the GIS show the lot size to be 24,600 and the R-5 calls for 25,000 sq. ft. which is even more substandard. Mr. Lawson said the lot is 100' wide and R-5 calls for 125' wide. Mrs. Emick asked what the footprint of the new home would be. Mr. Lawson said about 1,500 sq. ft. with the porches which is under the 25% requirement. Mr. Andrews said the height is 24'. It was determined that the nature of the property and surrounding area is vacant land all the way to the Sportsman's Club. Mr. Stapleton referred to the LWRP which is a guide to Towns around the lake regarding the criteria you should be looking at when you allow any type of development along the lakeshore in order to protect the environmental aspects of the lake. He said there is a checklist for this and it might be appropriate for applicants to fill this out. Mr. Levesque said it would be

ZBA

2/22/12 (Pg. 2)

beneficial for the board to have this information in their review process. He said his concern is the absence of the County Health Department approval of the septic and asked if the applicant has any idea when those might be completed. Mr. Andrews said they were supposed to have been completed prior to this hearing. Mrs. Emick asked about the topography of the land. Mr. Andrews said there is a very small amount of slope to the land. Mr. Lawson reviewed the survey map with topography information with the board.

Mr. Levesque motioned to table the application of Sally T. Bootey requesting an Area Variance to build a new home on a new substandard lot size which does not meet Zoning Code requirements set forth in Section 405 at property located at 5358 Bootey Bay Road, specifically Section 332.11-1-17.1 (Old # 7-1-1.1) until engineered drawings for the septic system have been provided to the County Health Department and approved. Mrs. Emick seconded and the motion was carried unanimously.

Mr. Lawson said he would provide a copy of the LWRP checklist to Mr. Andrews to complete.

2. Frank and Donna Schoenacker requesting an Area Variance to remove two manufactured homes and build a new home which does not meet Zoning Code requirements set forth in Section 401 for lot size and rear setback, at property located at 5146 Lakeview Ave., specifically Section 349.20-1-48 (Old #23-4-11).

Mr. Andrews of Heil Andrews said he is also representing the Schoenacker's who would like to remove 2 trailers on Lakeside Road in Quigley Park and replace them with a new home. He said the Schoenacker's do have an approved septic permit from the county. Mr. Stapleton asked Mr. Lawson about the affidavit from the Health Dept. which required the applicant accept all responsibility and risk in the event there is some contamination because the septic system and the well could not be distanced properly on the lot. He asked if this was based on the installation of a new septic and well. Mr. Andrews said yes. Mr. Levesque asked if the new well is in close proximity to the old septic. Mr. Andrews said the well has been moved further from where it is initially shown on the drawing to increase the distance. Mr. Andrews said the house will be similar to the McCauley home which he also built. Mrs. Emick said she was concerned about the size of the home at 2,700 sq. ft. and asked if anything had been done to try and minimize the footprint. Mr. Lawson said the house will be 30'x75' or 2,250 sq. ft. Mr. Andrews said to get it down to that size had taken a lot. He said they had wanted a one story home but had to go with the two stories to get an appropriate size. He said the attached garage is 30'x30' sq. ft. Mr. Thomas asked what would be done with the two mobile homes. Mr. Andrews said he did not know. Mrs. Emick asked how far the well is from the road. Mr. Andrews said more than 20'. Mr. Lawson said the home would meet the 25% coverage requirement. Mr. Lawson said it appears that one corner of the home will be at least 20' from the easterly rear corner of the lot and that is not shown on the site plan. He reviewed the measurement with Mr. Levesque and the board. Mr. Stapleton said that typically what the ZBA doing is a type of sketch plan conference that is handled by the Planning Board and minimum variances are set by them prior to it being sent to the ZBA. Mr. Levesque asked if anyone wished to speak regarding the application. He asked Mrs. Thomas if any other neighbors had corresponded regarding the application. Mrs. Thomas said the Saunders had been at the hearing earlier and requested a review of the Pfeil and Scoenacker's application. She said after their review they had left before the hearing began.

ZBA

2/22/12 (Pg. 3)

Mr. Levesque motioned to grant Area Variances to Frank and Donna Schoenacker for lot size; rear setback of 20' due north; side setback 15' to the northeast; to build a new home which does not meet Zoning Code requirements set forth in Section 401 at property located at 5146 Lakeview Ave., specifically Section 349.20-1-48 (Old #23-4-11). Mr. Thomas seconded. Mr. Levesque, Mr. Barton, Mr. Michalak, Mr. Silzle, Mr. Thomas; YES: Mrs. Emick; NO. The motion was carried.

At the request of Mr. Stapleton Town Law Section 267b. Area Variances, was reviewed and questions 1. – 5. were answered as follows: 1) no 2) no (majority decision after lengthy discussion) 3) yes 4) no 5) yes.

3. Bruce M. and Rhonda L. Pfeil requesting an Area Variance to construct a porch which does not meet the side and lakeside setbacks set forth in Section 401 of the Zoning Code at property located at 2906 Chautauqua Ave., specifically Section 350.17-1-31 (Old #25-1-6)

Mr. Pfeil said he would like to modify the porch on the lakeside of the cottage so that it is safer to use for elderly relatives. He said currently there are 2 steps that go up to the 3' wide porch and you have to take a step down in order for the 3' wide door to clear. He said currently the porch is 30-35' from the shoreline and the cottage is 16' wide on that side. Mr. Pfeil said he would like to construct a 6' x 16' wide porch with a railing to correct the problem and for cosmetic reasons. He included letters from immediate neighbors stating they have no issue with the plan. Mr. Lawson stated for the record that NYS Code requires that when door opens you must have a minimum porch area on which to stand for safety reasons. He said the current porch does not meet code. Mr. Stapleton said typically the board had been very stringent on the 50' lakeside setbacks. Mr. Thomas asked if this was the way the porch had been when he bought it. Mr. Pfeil said yes. Mr. Levesque asked if anyone wished to speak regarding the application. Mr. Lawson said the setbacks would be 15' to the lakeside; 9.17' on the south side setback; 3.99' on the north side setback. Town Law Section 267b. Area Variances, questions 1. – 5. were reviewed and answered as follows: 1) no 2) no 3) yes 4) no 5) no.

Mr. Levesque motioned to grant Area Variances of 15' to the lakeside; 9.17' on the south side setback; 3.99' on the north side setback to Bruce M. and Rhonda L. Pfeil to construct a porch at property located at 2906 Chautauqua Ave., specifically Section 350.17-1-31 (Old #25-1-6) with the condition that no roof be installed on said porch. Mr. Barton seconded and the motion was carried unanimously.

The hearing was adjourned at 8:40 PM.

*Nancy Thomas
Town Clerk*