

2. (Re-Hear ref. 2/22/12 ZBA minutes) Sally T. Bootey requesting an Area Variance to build a new home on a new sub-standard 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).

ZBA

5/23/12 (Pg. 2)

Mr. Andrews of Hiel and Andrews Construction appeared to represent Mrs. Bootey and introduced Mr. and Mrs. Currie her relatives. Mr. Andrews said the re-hear (*ref. ZBA 2/22/12 minutes*) is because at the first hearing they did not have the appropriate septic permit. Mr. Lawson said he does not have the actual approval of the septic from Chautauqua Co., but he has spoken with Mr. Stow of the Health Dept. and he has preliminarily approved the plans with a few minor changes and has given a verbal OK to begin the project. Mr. Lawson refreshed the board on the application. He said at the time the Bootey's were looking at sectioning off this piece of property before selling the rest, the zoning ordinance and county required a 20,000 sq. ft. lot for approval of septic and water. He said they had attempted to comply with the regulations at that time. Mr. Stapleton said when he had spoken to the Bootey's attorney Neil Robinson at the time he had assumed the property was zoned R-1 which requires 100' lot width. He said in actuality the property is zoned R-5 and requires 125' lot width. He said there are many situations around the lake where the size of the lot was grandfathered in before the Health Dept. requirement of 40,000 sq. ft. for septic and water. He said the Health Dept. can issue variances based on septic plans submitted that meet various requirements and that is what happened in this case. Mr. Lawson said the board had also required that the Bootey family submit the LWRP Waterfront Assessment Form (WAF). Mr. Stapleton reviewed the LWRP WAF submitted in its entirety for those present. Mr. Currie said there would be a gravel driveway and no impermeable surfaces installed other than the roof of the home. Mr. Stapleton asked Mr. Thomas if there were any archeological sites (i.e. Indian artifacts) that needed to be addressed. Mr. Thomas said not to his knowledge. Mr. Currie indicated that there is already electric available at the lot. Mr. Lawson stated that there is some drainage plans included with the site plan but those will have to be elaborated on. There was discussion of flood plain, erosion and wetland issues and Mr. Lawson indicated there appeared to be no issue with them in relation to where and how the home will be built. Mr. Lawson said the septic system proposed will be a raised aeration system. Mr. Vaillancourt said there is no discharge or open pipes into the lake with this system. Mrs. Emick asked if the house would be built on a level with the ground. Mr. Lawson said it will be raised up about 2' to meet the hazard flood plain level. Mr. Levesque asked if anyone wished to speak regarding the application. Mr. Lawson said they are looking for Area Variances for the lot size and lot width and everything else meets set back requirements. Mr. Levesque read into the record Town Law Section 267 b. 3. Area Variances, questions 1. – 5. The consensus of the ZBA was: 1) no 2) no 3) yes 4) no 5) yes. Mr. Lawson asked Mr. Stapleton to address each individual application being a standalone case. Mr. Stapleton said traditionally the ZBA treats each individual application as a unique set of factual circumstances. He said no cases are perfectly identical and because of that there is no precedent value to whatever decision the ZBA makes on one lot vs. another lot. He said this decision has no bearing on whatever decisions may be made about adjoining lots or development plans in the future. He said for the record there is no precedent value in what the board does in this case for the next application that comes before the Town or ZBA Boards.

Mr. Silzle motioned to grant Area Variances for lot size and width which do not meet Zoning Code requirements set forth in Section 405 and as outlined in the application of Sally Bootey to construct a new home at property located at 5358 Bootey Bay Road, specifically Section 332.11-1-17.1 (Old # 7-1-1.1). Mr. Levesque seconded. Mr. Levesque, Mr. Thomas, Mrs. Emick, Mrs. Ortman, Mr. Silzle; Yes. Mr. Vaillancourt, abstain. The motion was carried.

3. William D. Fritz requesting an Area Variance to construct a storage building taller than allowed in Section 401 of the Zoning Code at property located at 2640 Rt. 394, Specifically Section 367.14-1-50.2 (Old #26-1-13).

ZBA

5/23/12 (Pg. 3)

Mr. Fritz said he would like to build a storage building for tractors and equipment to take care of his 25 acre property, Trolley Stop Lane. He said he asked for the height variance more for cosmetic purposes. He said he would like it to be similar to the barn he had built last year with dormers' and a steep pitch in keeping with the other structures on the property. He said the roof would be approximately 24' high with a 7-12 pitch and include 3 dormers. He said last year when he had built the other barn he had to section off that land and add it to his home property. He said the remaining land is where the other storage barn will be built and is not large enough to include a house as well. Mrs. Emick asked there was any habitable space intended in the building. Mr. Fritz said no. Mr. Fritz gave a brief description of his property as it related to the old Trolley Stop which was once located there. Mr. Lawson explained that he had Mr. Fritz complete both the Use and Area Variance applications because at the time of the application he had thought the Town Board had passed a law recommended by the Planning Board about the number of accessory structures on a property that might have impacted this application. He said the board has not passed the law and asked that the Use Variance application be withdrawn. Mr. Fritz said Pete Radka had done some preliminary rough drawings of the proposed building and presented them to the board for review. Mr. Silzle asked if the building would have electric and water. Mr. Fritz said it would have electric and perhaps water later. Mr. Silzle asked if there would be septic there. Mr. Fritz said not at the present time. Mr. Lawson said Mr. Fritz has access to the public sewer lines and could possibly hook into them in the future. Mr. Fritz said he would like to include a cupola on the top of the building. There was general discussion that this would make the building about 30' high. He said he did not have to include it if it was not allowed. Mr. Lawson said as outlined in Section 504 of the zoning code a cupola is not considered an addition to the height of a home unless it is usable. Mr. Levesque asked if anyone wished to speak regarding the application. He read into the record Town Law Section 267 b. 3. Area Variances, questions 1. – 5. The consensus of the ZBA was: 1) no 2) yes 3) yes 4) no 5) yes.

Mr. Levesque motioned to grant William D. Fritz an Area Variance to construct a storage building taller than allowed in Section 401 of the Zoning Code at property located at 2640 Rt. 394, Specifically Section 367.14-1-50.2 (Old #26-1-13) with the following condition:

- **Building will be no higher than 24' and any significant change must be discussed with the Zoning C.E.O.**

Mrs. Emick seconded and the motion was carried unanimously.

4. Joseph A. Fairbank requesting an Area Variance to replace an existing barn (25' from road) with a new barn (35' from road) closer to road side setback than allowed in Zoning Code Section 407 at property located at 6260 Randolph Road, Specifically Section 382.00-1-50.

Mr. Fairbank said the property in question is currently part of his deceased father's trust and will come to him in 30 days. He said for roughly 90-100 years there has been a barn in the same spot. He said 30

years his father tore down the old barn and built what is there now. He said they would like to replace the barn and move it back from the road and additional 10'. He said the reason they did not want to move it further back is because the tennis court is located there. Mr. Thomas asked how many acres are involved. Mr. Fairbank said 131.9 acres. Mr. Lawson said there are no height restrictions because it is an agricultural building. Mr. Levesque said it appears they are trying to improve the setback situation rather than to encroach further into it. Mr. Levesque asked if anyone wished to speak regarding the application. He read into the record Town Law Section 267 b. 3. Area Variances, questions 1. – 5. The consensus of the ZBA was: 1) no 2) no 3) yes 4) no 5) yes.

ZBA

5/23/12 (Pg. 4)

Mr. Levesque motioned to grant Joseph A. Fairbank an Area Variance to replace an existing barn (25' from road) with a new barn (35' from road) closer to road side setback than allowed in Zoning Code Section 407 at property located at 6260 Randolph Road, Specifically Section 382.00-1-50. Mr. Silzle seconded and the motion was carried unanimously.

5. Dustin Gifford requesting a Special Permit to operate an Ice Cream Stand at property located at 3934 Chautauqua Stedman Road, Specifically Section 314.00-2-12.

Mr. Levesque asked Mr. Gifford what he would like to do. Mr. Gifford said he would like to try operating a small ice cream stand on their property. He said the structure is not permanent and is a shed 10'x15' with a covered porch that is movable. He said he had gone ahead with the project before he found out there were many other things that needed to be addressed by the county and the town. He gave an outline of the type of business he and his wife wish to run and said they are trying to comply now with the codes. It was discussed that the location is directly across from the Stedman Corner General Store. Mr. Gifford said Mr. Lawson brought it to his attention that it would have to be handicap accessible and said he intends to comply. Mr. Thomas said that the General Store can be very busy on weekend days and people park on the shoulders. Mr. Gifford said Mr. Wells the owner of the store had asked if he could use his extra parking. He said the hours of operation of the two businesses are not the same; the General Store is usually open early and he may or may not stay open until after lunch and his ice cream stand would have hours of 3 – 9:00 PM or dark. Mr. Thomas asked if public restrooms would be available. Mr. Gifford said he hoped to provide a portable facility. Mr. Gifford explained their business plan at great length. Mr. Lawson said he spoke to the Health Dept. at length about what the requirements would be as far as drainage and water to the facility for the ice cream service. He said Mr. Stow has verbally approved the applicant's plan but he has not yet received the written approval. He said Mr. Gifford does have to supply a restroom facility for the use of employees but does not have to supply one for customers. Mr. Lawson said that the facility has to be built so that a handicap individual can come up to the window and be served. He said the portable out house had to be handicap accessible also. Mr. Lawson said that what the board has before them is a Special Use Permit application for the commercial district requesting a drive in ice cream shop as outlined in Section 609. Mr. Gifford said there is one light located on the porch of the shop which will light up the area sufficiently. Mr. Levesque said the board appreciated the opportunity to help Mr. Gifford, but the board would only address what was in the application. He said Mr. Gifford needed to bring to the board the entire plans for the project (i.e. hours, lighting, sign position, etc.). Mr. Levesque said more written detail needs to be presented. Mr. Levesque also expressed concern about the accessibility to the shop as it is located very close to the four way

intersection at Stedman. Mr. Lawson asked Mr. Gifford if he had discussed ingress and egress to the business with the county. Mr. Gifford said he had talked to 2 guys from the county and an engineer regarding the positioning of his 4' tall proposed sign. He spoke at length about their discussion of existing state and county signage at the four corners and his signage as far as safety and visibility. He said they had basically told him to put his sign up and then they would discuss whether there was a visibility issue and/or traffic safety hazard that would require the state/county or him to move signage. He again said he doesn't want his hours to exceed dusk. Mr. Lawson said he does not have to provide lighting if he operates in the daylight hours. Mr. Lawson said Mr. Gifford has talked to the county about his sign but the town's regulation says the sign has to be 25' from the edge of the road and it is up to this board to decide if a variance is needed or not. It was established that no sign has been applied for even if it is drawn in on the site plan. Mr. Levesque reviewed the requirements of Zoning Code Section 609, Drive-in Business. There was discussion that the house on the property is a rental and buffer zones from the business need to be provided. Mr. Gifford said he had discussed it with the renter's as a part of the condition of their rental.

ZBA

5/23/12 (Pg. 5)

Mr. Levesque asked if anyone wished to speak regarding the application. Mr. Vaillancourt said he had worked on the gravel drive and parking lot area. He said he had been able to get his dump truck in and out with no difficulty. Mrs. Emick said the visibility is good there. Mrs. Thomas indicated that the speed limit had been reduced to 45 mph on all roads leading to the four way stop. Mr. Gifford said he had installed 2" lines for water access and drainage of water to the septic through the foundation on the backside of the house. Mr. Lawson said the Health Dept. had approved that.

Mr. Levesque motioned to grant a Special Use Permit to Dustin Gifford to operate an Ice Cream Stand at property located at 3934 Chautauqua Stedman Road, Specifically Section 314.00-2-12 with the following conditions:

- **Hours of operation will be 3-9:00 PM Monday through Friday and 12:00-9:00 PM Saturday and Sunday**
- **No additional lighting be added to the property**
- **The sign placement must be permitted through the C.E.O.**
- **The application will be reviewed in one year by the ZBA before business opening**

Mrs. Emick seconded. Mr. Levesque, Mr. Thomas, Mrs. Emick, Mrs. Ortman, Mr. Silzle; Yes. Mr. Vaillancourt, abstain. The motion was carried.

The hearing was adjourned at 9:20 PM.

Nancy Thomas
Town Clerk