

TOWN OF NORTH HARMONY ZONING BOARD OF APPEALS

WEDNESDAY, 05/22/2024, 7: 00 P.M.

ZBA MEMBERS PRESENT: **GREG MICHALAK** **WILLIAM ORTMAN**
 ROGER VAILLANCOURT **DAN THOMAS**
 Julie Conklin, Zoning Board Clerk
 Bradley Lawson, Code Enforcement Officer
 Kelly Johnson, Attorney

OTHERS PRESENT: Robin Miller Louise Ortman
 Dick Sena Joe Calimeri
 Sue Marchiando Robert Marchiando
 Mike Glowny Kelly Waggoner
 Todd Nasso

Mr. Michalak brought the hearing to order at 7:00 PM.

Mr. Michalak motioned to adopt the minutes of the 04/24/2024 Zoning Board of Appeals Hearing as submitted by the Zoning Clerk. Mr. Thomas seconded. Yes (4): Michalak, Ortman, Thomas, Vaillancourt. No (0).

Mrs. Johnson swore in all who expressed intent to speak.

- Robert and Susan Marchiando requesting an appeal of Letter of Determination, dated March 22, 2024, from the Town of North Harmony Code Enforcement Officer to construct a garage with living space above in the R-1 district closer to side setbacks than allowed according to Zoning Code Sec. 403 located at 3198 Chautauqua Ave., specifically SBL 349.20-1-54.

Mr. Michalak motioned to move to executive session to discuss the Marchiando's appeal and litigation at 7:05 pm. Mr. Thomas seconded. Yes (4): Michalak, Ortman, Thomas, Vaillancourt. No (0).

Mr. Michalak motioned to close out of executive session at 7:29 pm. Mr. Ortman seconded. Yes (4): Michalak, Ortman, Thomas, Vaillancourt. No (0).

Mr. Calimeri spoke on behalf of Marchiando's as their attorney. He gave a presentation on the appeal letter dated April 24, 2024, addressed to Bradley N Lawson.

History:

- Application was submitted in October of 2023
- They were told that the only item needed was an area variance.
- Application reviewed November of 2023 ZBA Meeting
- Variance was denied at the November 2023 meeting.

- March of 2024 the Code Enforcement Officer (CEO) issued a new determination.
 - The original determination was a garage with living quarters and only needed the area variance.
 - The March determination had two distinct differences:
 - The proposed construction was no longer a garage with living quarters but instead it was treated as a garage.
 - The lot where the construction was going to take place was being treated as one lot, contiguous lot, with an independent lot across the street where the Marchiando's currently reside in the summers.

Appeal Letter dated April 24, 2024 (objections)

- The properties are not contiguous.
 - Not a consistent interpretation of the zoning code. The zoning code only explains how the two lots will be treated if they are next to each other and substandard, it does not define what is contiguous.
- Review of GIS Maps-*comparing three applications with properties divided by roadway to build a garage with living quarters.*
 - CEO's determination letter, with respect to contiguous is not consistent with the way in which they have treated similar applications that have been to the ZBA board.
 - 3448 Mason St- garage with living quarters- presented to the ZBA one month prior to the Marchiando's, they received approval and that it was not treated as a contiguous lot.
 - 3096 Chautauqua Ave (same street as the Marchiando's)- garage with living quarters- approved 14 months prior to Marchiando's.

Mr. Calimeri stated that this determination needs to be overruled and the original determination needs to proceed.

Mr. Michalak motioned, on the advice of legal counsel, to table the Marchiando's appeal until next month to have time to review the evidence that has been presented to make a decision. Mr. Thomas seconded. Yes (4): Michalak, Ortman, Thomas, Vaillancourt. No (0).

- **Mike Glowny requesting an area variance to build a home within 1310.5 high-water mark closer than allowed according to Town of North Harmony Zoning Article VI, Section 614 A located at 3594 Watson Rd, specifically SBL 332.16-1-34**

Mr. Glowny stated that Demo 1 (on site plan) will be demolished first, and Demo 2 will remain until the new home is constructed so they will be able to use the property for the summer. Demo 2 will come down as soon as the Certificate of Occupancy is issued.

Mr. Thomas read into the record Zoning Ordinance SECTION 904-USE and AREA VARIANCE, C. Area Variances

ZBA-Area Variance Findings & Decision- **Attached to minutes.**

Mr. Michalak motioned to grant an Area Variance as requested to build a home within the 1310.5 watermark closer than allowed. Mr. Thomas seconded. Yes (4), Michalak, Ortman, Thomas, Vaillancourt. No (0).

- **Michael Wiktor requesting a Special Use Permit to construct a fence higher than allowed according to Town of North Harmony Zoning Law Article VI, Section 618 A-2 located at 3278 Chautauqua Ave., specifically SBL 349.20-1-10**

Mr. Wiktor was unable to attend meeting, so it was tabled until next month.

- **Samuel and Brenda Prentis requesting a Special Use Permit to construct a fence higher than allowed according to Town of North Harmony Zoning Law Article VI, Section 618 A-2 located at 5111 Spring St., specifically SBL 350.13-2-43**

Mr. Waggoner, the contractor for Prentis's, explained that they are putting up a privacy fence on the property line, six feet high for privacy.

Mr. Michalak motioned to grant a Special Use Permit as requested to construct a fence higher than allowed with letters on file from both neighbors, with no objection to having it on the property line and that the fence will be six feet high. Mr. Thomas seconded. Yes (4), Michalak, Ortman, Thomas, Vaillancourt. No (0).

- **Todd Nassoiiy requesting an Area Variance to build an addition on home closer to front setbacks than allowed according to Town of North Harmony Zoning Law Article IV, Section 403 located at 4882 Ashville Bay Rd., specifically SBL 367.14-2-4**

Mr. Nassoiiy stated that there is no other option to build except on the roadside. The properties are small and close. He talked about the history of the property and that he is close to retirement, and they are looking to spend summers there.

Mr. Nassoiiy reviewed the plans with the board members and walked them through what he is looking to accomplish.

Mr. Thomas read into the record Zoning Ordinance SECTION 904-USE and AREA VARIANCE, C. Area Variances

ZBA-Area Variance Findings & Decision- **Attached to minutes.**

Mr. Lawson wanted to add that Mr. Nassoiiy check with the South & Center Sewer District before digging to get approval on the project, and have the letter sent to him.

Mr. Michalak motioned to grant an area variance to build an addition on home closer to front setbacks than allowed with the condition that prior to digging that Mr. Nassoiy contact South & Center Sewer District for a letter of approval to be sent to Mr. Lawson before permit is issued. Mr. Vaillancourt seconded. Yes (4), Michalak, Ortman, Thomas, Vaillancourt. No (0).

By a motion made by Mr. Thomas, Mr. Vaillancourt seconded and with none being opposed the hearing was adjourned at 8:16PM

Julie Conklin
Zoning Board Clerk