

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
WEDNESDAY, 8/22/12 7:30 PM**

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

Others Present: **Russell A. Putney** **Dorothy Reinstetle** **Leslie West**
 Jeff Holt **Glenn Johnson** **Sue Johnson**
 Michael Kosinski **Busty Iuculano** **J. Andrews**

Mr. Levesque opened the hearing at 7:37 PM. Mr. Stapleton swore in all who expressed intent to speak at the hearing.

1. Michael Kosinski requesting a Special Permit to install an above ground pool and deck at property located at 2438 North Maple Ave., specifically Section 367.00-2-27 (Old #15-1-16.3).

Mr. Levesque asked what the applicant wished to do. Mr. Kosinski said he would like to construct an above ground 24' round 4' deep swimming pool with a deck on his property. Mr. Lawson indicated that there would be no fence required but all other NYS Code Laws would apply. Mr. Kosinski said he was moving the pool from his old address to the new location on N. Maple and provided a GIS map showing the location of the pool in relation to neighboring properties. His maps included his septic and drain field as well as distances from setbacks. Mr. Levesque asked if the pump would be exposed. Mr. Kosinski said yes. Mrs. Emick asked if the deck attached would have a railing. Mr. Kosinski said yes. Mrs. Ortman asked about the elevation as it would relate to drainage of the pool. Mr. Kosinski said the land is basically flat within about 20' of the tree line, but does slope slightly after that (following the drainage line) as indicated on his map. Mr. Levesque asked if anyone wished to speak regarding the application. Mr. Stapleton asked if the location was next to Mr. Barton's home on the south side and if Mr. Kosinski had spoken to him about the pool. Mr. Kosinski said yes and he had no objections.

Mr. Levesque motioned to grant a Special Permit to Michael Kosinski to install an above ground pool and deck as stated in his application at property located at 2438 North Maple Ave., specifically Section 367.00-2-27 (Old #15-1-16.3). Mrs. Ortman seconded and the motion was carried unanimously.

2. Ken and Mary Schoetz requesting a Special Permit to construct an 8' tall privacy fence at property located at 3490 Mason St., specifically Section 332.20-1-28 (Old #21-1-22) which does not comply with Zoning Code Section 618.

Jeff Holt, Holt General Contracting said he would speak on behalf of the applicant's Ken and Mary Schoetz. He said their neighbor Bill Tucker had received a permit for a privacy fence and the Schoetz's would like to extend the fence onto their property because of proximity views to Lakeside Camp Ground created by tree/brush cutting by National Grid. Mr. Holt provided photos of the Tucker's fence. Mr.

Levesque asked if there was a gate in the fence. Mr. Holt said yes there is a gate already installed on the Tucker portion. Mrs. Emick asked how long the fence would be. Mr. Holt said approximately 50' long. Mr. Levesque asked Mr. Holt if he was aware of the exact location of the property lines and if he had a current ZBA

8/22/12 (Pg. 2)

survey of the lot. Mr. Holt said he knows where the property line is but did not have a survey available for review. Mr. Holt said the fence would be the exact same height as the Tucker's which is 8'. Mr. Stapleton asked if there was a written document from Mr. Tucker to Mr. Schoetz giving Mr. Schoetz permission to hook onto his fence. Mr. Holt said it was an agreement between neighbors, but he is sure that something in writing could be provided. Mr. Levesque asked if anyone wished to speak regarding the application. The application is for the height of the fence and setback distance of 1' from the property line (2' is required).

Mr. Levesque motioned to grant a Special Permit and Height Variance to Ken and Mary Schoetz to construct an 8' tall privacy fence 1' from the rear property line at property located at 3490 Mason St., specifically Section 332.20-1-28 (Old #21-1-22) with the following conditions:

- **A survey no older than 2 years be provided to the Zoning CEO showing property line pins**
- **Written agreement between Mr. Tucker and Mr. Schoetz with regard to the shared nature of the fence**
- **Fence to be no closer than 1' from the property line and no higher than 8'**

Mr. Silzle seconded and the motion was carried unanimously.

3. Russell A. Putney requesting Area Variances to construct a new home on a sub-standard size lot and closer to setbacks than allowed in Zoning Code Section 401 at property located at 3506 Mason St., specifically Section 332.20-1-21 (Old #21-1-15).

Mr. Levesque asked what the applicant wished to do. Mr. Putney said he had provided the plot plan for his property and said he would like to build a 1 ½ story (no basement), 32' wide x 48' long home on the lakeside lot. He said the setback from the closest edge of the deck to the lake is 29' and he has a county approved septic plan. Mr. Silzle said it is actually 25' based on the closest corner of deck to the lake. All agreed that was correct. Other setbacks on the proposed home are 14.5' on the roadside and 4.3' and 7.4' on the side setbacks. Mrs. Ortman asked what the distances to the neighbor's homes are. Mr. Putney said the house on the south side is 7.4' from the property line and the house on the north side is 22.8' from the line (a ROW is included in this measurement). There was discussion that Mr. Putney's 3 lots combined are well over the 40,000 sq. ft. lot size requirement. Mrs. Emick asked if the parcels are included on one deed. Mr. Putney said they will all be joined. Mrs. Emick said it would have to be all on one deed. Mr. Lawson agreed that should be done before any building starts according to Town Law. Mr. Stapleton said at the property owner's request the Assessor will place multiple parcels on one tax parcel number even though they are on separate deeds. He said you can take 3 separate parcels and include them all on one deed with three different descriptions if you wish to do so. He said the Assessor does not require them to be on one deed in order to give you one parcel number as a courtesy. Mr. Lawson said that Town Law requires under the 40,000 sq. ft. rule that the property be contiguous and he wasn't sure if that required it be all on the same deed. He said if the board wishes to require it be on one deed or one tax parcel number so there is no confusion that could be a condition. Mr. Levesque asked if anyone wished to speak regarding the application. Mr. Lawson said one of the things that zoning requires that the lakefront setback be taken from the high water mark of 1,310.5' and that needs to be determined as it is not on the current survey. He said that is where the deck distance to

lake would be measured from. Mr. Stapleton asked if there is any restriction to prevent the building from being placed further back on the large parcel where it would meet appropriate setbacks without a variance. *There was general discussion of the parcels and their size in relation to the building project.* Mr. Putney said he has owned the property he desires to build on for 55 years and that is where he would like the home. Mrs. Emick asked if the construction would impede any neighbor's access to their properties. Mr. Putney said no. Mr. Levesque asked if the Planning Board was reviewing the area as part of its Comprehensive Plan for the Stow Area Interchange. Mr. Lawson said they are in the sense that a portion of Hadley Bay is

ZBA

8/22/12 (Pg. 3)

included, but not Mr. Putney's area at this time. Mr. Levesque noted that Mr. Putney is asking for very large variances and stated that the ZBA is not in the habit of creating more issues that go against zoning. Mrs. Emick said it would be good if a compromise could be made. Mr. Putney's daughter, Leslie West asked if there was something they could provide that would help clarify their request. Mr. Levesque said he did not know if that would help at this point. Ms. West said they have the builder with them and asked if he could provide anything to help clarify the situation. Mr. Levesque advised there are a lot of missing setbacks; dimensions and sizes of decks, porches, etc. that need to be provided. Mrs. Emick asked about the existing deck shown on the survey and it was clarified that it was located on the neighbor's property.

Mr. Levesque motioned that the application of Russell Putney requesting Area Variances to construct a new home on a sub-standard size lot and closer to setbacks than allowed in Zoning Code Section 401 be forwarded to the Planning Board for their review and recommendation. Mrs. Emick seconded and the motion was carried unanimously.

Mr. Levesque asked that it be clarified to the Planning Board that the ZBA would like the 3 parcels converted to one tax parcel number and/or one deed in order to comply with Town Law.

Mr. Stapleton advised Mr. Putney that basically you just give a deed to yourself and you take the 3 deeds, put them all on one deed with descriptions and convey it back to yourself. He said it is a simple procedure with your attorney and can be done in just a couple of days. Mr. Levesque said accomplishing this may prove to be helpful in the Planning Board's review process.

4. Glenn Johnson requesting an Area Variance to construct a deck closer to side setbacks than allowed in Zoning Code Section 401 at property located at 5508 Wells Bay Rd., specifically Section 332.11-1-14 (Old #3-2-14).

Mr. Johnson said he had purchased a camp and would like to tear off an existing one story addition on the house and build a 2 story addition there. He said they would also like to extend the deck on the lakeside by 2' and add a porch with overhang on the street side. He provided photos of the existing dwelling for the boards' review. He said basically they are trying to square off the house. Mr. Levesque clarified that setbacks requested are 10.3' from the property line on the north side and 12.6' on the south side. Mr. Levesque asked if anyone wished to speak regarding the application. Mr. Lawson said as in the preceding case, Mr. Johnson would need to identify the setback from the lake by the high water mark of 1,310.5' as provided for in Section 614 a. He said this would need to be done by a surveyor and shown on the survey to determine if any lakeside variance is necessary.

Mr. Levesque motioned to grant Area Variances to Glenn Johnson as outlined above at property located at 5508 Wells Bay Rd., specifically Section 332.11-1-14 (Old #3-2-14) with the following conditions:

- **Applicant must provide survey map showing the high water mark of 1,310.5' as required in Zoning Code Section 614 a.**
- **Actual survey map with dimensions and setbacks provided to the Zoning CEO**

Mr. Michalak seconded and the motion was carried unanimously.

Mr. Stapleton reminded the board not to forget Section 267B and the Waterfront Assessment Form (WAF) when reviewing these types of cases especially for new construction on the lake.

ZBA

8/22/12 (Pg. 4)

5. Shawn Hadley requesting an Area Variance to construct a deck closer to setbacks than allowed in Section 401 of the Zoning Code at property located at 2832 Chautauqua Ave., Specifically Section 367.05-1-22 (Old #25-3-11).

Mr. Hadley was represented by his contractor Mr. Iuculano. He said Mr. Hadley would like to construct an 8' x 16' x 20' wide deck that will be 16" from the ground with no railings and one step to go around the perimeter. Setbacks requested in the application are 6' on the north side and 13.8' on the south side. Mr. Levesque asked what had been there previously. Mr. Iuculano said just an old porch. Mr. Lawson said even though over the years the shoreline has filled in with sediment, dirt, etc. moved by the lake to create what appears to be a larger lot; the property line and high water mark do not change. *There was discussion of the location of the house.* 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. Levesque asked Mr. Stapleton if the WAF form should be required from the applicant. Mr. Stapleton said since it is just an open deck and not a major construction it was not necessary.

Mr. Levesque motioned to grant Area Variances to Shawn Hadley to construct a deck closer to setbacks than allowed in Section 401 of the Zoning Code at property located at 2832 Chautauqua Ave., Specifically Section 367.05-1-22 (Old #25-3-11) as outlined in his application and with the following conditions:

- **A survey map be provided to the Zoning CEO showing the high water mark of 1,310.5 in relation to the deck (both corners) and to the lake side property line**

Discussion:

Mr. Lawson asked for clarification. He said the house sits almost parallel to the property line and the town should have the setbacks from each of the front corners of the deck to the lake as they will be different than the house.

- **Deck shall be a continuous straight line and parallel to the house**

Mr. Silzle seconded. Mr. Levesque, Mr. Michalak, Mr. Thomas, Mrs. Ortman, Mr. Silzle; YES; Mrs. Emick; NO. The motion was carried.

The hearing was adjourned at 9:15.

Nancy M. Thomas
Town Clerk