

**Town of North Salem  
BOARD of APPEALS  
July 9, 2009  
8 p.m., The Annex**

**MEMBERS PRESENT:** Peter Kamenstein, Chairman  
William Monti

**MEMBERS ABSENT:** Brian Ivanhoe  
Deidre McGovern  
Patrick Browne

**OTHERS PRESENT:** Maureen Eckman, Assistant Building Inspector  
Janice Will, Recording Secretary

*Chairman Kamenstein called the July 9, 2009 Town of North Salem Zoning Board of Appeals meeting to order.*

The Chairman stated that as there was not a quorum present, the June minutes could not be approved. He set the next meeting for Thursday, August 13.

PUBLIC HEARING:

**BA09-21** Patrick Donovan (605 Route 22) – **Area Variance** – To increase the maximum height of a fence in a front and side yard from 4 ft. permitted in the front yard and 5 ft. permitted in the side yard to 6.5 ft. proposed per Article VI Section 250-22 (C).

The Chairman stated that Board member Brian Ivanhoe had been detained in the City and would not be able to get to the meeting, and he apologized for the inconvenience to the applicant. He said the Building Inspector (Bruce Thompson, away on vacation) told him he had no issues with this application. The Chairman said he felt the fence was important for safety reasons. He added that although he and Mr. Monti could not vote to approve the application, Mr. Donovan might take a census of the ZBA to get an indication of the likelihood that his application would be approved.

William Monti commented that part of the proposed fence will be as much as 15 ft. high above the road. He asked if Mr. Donovan has any plans to soften the fence's appearance.

Patrick Donovan said he was going to plant some forsythia, but the Building Inspector said he didn't want anything in front of the fence.

The Chairman commented that the Building Inspector was probably concerned about plants that die and are left in.

Mr. Donovan said the Building Inspector told him he was concerned about roots compromising the stability of the fence.

The Chairman said forsythia does not have a deep root system. He stated that he recently noted the improvements to the subject property as Mr. Donovan moves ahead with the reconstruction project. Chairman Kamenstein said it would be a good idea to plant something to break up the appearance of the fence, and forsythia might be good.

Mr. Donovan showed the Chairman where he had included planting of forsythia in the submitted plan.

The Chairman asked how long the fence will be, and Mr. Donovan said it will be about 150 ft. long.

Chairman Kamenstein commented that it will be a very long fence and needs to be broken up by something. He said the plan notes indicate a plant to be put in every 15 ft.

Mr. Donovan said forsythia grows fast.

The Chairman said it won't grow all that fast, and he asked what size plants Mr. Donovan intends to put in.

Mr. Donovan said the plants he already has are about 2.5 ft. high.

Chairman Kamenstein said he would want a minimum of double the number of plants in the plan so they will fill in quickly, and he asked that any new plants purchased be at least 3 ft. high. He reiterated the importance of having the fence as a safety measure, and he added that he does not wish to see Mr. Donovan's project held up.

Mr. Donovan said he is awaiting NYS approval for some work; but once he gets the approval, he intends to be finished with the job in 2 weeks.

The Chairman stated that if Mr. Donovan gets the necessary approval to proceed and wants to start putting the fence and forsythia in, the Board would not object.

Mr. Monti asked when NYSEG will remove the utility poles on the property, noting that some are cut.

Mr. Donovan replied that one is to remain (with new guide wires), and he is not permitted to touch the others until he gets the NYS permit. He thanked the Board for their encouragement, and the public hearing was held over.

#### WORK SESSION:

Fuelco (former Getty Station, 2 Fields Lane) – Discussion of site plan and variances.

Chairman Kamenstein explained that Don Rossi, attorney for Brian Orser of Fuelco, had called him to say he wished to discuss this issue before formally submitting a variance application.

Don Rossi introduced Mr. Orser and Joseph Bryson, owner of the subject property.

Displaying a site plan, Mr. Rossi explained that the following area variances will be requested:

- For permission to widen the 2 entranceways to the service station, because the use of the property is commercial and one driveway opening is within 100 ft. of the Hardscrabble Road intersection (per Article XIII, Section 250-73 (B) of the Zoning Ordinance).
- A setback variance for a 6 gas-pump island with canopy above, because it will be new construction (not covered by pre-existing situation).
- For a larger-than-allowed free-standing sign and for a façade-mounted sign.

Regarding the signs, Mr. Rossi said there will be no Mobil sign on the canopy as originally proposed, because the Planning Board objected to it. Additionally, the Planning Board is agreeable to the free-standing sign showing Mobil and gas-pricing as long as it is no larger than the similar sign at the Shell station.

Mr. Orser stated that the 73 ft. x 24 ft. pump-island will consist of 3 back-to-back dispensers with 6 fueling points.

Mr. Rossi indicated the location of the proposed free-standing sign approximately where the Getty sign used to be and not far from the existing Outhouse Orchard sign, although on Mr. Bryson's property.

Mr. Monti asked if the sign will be the same as the Mobil sign at the filling station on Route 100 in Somers.

Mr. Orser said the sign on the plans is a standard schedule-B size (52 sq. ft.), but it will actually have to be custom-made at 4 ft. x 8 ft. (32 sq. ft.) to be the same as the sign at the Shell station.

Mr. Monti asked about changing the prices listed on the sign, and Mr. Orser said the prices will be done by hand/not digitally like the Somers sign.

Mr. Rossi said his client will also be applying for a use variance, and there are interpretative issues with the Zoning Ordinance to work through. The property, a pre-existing, non-conforming service station, was zoned B-1 (business) prior to 1987, at which time it was re-zoned R-1/2. Mr. Rossi said gas stations are only permitted in GB (general business) zones now. He explained that the Planning Board resolved the issue in 1992 when they granted a special permit amendment to an older special permit from 1970 (also issued by the Planning Board). Mr. Rossi stated that under the old Ordinance, there were Planning Board special use permits, but a conditional use permit from the Planning Board is needed now.

Mr. Rossi said his client also wants to add a convenience store to the site, which he believes is an accessory use to the service station. He indicated that an interpretation by the ZBA will be called for.

Chairman Kamenstein said he recently attended a meeting on land use and it was asked if, by increasing usage, a non-conforming situation would also be increased. It was agreed that

if a use is closely associated with an existing use, it is not an expansion of the non-conformity. The Chairman commented that convenience stores are usually associated with gas stations.

Mr. Rossi said the convenience store as an accessory use is consistent with other cases regarding non-conforming uses. Mr. Rossi explained that if he submits a request for an interpretation regarding an accessory use, then a use variance will not be necessary.

Mr. Rossi said the Building Inspector feels it will be necessary to apply for a use variance for a retail outlet on the same property as a service station, although the Planning Board does not support this view.

A third option, if it is agreed that a pre-existing, non-conforming use with a conditional use permit is then considered a conforming use, would be to add the convenience store as an accessory use.

Chairman Kamenstein said he doesn't mind that the convenience store would draw more customers, but he feels the big issue will be how the site will look. He explained that neighborhood character is a prime criterion for the ZBA, and he added that he would be interested to know how the applicant intends to mitigate the visual impact of the service station at one of the 2 gateways to the Town. The Chairman stated that he has no problem with the expansion of the use of the property within reason, but he is very concerned about visual impact. He said the site is not very attractive now, but there are also no lights on and it is not used much; whereas the proposed use of the site will be more of an attraction.

Mr. Rossi said he and his client were present to speak to the Board to get a sense of what will be asked/required.

Chairman Kamenstein said the ZBA controlled numerous aspects of how the Shell station in Croton Falls looks, and it is in a busy area. He pointed out that the Bryson property stands alone, adding that it must set the tone for North Salem and not for the residents of neighboring towns.

Mr. Rossi said there are no renderings of the exterior yet, and Mr. Orser added that the proposal will be looked at by the Architectural Review Board.

The Chairman stated that architecture, landscaping and lighting will be big issues for the Board of Appeals.

Mr. Rossi explained that the sequencing of the Planning Board and Board of Appeals applications will be similar to that of Piedmont Properties:

- the ZBA opens a public hearing and closes it but does not vote;
- the applicant goes to the Planning Board for SEQRA review;
- the applicant returns to the ZBA for final consideration and a vote.

Chairman Kamenstein pointed out that the Board of Appeals is more difficult to deal with than the Planning Board when it comes to matters of aesthetics.

Maureen Eckman asked Mr. Bryson if a sign for a facility in Brewster that is hanging from another sign is on his property, because it is not permitted. She also mentioned graffiti on his fence that needs to be removed.

Mr. Bryson said he would look into both things.

Mr. Monti asked if the building off to the right at the rear of the property will continue to be used after the service station opens.

Mr. Bryson said he will keep the one-bay building for his towing and repair business.

Mr. Monti expressed interest in seeing an architectural rendering of the service station. He also asked if, given the increased use, there will be enough room for the amount of traffic generated.

The Chairman commented that it is a much easier lot to get in and out of than the Shell station.

Mr. Monti explained that he meant he wondered if there will be enough room for increased parking. He said he did not expect an immediate answer, but he would like the issue addressed when Mr. Rossi's client actually submits an application to the ZBA.

Chairman Kamenstein said this is important, because a big asphalt parking lot will not be looked favorably upon.

Mr. Monti asked if the station will be open 24 hours a day, and Mr. Orser said he thinks so.

The Chairman reiterated that lighting will be very important to the ZBA, and it will be necessary to find a balance between business needs and neighborhood character.

Mr. Monti pointed out that there are not many houses near the Bryson lot.

The Chairman said he was reminded of a large indoor riding ring with clerestory windows that the Board approved in the past, which can be seen from a fair distance at night when the lights are on inside the ring. Had the Board realized how this would look, they would never have approved it.

Mr. Monti said it will be important to control the halo effect of lighting, adding that he also would not want the free-standing sign to be too high.

Mr. Rossi responded that his client hopes for visibility from the highway while softening the visual impact on the side facing the Town.

Chairman Kamenstein said he was sure there will be a sign right on the highway, indicating that there is a service station ahead, and he will not accept a very tall sign on the lot. He added that he will be very concerned about aesthetics, although he is on the applicant's side in principle.

Mr. Monti commented that there is already a sign on the highway, but Mr. Orser said it has been removed/he will be re-applying for a new sign.

The Chairman stated that the Board will see the applicant and Mr. Rossi when they are ready with their applications, adding that he will expect a lot of detail regarding the appearance of the station.

At this time the meeting was adjourned.

Respectfully submitted,

  
Janice Will, Recording Secretary