

**TOWN OF NORTH HARMONY  
ZONING BOARD OF APPEALS  
WEDNESDAY, 3-28-2012, 7:30 PM**

**ZONING MEMBERS PRESENT:**            **GREG MICHALAK**            **DICK BARTON**  
   **LOUISE ORTMAN**            **PAUL SILZLE**  
   **DAN THOMAS**                **HELEN EMICK**  
   **ROGER VAILLANCOURT**

**Brad Lawson, Zoning CEO**  
**Dave Stapleton, Attorney**

**Others Present:**    **Bev Larson-Butts**            **Caleb Butts**                **Stephanie Butts**  
                                 **H. Robert Butts**            **Tim Quackenbush**        **Robert Kanouff**  
                                 **Jeff Flanders**                **Micah Meredith**         **Denny Vant**  
                                 **John McGraw**

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

**1.     H. Robert & Beverly Butts (re-hear 1/25/12) requesting a Special Permit to replace a single wide mobile home with another single wide mobile home at property located at 2496 Carpenter-Pringle Rd., Ashville, NY, Specifically Section 366.00-1-31 (Old #14-1-17.1).**

Mr. Michalak asked Mr. & Mrs. Butts to inform the board of their progress. Mrs. Butts said that the board should have received two documents; one showing that the two parcels have now been conjoined in order to meet the two acre requirement and the other should be from Mr. Stow, Chautauqua County Health Department in regards to the septic system. Mr. Lawson stated that he sent Mr. and Mrs. Butts a letter describing the criteria that would have to be met should the board grant a special permit for a newer manufactured home to be placed on the parcel. Mr. Caleb Butts stated that the property has been cleaned up as requested by Mr. Lawson and several board members stated that they have driven past the area and said that it looked good around there. Mrs. Butts stated in regards to the disposal of the existing mobile home she has spoken with Goodman's in Ashville and Chautauqua County Landfill. She said Goodman's will take the metal and the landfill will take the remainder of the demolition material and the family plans on taking care of the demolition by themselves to reduce the cost. Mr. Barton asked if the town had a time frame for demolition. Mr. Lawson stated that he allows 30 days and as part of the criteria they must keep the debris contained. Mr. Barton asked if the home would be tied into the existing sewer. Mrs. Butts said yes and Mr. Lawson said that town makes sure that the hookups meet code by the installer and the County Health Department would have conditions that must be followed. Mrs. Butts said that they have contacted a certified installer and he would be sending a letter to Mr. Lawson. Mr. Barton asked if the setbacks have been met. Mr. Lawson said that there were concerns about the setbacks to the road and the property line to the south, it was determined now that the parcels have been conjoined the property line to the south is between the grey house and the barn and this should be depicted as far as lineage in the deed itself. Mr. Caleb Butts stated that they did find the stakes from the last survey and Mr. Lawson asked Mr. Butts to get a copy of the latest survey just to have it on file. Mr. Barton asked if the home would need any type of stairs or steps to the entrance and if so what their plans are. Mrs. Butts said that currently there is a deck on the back side of the existing trailer which they will have to pull off to get the current trailer moved. She stated that the new mobile home is wider and they are not sure if they will be able to utilize the deck with the new mobile home. Mr. Barton asked Mr. Lawson if there were some sort of code for this type of issue. Mr. Lawson said that if the deck is pulled away from the existing building it will then have to meet the specifications of a new build and stated that if the entry was going to be removed from the front of the current building the same specifications would have to be met. He reminded Mr.

Caleb Butts that if he does plan on constructing a new entrance on the road side he should take into consideration the front setback requirements. Mr. Michalak stated that in Section 649 of the Zoning Ordinance it states that the skirting must be fire resistant. Mr. Michalak asked if there was anyone from the floor who wished to speak in regards to the application. Mr. Caleb Butts stated that his neighbors had no problem with them removing the current mobile and replacing it with a newer one. Mr. Quackenbush, a neighbor spoke and said that he is no issues with the request of Mr. and Mrs. Butts. Mr. Lawson said that he would like to see the existing trailer demolished and removed before the new one is placed. Mrs. Butts said she would like to know that they have permission to place the new one before the old one is removed.

**Mr. Michalak motioned to approve the Special Permit application of H. Robert and Beverly Butts to replace a single wide mobile home with another single wide mobile home at property located at 2496 Carpenter-Pringle Road, Ashville, NY, Specifically Section 366.00-1-31 (Old #14-1-17.1) providing the following criteria is strictly adhered to:**

- **The existing mobile home be removed and cleaned up prior to the new mobile home being brought in.**
- **All standards in Section 629 of the Zoning Ordinance are met including setbacks.**
- **Applicant comply with Chautauqua County Health and Environmental Services Departments concerning the septic system as well as any and all conditions outlined in the letter from Mark Stow with Chautauqua County Health Department dated 1/27/2012.**
- **If the applicant plans on constructing a new deck, proper permits must be obtained.**

**Mrs. Ortman seconded and the motion was carried unanimously.**

**2. Lakeside Campground (Gary & Connie Carlson) requesting a Special Permit to use an existing bill board located at the corner of 3280 Hadley Bay Road and Route 394, as advertisement for the Hadley House Restaurant, Specifically Section 322.20-1-39.**

Mr. Michalak asked if anyone from the floor wished to speak regarding the application. Mr. Kanouff said he is the owner of the property where the billboard is located. He said he has not yet met Mr. and Mrs. Carlson. He said they have only spoken via phone requesting that they use the sign and Mr. Kanouff said that he had no problem with them using the sign. Mr. Lawson stated for the record Mr. and Mrs. Carson should have someone in attendance to represent them.

**Mrs. Ortman made a motion to table the request by Lakeside Campground (Gary & Connie Carlson) requesting a Special Permit to use and existing bill board located at the corner of 3280 Hadley Bay Road and Route 394, as advertisement for the Hadley House Restaurant, Specifically Section 332.20-1-39 until next month and advise the applicant that they should have representation during that time. Mr. Emick seconded and the motion was carried unanimously.**

**3. Edwin and Nina Derks requesting an Area Variance to build a covered deck closer to the lakeside setback than allowed in Zoning Code Section 401 at property located at 4896 Ashville Bay Road, Specifically Section 367.14-1-18.**

Mr. Michalak asked if anyone from the floor wished to speak regarding Mr. & Mrs. Derks application. Mr. Meredith introduced himself as the contractor for Mr. and Mrs. Derks and approached the board with a map of the parcel and a photo of the current building that the applicants are wishing to add a covered deck to. Mr. Ortman asked the distance from the lake and it was pointed out that the

proposed deck is 40 feet from the lot line and 30 feet from the high water mark. Mr. Stapleton asked what the current usage of the property was. Mr. Flanders said up on the hill was a single family residents and below is a 16' by 20' building with a small half bath that is currently being used as a staging area for lake activity as depicted in the photographs supplied. Mr. Flanders stated that the applicants are not looking to change anything in the interior of the inhabitable building they only wish to add a 7' by 14.5' covered deck to get out of the rain. Mr. Lawson stated for the record that current structure existed prior to Mr. and Mrs. Derks purchasing the property and as he recalls it was they who added a bathroom and kitchenette which included a refrigerator and sink. Mr. Lawson stated that the board had specifically explained to the applicants at that time that this structure was not to be used as a habitable space and both he and the board were very concerned that the structure would become just that. Mr. Meredith said that he has worked with the Derks Family for over five years and to his knowledge he has never known anyone to spend the night in the building. Mr. Lawson explained that area neighbors had several issues with the building being too close to property lines. Mr. Barton asked if the addition would block anyone's view of the lake. Mr. Meredith said no and pointed out in one of the photographs provided where a tree recently stood and said it was much higher than the roofline of the covered deck would be. Mr. Ortman asked if the deck would be attached to the current structure and what type of foundation would be used. Mr. Meredith said the deck would be attached and the foundation would be tube formed concrete to carry the load of the porch. Mr. Emick asked if Mr. Lawson has received any complaints from neighbors in regard to the application. Mr. Lawson said that he had not received so much as a phone call. Mr. Thomas questioned why they would be upset before and not now. Mr. Meredith said to his knowledge the neighbor that once opposed is now elderly and has health issues and his home is currently for sale. Mr. Stapleton asked if during the last applications the board requested any testing of the sewer. Through discussion it was determined that all sewage on this parcel is tied in with South & Center Sewer. Mr. Michalak asked Mr. Lawson if he felt the map provided by the applicant was accurate in the distances from the proposed deck to the property lines. After discussion it was decided that the proposed deck addition will be no closer than 4.4 inches to 5 inches from the property line. Mrs. Ortman reviewed Town Law Section 267b. questions 1. through 5. and the following answers were provided;

1. Whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by granting the area variance;  
The board collectively said No.
2. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance;  
The board collectively said No.
3. Whether the request for the area variance is substantial;  
The board collectively said Yes.
4. Whether the proposed variance will have any adverse effect or impact on the physical or environmental conditions in the neighborhood or district.  
The board collectively said No.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the consideration to the board of appeals, but shall not necessarily preclude the granting of the area variance.  
The board collectively said Yes.

Mr. Stapleton reminded the board that they have not considered the Waterfront Assessment Form that was passed by the Town Board as part of the LWRP, though he did not state that is was necessary with this particular application. Mr. Lawson stated that he did not have the applicant fill out that particular form because of the nature of the structure.

**Mr. Michalak made a motion to grant Edwin and Nina Derks an Area Variance to build a covered deck closer to the lakeside setback than allowed in Zoning Code Section 401 at property located at 4896 Ashville Bay Road, Specifically Section 367.14-1-18 with the following conditions:**

- **The open deck (not to be enclosed) be no larger than 7 x 14 feet and will be covered.**
- **The side setback will be no closer than 4.4 inches to the property line.**
- **The building is to be used strictly as an auxiliary building and not to be inhabited as living space.**

**Mr. Thomas seconded and the motion was carried unanimously.**

Mr. Stapleton stated that he would like to have a discussion about the effects of this motion when the hearing is complete. For clarification, Mr. Stapleton stated that the board has already made a motion and passed it and typically the board can bring back anything the board does if they have a unanimous request to do so. He said the board has had some discussion on the request regarding the survey and the setbacks from the lake. The concern was whether or not the setback should be from the deeded pins rather than the high water mark and in his opinion the setback should be from the pins rather than the high water mark. Mr. Lawson said in the zoning code it states high water mark which in this case is 29.23 feet. Mr. Stapleton said that because of the title issues that the applicant does not have title beyond their pins; the board should reopen the application to thoroughly cover the concerns.

**Mrs. Emick motioned to re-open the hearing on the request for an Area Variance of Edwin and Nina Derks to build a covered deck closer to the lakeside setback than allowed in Zoning Code Section 401 at property located at 4896 Ashville Bay Road, Specifically Section 367.14-1-18.**

Mr. Stapleton asked the board to consider also approving an Area Variance for the setback to the lake based on the survey as well as the distance from the new construction to the property line. After reviewing the maps provided by the applicant, Mr. Lawson said the distance from the closest corner of the proposed new construction to the pin appeared to be approximately 33 feet to the pin and then 7 feet of porch.

**Mr. Michalak made a motion to grant Edwin and Nina Derks an Area Variance to build a covered deck closer to the lakeside setback than allowed in Zoning Code Section 401 at property located at 4896 Ashville Bay Road, Specifically Section 367.14-1-18 with the following conditions:**

- **The open deck (not to be enclosed) be no larger than 7 x 14 feet and will be covered.**
- **The side setback will be no closer than 4.4 inches to the property line.**
- **The building is to be used strictly as an auxiliary building and not to be inhabited as living space.**
- **The deck edge is to be no closer than 26 feet to the survey line on the lakeside.**

**Mrs. Ortman seconded the motion and it was carried unanimously.**

The meeting adjourned at 8:35 PM.

Respectfully Submitted,  
Penny Best  
Deputy Town Clerk