

**Town of North Salem
BOARD of APPEALS
Public Hearing
February 18, 2010
8 p.m., The Annex**

MEMBERS PRESENT: Brian Ivanhoe, Chairman
Deidre Sokol
William Monti
Patrick Browne

OTHERS PRESENT: Bruce Thompson, Zoning Enforcement Officer
Janice Will, Recording Secretary
Members of the Public

Chairman Ivanhoe called the February 18, 2010 Town of North Salem Zoning Board of Appeals meeting to order.

Chairman Ivanhoe set the next meeting for Thursday, March 11, 2010.

The minutes of the January 14, 2010 meeting were unanimously accepted.

The Chairman stated that he visited all the application sites prior to the meeting, and Patrick Browne added that he inspected ones that involve future action but not those with as-built conditions.

HEARINGS CONTINUED:

BA09-32 Joseph Bryson (2 Fields Lane) – **Use Variance** – To permit the use of an existing building for a sales and service business, per Article IV Section 250-11 and the Table of General Use Requirements for the R-1/2 zoning district.

Carried over pending progress of Planning Board application.

BA09-33 Fuelco Food Marts, Inc. (2 Fields Lane) – **Area Variance** – For the operation of a gasoline station and convenience store per Article V Section 250-15, Article VI Section 250-22 (C), Article IX, Article XIII Section 250-73 (B) and (C), the following variances are requested:

- Decrease the front yard setback from 35 ft. required to 12 ft. proposed for placement of a fuel pump island with canopy.
- Decrease the distance from an intersection from 100 ft. required to 49 ft. proposed for modification of an entranceway.
- Increase the maximum height of a fence in a front and side yard from 4 ft. permitted in the front yard/5 ft. permitted in the side yard to 6.5 ft. existing/proposed for replacement of a fence.

- Increase the maximum size of a free-standing sign from 8 sq. ft. permitted to 33 sq. ft. existing/proposed.

Carried over pending progress of Planning Board application.

BA09-34 Fuelco Food Marts (2 Fields Lane) – Interpretation/Use Variance - Whereas the Building Inspector determined that the addition of a convenience store to the existing non-conforming gasoline service station requires a use variance, application is made to the Board of Appeals to find that the convenience store is permitted as an accessory use; or in the alternative, request a use variance per Article IV Section 250-11 and the Table of General Use Requirements for the R-1/2 zoning district if the ZBA's interpretation of the circumstances is the same as the Building Inspector's.

Carried over pending progress of Planning Board application.

BA10-06 Betty and Stephen Pogozeleski (18 Lakeside Drive) – Area Variance – To decrease the minimum setback requirements in an R-1 zoning district per Article V Section 250-15 and Article XIV Section 250-79A (because the non-conforming lot is subject to R-1/2 bulk requirements) in order to permit a deck and shed to remain as constructed. The following variances are requested:

- Deck – decrease the rear yard setback from 35 ft. required to 23 ft. existing/proposed and decrease the side yard setback from 15 ft. required to 9 ft. existing/proposed.
- Shed – decrease the rear yard setback from 35 ft. required to 6 ft. existing/proposed and decrease the side yard setback from 25 ft. required to 3 ft. existing/proposed.

Stephen Pogozeleski explained that he built his deck 30 years ago before the co-op was created. He said his shed is newer, and he received the co-op's approval to build it. Now he has learned that Building Permits and variances from the Board of Appeals are necessary to legalize the deck and shed.

William Monti asked the Building Inspector if the Pogozeleskis' deck meets construction standards for 30 years ago, and Mr. Thompson replied that it does.

Patrick Browne asked who did up the plans, and Mr. Pogozeleski responded that Richard Vail created them. The plans were approved/stamped by the Bloomerside Co-operative where the subject property is located.

Noting there were no further questions, the Chairman closed the public hearing.

Motion by: William Monti
Seconded by: Patrick Browne

Ms. Sokol: Aye
Mr. Monti: Aye
Mr. Browne: Aye
Chairman: Aye

Area variance granted, as requested.

BA10-08 Thomas M. DePaoli, Jr. (622 Route 22) – **Area Variance** – To decrease the minimum setback requirement in an R-1/2 zoning district per Article V Section 250-15. A rear yard setback variance of 31 ft. is requested (35 ft. required; 4 ft. existing/proposed) in order to permit a shed to remain as constructed.

Thomas DePaoli addressed the Board, stating that he wishes to keep an existing shed that is on his property.

Mr. Monti said Mr. DePaoli has done a great job renovating the house on the subject property.

Peter Kamenstein of 665 Titicus Road (*Town Board member and former Chairman of the Board of Appeals*) seconded Mr. Monti's statement, adding that the improved appearance of the house helps to enhance Croton Falls.

There were no questions, and the Chairman closed the public hearing.

Motion by: Patrick Browne
Seconded by: William Monti

Ms. Sokol: Aye
Mr. Monti: Aye
Mr. Browne: Aye
Chairman: Aye

Area variance granted, as requested.

BA10-09 Jonathan Fogler (39 Whittier Hills Drive) – **Special Permit** - For the construction and maintenance of an accessory apartment in a single-family residence per Article XIII Section 250-68.

Chairman Ivanhoe read a letter from Patricia and Dean Horvath of 32 Whittier Hills Drive in which they expressed concern over possible increased traffic on the narrow stretch of road where the 2 properties are located, and they asked that the road be widened.

Mr. Browne commented that the road was piled on both sides with snow when he inspected the site, and it is narrow.

Chairman Ivanhoe said the request to widen the road could be forwarded to the Highway Department.

Jonathan Fogler explained that he has a garage with bonus room above, and the room is larger than 750 sq. ft. He said he wishes to add a bath and kitchen, and the apartment would be used by guests. Mr. Fogler further stated that although he does not intend to rent the apartment, future owners may wish to do so.

The Chairman said it appeared to him there will be enough room for additional parking.

Mr. Thompson stated that the Zoning Ordinance limits the size of accessory apartments to between 300 and 750 sq. ft. or 25% of the floor area of the main house (whichever is smaller), but the Board of Appeals may allow an increase in size. The main house is 3700 sq. ft. and the apartment will be 950 sq. ft., which is 26%/very close to the permitted 25% ratio.

Mr. Browne asked where the apartment entrance is located, and Mr. Fogler replied that there is a door on the same side of the building as the garage doors.

Mr. Monti asked how long Mr. Fogler has owned the property.

Mr. Fogler answered that he bought the property in 2002, and his house was completed in 2005.

Mr. Browne asked if the apartment is accessible from the main house, and Mr. Fogler said it is.

The Chairman noted that a window for the proposed bathroom is listed as "optional" on the plans, and he said Mr. Fogler will have to put in a fan if the window is not installed. He asked about a folding stairway also noted on the plans.

Mr. Fogler explained that it leads up to the attic crawl space.

Mr. Browne asked if the septic system is adequate, and Mr. Fogler responded that it is a 5-bedroom system, and his house has 4 bedrooms; the apartment will add the fifth bedroom.

Ms. Sokol asked how close the neighbor's house is to the apartment entrance.

Mr. Fogler answered that there is no other house on the door side of the garage. He explained that his house is at the end of a cul de sac, approximately 350 ft. from the road, and the Horvaths live across the street.

Noting that the apartment is open to the house, Mr. Monti asked what Mr. Fogler would do if he wanted to rent the apartment.

The Building Inspector said the apartment could be separated from the house at the breezeway.

Mr. Fogler added that there is a door separating the house from the bonus room which could be locked.

Chairman Ivanahoe stated that the Town encourages the maintenance of accessory apartments, which is important for the ZBA to consider.

Carl Kropelnicki of 34 Whittier Hills Drive asked what the reasoning is behind the Town's support of apartments.

The Chairman replied that the Town supports accessory apartments as a means of providing affordable housing/meeting the requirements of the County and Federal governments.

Noting there were no further questions, the Chairman closed the public hearing.

Motion by: William Monti
Seconded by: Deidre Sokol

Ms. Sokol: Aye
Mr. Monti: Aye
Mr. Browne: Aye
Chairman: Aye

Special Permit granted, as requested.

BA10-10 Edna and Lester Brooks (5 Peach Lake Drive) – **Area Variance** – To decrease the minimum setback requirements in an R-1 zoning district per Article V Section 250-15 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-1/2 bulk requirements). A rear yard setback variance of 29 ft. (35 ft. required; 6 ft. existing/proposed) and a combined side yard setback of 15 ft. (40 ft. required; 25 ft. existing/proposed) are requested in order to permit a shed to remain as constructed.

Edna Brooks addressed the Board, stating that her property is located in the Pietsch Gardens Co-op. She said the lots are so small, that anything added requires a variance.

Mr. Browne asked how long the shed has been on the property.

Mrs. Brooks answered that it is about 6 months old, and she has owned the property since 1997. The application includes a site plan stamped by the Pietsch Gardens Co-operative.

Mr. Browne asked if there were any objections from the neighbors, and Mrs. Brooks replied that there were not.

There were no further questions, and the Chairman closed the public hearing.

Motion by: Patrick Browne
Seconded by: William Monti

Ms. Sokol: Aye
Mr. Monti: Aye
Mr. Browne: Aye
Chairman: Aye

Area variance granted, as requested.

BA10-11 Humberto Visbal (17 Locust Road) – Area Variance – To decrease the minimum setback requirements in an R-1 zoning district per Article V Section 250-15 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-1/2 bulk requirements). A side yard setback variance of 12 ft. (15 ft. required; 3 ft. existing/proposed) and a rear yard setback variance of 32 ft. (35 ft. required; 3 ft. existing/proposed) are requested to permit a shed to remain as constructed.

Humberto Visbal explained to the Board members that his shed is about 7 years old. He said he has had no complaints about it and he would like to be able to keep it, legally. The application includes a site plan stamped by the Vail's Grove Co-operative.

Noting there were no questions or comments, the Chairman closed the public hearing.

Motion by: *Deidre Sokol*
Seconded by; *William Monti*

Ms. Sokol: *Aye*
Mr. Monti: *Aye*
Mr. Browne: *Aye*
Chairman: *Aye*

Area variance granted, as requested.

BA10-12 Mei-Gi and Roger Schwartz (38 Sugar Hill Road) – Area Variance – To decrease the minimum setback requirements in an R-1 zoning district per Article V Section 250-15. A combined side yard setback variance of 15 ft. is requested (50 ft. required; 35 ft. existing) in order to permit an addition to a single-family residence to remain as constructed.

Oscar Ovalle, architect, addressed the Board. He explained that a variance was already granted for the construction project, but an as-built survey shows that the addition is 6 in. closer to the property line than what was permitted. He stated that the plan and original variance were based on an existing survey that showed the line to be used for the addition was 10 ft. from the side yard line, but the as-built survey indicates that the distance is 9.5 ft.

Mr. Browne asked when the addition was constructed, and Roger Schwartz replied that it was built over the past summer.

Mr. Browne asked how the 6 in. discrepancy was found, and Mr. Schwartz answered that he thought the Building Inspector had discovered it.

Mr. Thompson said he thought the original plans and variance were based on a measurement of 10 ft. +/-, which is never advisable.

Mr. Browne asked if the original variance application requested a side yard setback of 10 ft.

Mr. Thompson said that was correct, but the Schwartzes were working from an inexact measurement.

Mr. Monti said this kind of thing has been discussed in the past. He asked if, in the future, the Board may ask people to have the property line and proposed building staked before a Building Permit is issued.

The Building Inspector said he has taken steps to do that recently, adding that he will not accept any +/- measurements where there are setback issues.

Mr. Monti stated that, in the future, a survey should be required before issuance of a Building Permit, adding that a partial survey with the construction distances would be sufficient.

Mr. Thompson said the second variance could have been avoided by staking the addition before constructing it, and he reiterated that the Building Department is working to avoid these kinds of problems.

Mr. Monti said doing these things would benefit applicants, and the Building Inspector agreed.

There were no other questions, and the Chairman closed the public hearing.

Motion by: William Monti
Seconded by: Deidre Sokol

Ms. Sokol: Aye
Mr. Monti: Aye
Mr. Browne: Aye
Chairman: Aye

Area variance granted, as requested.

BA10-13 LP Partners (125-143 Vail Lane) – Area Variance- For a variance per Article V Section 250-15 and -18 and per New York Town Law Section 280-a in order to permit creation of a subdivision lot. A decrease in the required street footage from 150 ft. to 0 and permission for the lot to access a street not shown on the Official Map for the Town (Chestnut Hill Road, Ridgefield, CT) are requested.

Don Rossi, attorney for the applicant addressed the Board, stating that the subject property is a 33-acre lot in a subdivision currently being considered by the Planning Board. While the property is entirely in North Salem, it would be accessed via Chestnut Hill Road in Ridgefield, CT. He added that there is plenty of safe access and street frontage to satisfy Town Law Section 280-a. Mr. Rossi stated that the Town of Ridgefield will permit a driveway opening on Chestnut Hill Road. He asked the ZBA to consider the application and close the public hearing but not to vote yet, because SEQRA still needs to be complied with before the Planning Board.

Mr. Browne expressed concern about access from Connecticut to a New York property, saying there are differences in the laws of the 2 states.

Mr. Rossi said he does not see a problem.

Mr. Browne pointed out that this will require a disclosure in order to sell the property.

Mr. Rossi said that is true, but there is no practical issue.

Mr. Monti asked how emergency services will be handled. He said that because of his home telephone number, his emergency calls were erroneously routed to Putnam County even though the property is in North Salem. This has since been corrected by Verizon.

Mr. Rossi said there is a house on Titicus Road that is very near Ridgefield; local emergency service personnel respond to calls for this property.

Mr. Monti said he just wondered where a "911" call would be routed to.

Peter Kamenstein, applicant, stated that the entire property is in North Salem, and the phone line is in New York.

Mr. Browne asked what the address will be.

Mr. Kamenstein said he is not sure what it will be. Then he said the utilities will be from New York and all the land is in North Salem, so it seems it must have a New York address. He further stated that the Croton Falls Fire Department will respond to emergency calls because the property is in New York.

Chairman Ivanhoe stated that the Board has a referral letter (January 26, 2010) from Cynthia Curtis, Chair of the Planning Board, in support of the variance application. The Chairman said the letter also explains that the parcel is subject to a conservation easement granted to the Westchester Land Trust.

Mr. Kamenstein said there will be no development beyond the 2 subdivision lots.

The Chairman asked if the building site on the property is just a suggestion.

Mr. Kamenstein said it is level, set back from the road and has been perk-tested, and it would create the least amount of disturbance to build there. He stated that 28 of the 33 total acres will be conserved.

Mr. Rossi added that the house-site is consistent with the conservation easement.

Chairman Ivanhoe asked if the subdivision will be part of Stonewall Farms.

Mr. Kamenstein replied that it will be separate.

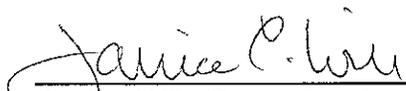
Mr. Rossi said the Planning Board will have to resolve the issue of the address for the final subdivision plat.

Noting there were no further questions or comments, the Chairman closed the public hearing.

Mr. Rossi said he will return to the Board of Appeals after the subdivision application receives a negative SEQRA declaration.

The Chairman closed the meeting at approximately 8:50 p.m.

Respectfully submitted,



Janice Will, Recording Secretary