

**TOWN OF NORTH HARMONY
ZONING BOARD OF APPEALS
WEDNESDAY, 1/23/2013 7:30 PM**

ZBA MEMBERS PRESENT: **James Levesque** **Dick Barton** **Paul Silzle**
 Dan Thomas **Louise Ortman** **Greg Michalak**
 Helen Emick
 Dave Stapleton, Attorney

Others Present: **Paul Potter, Engineer** **John McGraw** **Tom Turner, Turner Brokers**
Planning Board Members: **Pat Rice, Louis Rieg, Dick Johnson**
Town Board Members: **Sally Carlson, Frank Stow, Ralph Whitney, Dick Sena**

Mr. Levesque brought the hearing to order at 7:30 PM. Mr. Stapleton swore in all who expressed intent to speak at the hearing.

1. Bootey Bay, LLC requesting an Area Variance from the R-5 District Section 405. District regulations state 125' lot width and applicant is requesting 100' lot width for subdivision project. Applicant is also requesting an additional lot width Area Variance of 101' from the 105' required in Section 637 Funneling at property located at 5358-5516 Bootey Bay, Specifically Section 332.11-1-17.3 (old # 7-1-1.1).

Mr. Stapleton asked if he could briefly give the history of the case. He asked that previous minutes of meetings at which the proposed Bootey Bay Project was discussed be referenced: ZBA Hearing 10/24/12; Town Board Meeting 11/12/12; Planning Board Meetings 11/13/12, 12/11/12 and 1/8/13. He said the applicant had proposed the project at the 10/24/12 ZBA Hearing and at that time the ZBA had indicated it was not in a position to make a motion on the application because of the scope of the project. He said procedures set forth in Town Law Section 1101 required the application be recommended to the Town Board for review. Mr. Stapleton said that the Zoning Law requires that any time you have more than 5 residential units in a planned project the Town Board has the jurisdiction to perform a site plan review to issue a Special Use Permit with whatever conditions the Town Board feels appropriate. At the Town Board meeting on 11/12/12, Mr. Sena had motioned that the Area Variance and Special Use Permit request by Bootey Bay, LLC for the creation of a sub-division be forwarded to the Planning Board for review and recommendation. He said the Planning Board had met on 11/13/12, 12/11/12 and 1/8/13, for the purpose of review of the proposal. He said the Planning Board has spent a great deal of time reviewing the proposal. He said it is his understanding that all of the site plan details are not fully developed at this time because the applicant needed to know if the variances would be granted from an engineering and budget standpoint before going forward with the project. He said the request for the reduction of the 125' lake front requirement to 100' is for the proposed 7 lots on the lake and the request for the 101' from the 105' required in the funneling law is for the second row of 7 lots further back that will use the Power Boat Club for lake access. Mr. Stapleton referenced the 1/8/13 minutes and stated that motions recommending in favor of the variances with a number of conditions set forth had been unanimously approved by the Planning Board. He said the boards are working in cooperation with the applicant to move the process along. He said rather than having the complete site plan materials, it is coming before the ZBA now for a determination on granting the area variances requested. He said if the area variances are granted they would have to be conditioned on Town Board approval of the site plan upon review of the formal finished site plan materials. He said if the variances are granted, the next step would be for the Town Board to take Lead Agency status for the SEQR and Site Plan Review. He said also the matter would have to be sent to the County DOH for review of the subdivision maps since the town doesn't have a subdivision law. He said there are various other

governmental agencies to be notified for their input once the final plans are available. He asked Mr. Rice, Chairman of the Planning if that was a correct recitation of the facts. Mr. Rice said yes.

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Mr. Potter, Engineer for the project said the PB had requested a 35' buffer zone on the lake shore and the initial offset on the drawing was for 10'. He said that had been changed to 35' in the new drawing. He said they needed to know what the lot sizes would be in order to determine the placement of water gardens which will be located between the lots. He said the water gardens are based on size, amount of runoff, slope of the surface, etc. Mr. Levesque asked if the map in their most recent package is representative of the plan based on the requested lot size. Mr. Potter provided a new map which Mr. Levesque dated 1/23/13 for the record. *There was discussion between Mr. Potter and the board regarding the map.* Mr. Stapleton asked if the building envelope of 40'x70' shown on the map and setbacks are correct. Mr. Potter said yes. Mr. Silzle asked about the 3 sections of wetlands shown on the original map. Mr. Potter said the original designation of wetlands developed by the Corp of Engineers had expired in October, 2012 and new designations would have to be determined. Mr. Silzle asked if the original lands were re-designated wouldn't that affect the project. Mr. Potter said no because there is a program that allows wetlands to be "traded" whereby you add 2 for the 1 you trade off. Mr. Stapleton asked for clarification on the lot sizes. He asked if all the lots are 100'x400', both lakeshore and rear lots; if all building envelopes are 40'x70'; and if buffer zones on the lakeshore are all 35' of non-mowable area. Mr. Potter said that is correct. He said the location of water and sewer would probably require that one be in front of the home and the other in the rear. He said they would be discussing those requirements with Paul Snyder of the Health Department. He said usually wells need to be upstream of the septic system and leach field, but it depends on the type of engineering and system used. Mr. Stapleton noted that it appears that the housing on the second row of homes have setbacks that allow for views of the lake. Mr. Potter said they have visibility of the lake but they cannot walk through the front properties to access the lake. He said deed restrictions would be established preventing the obstruction of the 2nd row views. Mr. Turner said that this would be comparable to Grand View Estates where it is favorable to the developer and owner to preserve views of the lake. Mr. Stow asked if someone were to purchase 2 adjoining lots on the lake would footprints set forth have to be followed as far as the location of the house. Mr. Potter said yes. Mr. Turner said the covenants for the lakeside lots and those for the rear lots are sometimes different, to deal with different issues (i.e. lakeside cannot plant trees, etc. to obstruct view, while rear lots can do more landscaping because they can't obstruct a view). Mr. Stapleton noted that the SEQR document as submitted does not include Phase III of the project. He said the document may have to be changed to accommodate that phase to avoid segmentation of the project. Mr. Potter said it all depends on how the applicant handles the commercial portion of the property (i.e. whether he sells it or develops it himself). Mr. McGraw said at this time he has no idea what he will do with the commercial portion of the property so he does not know how to address it in the SEQR or if it should be addressed. Mr. Levesque clarified for the record that this application deals with Phase I and II only of this project. Mr. Potter said yes. Mr. Levesque noted page 11 of the SEQR; item 5. Indicates that 15 lots are going to be developed. He asked if that had been changed because the new map shows 14 lots. Mr. Potter said they had originally thought they could get 15 lots in but that has changed to the 14 currently shown. Mr. Stapleton noted that the tax parcel ID number on the SEQR is incorrect and needs to be corrected before it goes to hearing. Mr. Levesque stated that after the Site Plan is completed and the Planning Board OK's it, it will go before the Town Board for SEQR hearing after they hear from all permitting county and state agencies.

Mr. Levesque asked what the reasoning for the 4' variance at the Boat Club was. Mr. Potter said the funneling law requires 15' of lakefront for every home that will use the lake lot for lake access and with 7 lots that would require 105'. Mr. Stapleton said it is his understanding from the PB minutes that when the 1st rear

lot is sold, the license/agreement for use by the Power Boat Club will be revoked and will be used solely for the use of the rear lot homes. Mr. Potter said that is correct. Mr. McGraw asked if it would be possible to not have that in effect until a home is actually started on the rear lot as opposed to as soon as a lot is sold. He said this would give the Boat Club a little more time to make other arrangements. *There was general discussion of this. It was noted that there are 24 slips available at the club currently and discussed that when the project begins there should only be 7 slips for the rear lots.* Mr. Silzle said 7 slips could be

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removed or designated immediately for the 7 rear lots and not rented out and that would decrease the density of use by the Power Boat Club but still allow access. Mr. Levesque said if there is not Phase II (7 rear lots) you would still have the 7 docks for the lakefront homes and the 24 at the Power Boat Club. Mr. Potter said before Mr. McGraw purchased the land there were more than 7 cottages on the lakefront and they all had docks. Mr. Thomas asked if the town had some type of control over the lease of the Power Boat Club through Zoning, or is it just some type of Grandfather situation. Mrs. Carlson said as far as she knows it is Grandfathered, but its' uses have been expanded as far as a much larger dock and Winnebago's parking there to camp. Mr. Potter assured Mrs. Carlson that the Winnebago's would not be back next year. Mr. Stapleton said currently it is a commercial operation.

Mrs. Emick asked about the lease between Mr. McGraw and The Power Boat Club that had been signed previously, but not signed last year. She said on the lease there are stipulations that rent be paid and asked Mr. McGraw if he was still collecting rent on the club. Mr. McGraw said he had collected rent for 2011 and 2012. Mrs. Emick asked if the rent collected had been used to pay the taxes. She said this goes to the state and the authorization of those slips to be used. She said that the licensee is responsible for all state, local and federal payment of taxes. She said if the taxes have not been paid this could impact his use of the Boat Club. She said this is according to the terms of the submerged land license and the criteria that must be met. She said they do not have to transfer that license and could in fact terminate the license and that could affect his plans. Mr. McGraw said the taxes have not been paid but will be and as far as the state having a problem with that particular license he feels that when the taxes are paid there won't be an issue with granting a license for the 7 slips.

Mr. Stapleton said the issue of back taxes has been raised and he insists on a full record. He provided a copy of taxes owing on the 2 properties as of 12/11/12. Currently the approximate taxes on the 26.20 acres are \$101,715 and the approximate taxes on the Power Boat Club property is \$12,535. He said there is a county petition and notice of foreclosure on the property which must be paid by the last date of redemption which is 4/15/13.

Mr. Levesque said the ZBA is addressing only the 2 area variances requested. Mr. Stapleton said the ZBA is being asked to do that based on the map provided by the Mr. Potter showing 14 lots with houses. He said the original application was for a Special Use Permit because there are more than 5 lots being created and typically the jurisdiction on Special Use is only with the Town Board.

Dick Johnson, Planning Board, said that some of the reasoning behind their approval and recommendation of the project was that they felt this use (residential homes) was better than others that had been previously suggested given the R-5 Zoning. He said they felt the 100' lot width was sufficient as it is greater than many homes already located on the lake. He said they would have preferred that the Zoning be R-1 for the properties for the protection of the owners but given the conditions that the developer has agreed with there should be no issue. He said the lakefront homes will be a maximum of 1 story to preserve the lake views and the buffer zone has been increased to 35' of unmowed area. He said the engineer is responsible for developing the stormwater plan so there is no runoff to the lake. He said the rain gardens are also an important condition in the development. He said the offset nature of the front and back row of homes is

good because it preserves views. Mr. Johnson indicated that the wetland situation is a little fuzzy because the maps are not consistent and there are some discrepancies. He said this will have to be addressed. He said the Power Boat Club will be gone when the first lot on the back row is developed. He said the roads must be built to town specifications; trees will be preserved to the extent possible (4" and above in diameter); deed restrictions will be in place and in writing. Mr. Stapleton said all of these things could be conditions if the ZBA wishes.

Mr. Levesque said the step being taken today is just the start of the permitting process involved with the proposed development. He said the map provided today is being used to show this board the dimension of the lots and the proposed placement of the dwellings, but the details (i.e. roads; septic/sewer; trees; etc.) are not shown and will need to be reviewed by the various boards for accuracy and compliance. Mr. Potter

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said that the actual footprint of the home may in some cases be smaller than what is shown on the map. He said the well and septic will be based on county requirements and approval. Mr. Levesque asked that it be placed in the record that the current map provided is a maximum footprint /envelope for the structures on the lot.

Mr. Stapleton suggested that the deed restrictions and covenants be placed in one document as a declaration of restrictive covenants and if it is approved it be recorded and each deed can just reference that document. Mr. Potter said there will be 2 sets of covenants: one for the homes on the lakefront and a separate one for the rear or second row homes.

Mr. Levesque asked if anyone wished to speak regarding the application.

• MOTION #1 OF 2013

Mr. Levesque motioned to grant an Area Variance to Bootey Bay, LLC requesting a subdivision lot width of 100' in the R-5 District, Zoning Section 405 (125' is required) at property located at 5358-5516 Bootey Bay, Specifically Section 332.11-1-17.3 with the following conditions:

- Complete site plan review must be submitted and approved by the appropriate board**
- County Health Department approval of the subdivision map**
- Town Board accept Lead Agency status on the SEQR review**
- Full map and plan of wetland areas be provided and approved**
- Full Town Board approval of deed restrictions/covenants**
- Homes on lakeshore will be single story and height limitations taken into consideration**
- Submitted preliminary site plan for building envelope of Phase I (7 lakefront homes) and Phase II (7 rear homes) totaling 14 lots; does not include any Phase III plans and is not in consideration**
- Roads must be constructed to town road specifications and upon completion of one home, roads must be sufficient for emergency services access**
- Upon the sale of one rear lot (Phase II) and the issuance of a building permit, the Power Boat Club License will be terminated at the end of that season and be solely dedicated for the use of the rear lots.**
- This motion is contingent and conditioned on any conditions the Town Board wishes to place on the final site plan map and review.**

Mr. Michalak seconded and a roll call vote was taken. Mr. Levesque, Yes; Mr. Barton, Yes; Mr. Thomas, Yes; Mr. Silzle, Yes; Mrs. Ortman, Yes; Mr. Michalak, Yes; Mrs. Emick, Yes. The motion was carried unanimously.

- **MOTION #2 OF 2013**

Mr. Levesque motioned to grant a 4' Area Variance for lot width to 101' from the 105' required in Zoning Section 637 Funneling, to Bootey Bay, LLC, at property located at Bootey Bay and also known as the Power Boat Club, Specifically Section 332.11-1-17.2. This lot is to be used only for lake access for the 7 homes proposed in Phase II of the subdivision proposal. This motion incorporates all applicable conditions of Motion #1-2013 and is contingent and conditioned on any conditions the Town Board wishes to place on the final site plan map and review. Mrs. Ortman seconded and a roll call vote was taken. Mr. Levesque, Yes; Mr. Barton, Yes; Mr. Thomas, Yes; Mr. Silzle, Yes; Mrs. Ortman, Yes; Mr. Michalak, Yes; Mrs. Emick, Yes. The motion was carried unanimously.

The Hearing was adjourned at 8:40 PM.

Nancy Thomas, Town Clerk