

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

**MEMBERS PRESENT:** Brian Ivanhoe, Chairman  
Richard O'Leary  
Deidre Sokol  
William Monti  
Patrick Browne

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

***Chairman Ivanhoe called the April 8, 2010 Town of North Salem Zoning Board of Appeals meeting to order.***

The Chairman announced that the Board welcomes a new member, Richard O'Leary. Chairman Ivanhoe stated that Mr. O'Leary is a long-time Town resident. He said Mr. O'Leary would bring an architect's perspective to the Board and thanked Mr. O'Leary for volunteering to serve.

The minutes of the March 11, 2010 meeting were unanimously accepted.

Chairman Ivanhoe set the next meeting for Thursday, May 13, 2010.

**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.*

**BA10-13** 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.

*Carried over pending progress of Planning Board application.*

## PUBLIC HEARINGS

**BA10-17** Ada and Simon Sedlmair (6 Raymond Road) – **Area Variance** – To decrease the minimum setback requirements in an R-1 zoning district per Article V Section 250-15. A rear yard setback variance of 49 ft. (50 ft. required; 1 ft. existing) and side yard setback variances of 26 ft. and 2 ft. (30 ft. and 20 ft. required; 4 ft. and 18 ft. existing) are requested for an as-built storage shed and a deck.

Simon Sedlmair was invited to explain his application. Mr. Sedlmair said his shed has been on his property since 1972, and he has gotten used to it.

Patrick Browne asked about the deck.

Mr. Sedlmair said only a small corner of it sticks out into the setback, and it was built in 1978.

William Monti asked the Building Inspector if the shed and deck meet Code requirements.

Mr. Thompson replied that they do, adding that they are well-constructed.

Mr. Browne asked if any neighbors objected to either the shed or the deck, and Mr. Sedlmair said they did not.

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

Gerald Reilly read a draft resolution.

**Motion by:** Patrick Browne  
**Seconded by:** William Monti

**Mr. O'Leary:** Aye  
**Ms. Sokol:** Aye  
**Mr. Monti:** Aye  
**Mr. Browne:** Aye  
**Chairman:** Aye

**Area variance granted, as requested.**

Mr. Thompson stated that the applicant for BA10-18 was on his way to the meeting.

Chairman Ivanhoe stated that the Board would skip ahead to BA10-19.

**BA10-19** Mary and Irwin Freydberg (1A Delancey Road) – **Variance Amendment** – To remove or amend condition #3 of Area Variance BA08-27 so that a Certificate of Compliance may be issued for a newly-constructed run-in shed without having the applicants demolish and remove the second existing non-conforming shed as required in condition #3.

Mary Stuart Freydberg was present. She explained that she submitted a variance application in 2008 for 2 pre-existing, non-conforming sheds on her property, intending to demolish and replace them with a run-in shed and then a new storage shed. She said she put them both in the same application to show her complete plan, but she wanted to demolish the old/build the new structures one at a time. Now she has demolished one old shed and built a new run-in shed, and she would like a Certificate of Compliance for it.

Chairman Ivanhoe asked what Ms. Freydberg's plan is for the second (storage) shed.

Ms. Freydberg said she was not comfortable offering precise timing for demolition or construction. She said everything has been delayed, explaining that the old shed had to be re-built before applying to demolish and replace it, and now it needs more work. She reiterated her discomfort about giving a specific timeline, especially in view of the current economy. Ms. Freydberg said the old shed is ugly and she would have liked to demolish it, but she feels she has to keep it to retain her right to have a shed. Given past issues and complaints, she said there is too much uncertainty about ever getting approval for a new shed if the old one is demolished. She stated that she has put up one new building and worked on one old one on a pre-existing site, close to the property line. Ms. Freydberg said she thought her neighbors would agree that if they could re-draw the property lines, they would have done so. Mrs. Freydberg said that out of respect for the neighbors, she proposed in her variance application to put the new buildings further from the property line. She said she would like to confirm the site plan, architectural plans, etc. but she doesn't want everything bundled together.

The Chairman stated that he thought the compromise arrived at was a good solution for everyone, particularly moving the storage shed nearer to the barn. It also resolved some of the problems resulting from a poorly-done sub-division.

Ms. Freyberg said the existing shed is not of much use to her, because she cannot use the big door facing her neighbor's property (*cannot be accessed without going onto the neighbor's property*), but she has a right to have a shed on the property and store things in it.

Chairman Ivanhoe said taking the shed down does not negate Ms. Freyberg's right to have a shed.

Ms. Freyberg said her neighbors complained when she applied to build a barn, saying she had too many buildings on the property, and these kinds of complaints give her cause for concern about destroying a building before it is replaced.

The Chairman said the variance resolution protects her right to have a shed, so he could not see the risk to tearing down the old shed prior to replacing it.

Ms. Freyberg said the resolution includes a deadline, and the currently economy is very challenging. She said she was not sure it would make sense to improve her property/add another structure in the next 6 months. She stated that she was not asking for changes in the approved plan but the timing is an issue, and she added that she believes if she had made 2 separate applications, there would not be an issue now.

Chairman Ivanhoe said he thought it was wise to bring the 2 together as part of a complete plan.

Mr. Reilly asked when the variance will expire.

Mr. Thompson explained that a variance expires after 36 months if no building permit has been issued, so Ms. Freyberg's variance is good until August 21, 2011.

Mr. Monti asked how long a building permit is good for, and Mr. Thompson replied that it is good for a year, giving the Freybergs until 2012 to have the new storage shed built

Ms. Freyberg said that if she could have assurances that the economy will improve, she would be comfortable with that. She stated that she has the right to have the existing shed, the variance is in place, and she built the run-in shed in compliance with her neighbors' wishes.

Mr. Reilly asked the secretary if she sent the resolution to the Freybergs after it was signed by the Chairman of the Board of Appeals, and the secretary answered that she did.

Mr. Browne asked if Ms. Freyberg had said that the existing shed is not very useful to her.

Ms. Freyberg replied that it is not as useful as she would like, as she can only use the pedestrian door on the side of the shed facing her property. She commented that she would like to be able to use it for a tractor and a snow plow.

Mr. Browne asked where the tractor and snow plow are now, and Ms. Freyberg answered that they have been in the shed for years, but she cannot get them out.

Mr. Browne said if the shed were demolished, Ms. Freyberg could get the tractor and the plow out of it.

The Chairman asked how the tractor and the snow plow got into the shed in the first place.

Ms. Freyberg explained that the previous owner of the adjoining property allowed her to go onto their property and use the door on that side.

Mr. Browne asked, if the Freybergs cannot use the equipment in the shed now, could they store it somewhere else before building the new storage shed.

Ms. Freyberg said she prefers to use her garage for cars, and there is no room in the barn.

Mr. Browne suggested that even if Ms. Freyberg had applied for a variance for 1 shed, the ZBA might have bundled the 2 together any way, as both old sheds were very close to the property line.

Ms. Freyberg said she now thought she should only have applied to replace one old shed with a run-in shed, which is a very simple construction, and then returned a year or 2 later with an application for the next shed. Anticipating questions about the second old shed, she had thought it would be helpful to bring the complete plan, but she has the right to keep the existing shed.

Mr. Browne said he was trying to find a way to meet Ms. Freyberg's needs as well as the neighbors' need to have the old sheds removed as was agreed to.

Ms. Freyberg asked what right the neighbors have. She said she is not obligated to build a new shed; rather, she has an option to do so.

Mr. Browne said Ms. Freyberg is obligated to demolish the existing shed prior to receiving a Certificate of Compliance for either new one.

Ms. Freyberg said that was why she was there, as she is unwilling to demolish a shed prior to having an option to build a new one. She added that she considered it onerous to require destruction of 2 buildings in order to put a run-in shed on her property in accordance with the agreement reached, which is further from the setback and much more attractive than what was there. She stated that the run-in shed is a positive improvement to the neighborhood.

Ms. Freyberg said she would be very hesitant to commit to specific timing, as already her intentions have been misconstrued as promises. She said there were reasons things could change, and she would not want to have to commit to anything. She went on to say that she and her husband were not present at the final ZBA meeting, as an agreement had been reached and the meeting was merely administrative. She said they exchanged e-mails with their attorney, verifying the agreement and their options and rights, including the right to leave things as they were and the right to do one job without the other or one at a time. Ms. Freyberg said she thought she had considered the Town and the neighbors, building the

run-in shed in accordance with the variance. She said she didn't understand why there was a monumental change between the site meeting agreement and the final meeting.

Mr. Reilly asked if Ms. Freydberg read the resolution when she received it, and she replied that she did.

Mr. Reilly asked if it was clear to Ms. Freydberg when she read the resolution that she would have to demolish both old sheds before she would get a Certificate for one.

Ms. Freydberg said it was not, because that was not the agreement reached at the site meeting.

Mr. Reilly asked if Ms. Freydberg was saying that the resolution was not clear.

Ms. Freydberg replied that it was not clear at the time, because she thought she knew what the agreement was, and it was beyond her comprehension that she would be required to destroy 2 buildings in order to put up a run-in shed. She asked what the precedent is to require destruction of 2 buildings to put up a run-in shed.

Mr. Reilly asked Ms. Freydberg again if she understood the resolution when she read it, and she repeated that it was not clear to her at the time because it seemed far out of the realm of the agreement and what would be considered reasonable.

Mr. Browne commented that he remembered the site visit in the field. He said he recalled discussion of both old building being taken down, the site of the run-in shed and the suggestion that the storage shed be moved closer to the barn to make it more convenient to use. He stated that the resolution is a reflection of what he recalls.

Ms. Freydberg said she did not dispute the locations agreed to. She thought it was a good compromise for placement of the shed.

The Chairman read Condition #3 from the resolution for BA08-27: "The two existing non-conforming out-buildings on the subject property shall be demolished and removed from the property prior to the issuance of a Certificate of Occupancy for either of the proposed structures."

Chairman Ivanhoe said he thought the statement was pretty clear. He said the spirit of the compromise was clear, and the resolution is clear, and he asked what the basis was for Ms. Freydberg's request to reverse or amend the resolution.

Ms. Freydberg stated that at the last meeting she attended, the 2 buildings were not bundled together, and her attorney said there was no need for her to attend the second meeting as an agreement was already in place. She agreed that the old sheds were ugly, but the reason for keeping them all this time was to have the right to have a shed. The reason she hired an attorney was because of all the complaints in the past. She said she could not risk tearing down the shed without having the right to re-build in a place where she agreed to do so. She said she will not tear it down for the run-in shed, because she cannot guarantee (in this economy) that she will build the new shed within the time-line agreed to. She said she had made a great effort and agreed to what the Board and the neighbors suggested regarding

location of the new shed, and it was a good compromise. Ms. Freydborg stated that if what she proposes is not acceptable, she will move the run-in shed to a location not requiring the variance and keep the second old shed.

The Chairman said Ms. Freydborg seemed to be asking for protection of her right to do what she proposed to do on an open time line. He further noted that Ms. Freydborg was not present at the final meeting.

Ms. Freydborg reiterated that her attorney had informed her that the agreement had already been reached and the meeting would be administrative in nature. She said she did not realize until she applied for a Certificate of Compliance for the run-in shed that she was required to demolish the second old shed. She stated that the requirement is onerous.

Mr. Ivanhoe said the agreement was to demolish 2 buildings in order to be granted a variance for a run-in shed within the setback and to put up a new storage shed.

Ms. Freydborg said requiring destruction of 2 buildings to get a Certificate for a run-in shed was not reasonable.

Mr. Ivanhoe said that is not what is called for; it is to destroy 2 buildings to get Certificates for 2 new buildings.

Ms. Freydborg said the functional matter faced now is to destroy a second building in order to get a Certificate of Compliance for her run-in shed. If she cannot get that Certificate, the run-in shed is of no use to her.

Chairman Ivanhoe said he disagreed with her, and he suggested that Ms. Freydborg could request an extension of the variance until such time as she is ready to build the storage shed.

Ms. Freydborg said that was what she was asking for.

Mr. Monti asked why Ms. Freydborg wants to retain a building she has said is of little use to her because she can't get equipment in and out of it.

Ms. Freydborg said it is not of no use; she can store things in it, and she will make more use of it if it remains. She said she would like the new, more useful shed; but for the time being, she wants a Certificate for the run-in shed.

Ms. Sokol said it seemed that Ms. Freydborg prefers not to go to the expense of removing the old shed and building a new shed so, for now, she wants to use the old one. At such time as she feels able to build the new one, then she wants the option to do that. Ms. Sokol said there must be some kind of limit/timeline.

Ms. Freydborg said it needs to be open-ended because she cannot predict what the economy will be.

Ms. Sokol said Ms. Freydborg had said she did not understand the agreement and the old shed serves no real purpose.

Ms. Freydborg said she never said the shed is of no use; it is of limited use because of its previous poor condition. Now that the roof is being re-done for a second time, it will be of more use for storage. Ms. Freydborg said she would rather have a new, attractive, most useful shed, but she cannot have one built now. She said she was asking not to be made to destroy 2 buildings in order to get a Certificate of Compliance for a run-in shed. Ms. Freydborg stated that if the Board insists on a specific timeline, she will keep the old shed and re-build it.

The Chairman opened the discussion up to members of the public, and called on Margaret Clark, attorney for Andre Betz (also present) and his wife, Mary Hanley, of 250 Titicus Road.

Ms. Clark said she hoped the Board had had time to review her submission on behalf of the Betz-Hanleys. She said the situation was negotiated in 2008. Ms. Clark attended the site meeting then, and thought the creative solutions reached were great. She added that she did not think the Freydborgs' original application could have been approved with the proposed locations of the new storage shed and run-in shed. The ZBA urged compromise, and everyone work together to come to an agreement which is reflected in the resolution. Ms. Clark stated that the resolution makes clear that both existing buildings must be demolished; in exchange, a run-in shed may be placed 11 ft. from the property line, and a storage shed built in a new location near the barn but still requiring a variance.

Ms. Clark stated that the current issue is not a good faith application before the Board. One structure is built; if there was so much trouble with the storage shed, perhaps it should have been replaced first instead of starting with a run-in shed. Ms. Clark said it was disingenuous to say there are not funds available for the storage shed, as funds are being disbursed to repair the old one.

Ms. Clark said the main doors on the Freydborgs' shed are on the Betz-Hanley property line, so they cannot use it. Trees planted by the Freydborgs would also make it hard to use the other door. She stated that the situation is a self-created hardship after the granting of a variance that is very favorable to the Freydborgs. There is an implicit threat that if the variance amendment is not granted, Ms. Freydborg will move the run-in shed and keep the old shed to make the neighbor regret not agreeing with her. Ms. Clark said a deal was struck and the Board should continue with the terms of the resolution without amendment.

Ms. Clark stated that she is aware that these are uncertain economic times, but there are 1 ½ years left on the variance. She said the old shed should be taken down now; the Freydborgs will get the C/C for their run-in shed and there will be plenty of time to build a new storage shed if they want to. Ms. Clark commented that if the Freydborgs need more time, an application for an extension would be appropriate if the old shed is gone. She said the current resolution, arrived at through compromise, should not be eviscerated and she strongly requested that the application be denied.

Chairman Ivanhoe stated that the Freydbergs' original plan was to add a half-story to the existing shed, for which they needed a variance because of its location within the setback. Then there were suggestions that led to the solution that became the resolution.

Ms. Freydberg took exception to Ms. Clark's statement that she was threatening.

The Chairman said he did not feel there was any threat in Ms. Freydberg's application.

Ms. Clark said she did not think there was any threat in the application either, until she heard Ms. Freydberg speak on the record earlier. Ms. Clark said she would withdraw her statement and apologized for any discomfort it might have caused.

Andre Betz said he does feel threatened, stating his belief that if the ZBA does not adjust the variance, the Freydbergs will keep the old shed right where it is, on the property line. He said it is falling down and there is vermin in it. He stated that if expense is a problem, the Freydbergs should have put up the storage shed first, not the run-in shed. Mr. Betz said he only agreed to the variance because both old buildings were to be demolished, adding that the Freydbergs seemed to keep them out of spite. He said if they care about the neighborhood, they should have removed both buildings years ago. He said the existing shed still looks terrible with its "keep out" signs, and he wants it gone. Mr. Betz said that if the Freydbergs just wanted a little more time to build the new shed, that would be fine. He said he was sure they will move their new run-in shed rather than take down the old shed he has been looking at for 12 years. He stated that for the Freydbergs to say they didn't know demolition of both buildings was required was wrong, because he knows the Building Inspector explained it to them. Mr. Betz offered to pay to take down the existing shed.

Chairman Ivanhoe stated that the Freydbergs have the right to move the run-in shed to a site not requiring the variance.

Ms. Freydberg said she regretted that her neighbor feels a property line drawn before either of them purchased their property is in some way her threatening him. The 2 sheds were also there before either family purchased their property. She said she is not threatening her neighbors; she has tried to accommodate them. The trees were planted to accommodate the Betzes' request for screening when the Freydbergs had their barn built. Ms. Freydberg said that in terms of funds, the run-in shed was considerably less expensive than the storage shed will be. The tarp on the shed began to blow around so, out of respect for the neighbors, she is having the roof repaired. She said she also needs to protect equipment kept inside the shed. As for Mr. Betz' statement about animals, she has seen no evidence of animals in the shed.

Mr. Betz said he and the North Salem police chased a rabid raccoon from the shed.

Ms. Freydberg said she hoped the police would have informed her if they discovered a rabid animal in her shed. She further stated that she never promised she would tear down the sheds, which were there before either the Betzes or her family moved in. She reiterated that there is no threat and nothing personal; there is merely a pre-existing condition.

Mr. Browne said the Board has to deal with the situation as it is now, including the variance that was granted. He commented that the Freydbergs planned to build a new storage shed, but now they do not want to build it due to the uncertain economy. He asked if it could be scaled down/made less expensive, with just enough room initially to store equipment currently kept in the disputed shed within a time frame that everyone could agree to.

Chairman Ivanhoe suggested that equipment could be stored in the run-in shed. If the old shed is demolished, the Freydbergs will have a Certificate of Compliance for the run-in shed so they may use it. He said the Board was not really present to discuss Ms. Freydberg's storage needs, but just to go over the current application.

Ms. Freydberg said she has a pre-existing shed.

Mr. Browne said the Freydbergs were then granted a variance, including certain conditions.

Mr. Reilly asked for confirmation that the pre-existing run-in shed is no longer on the property, and Ms. Freydberg said it is gone.

Mr. Reilly said Ms. Freydberg's variance has allowed for 3 years to complete her project, and she also has the right to request a time extension.

Ms. Freydberg said she was hesitant to do so, because she could not assume that the neighbors won't oppose such a request.

Mr. Browne pointed out that the Board would decide on such an applications, not Ms. Freydberg's neighbors.

The Chairman stated that the variance was granted on the basis of the Freydbergs following the terms of it; so if they returned to the Board with an application to extend the time frame of the variance, it would be looked on favorably by the Board because the Freydbergs had lived up to the spirit of the resolution.

Ms. Freydberg said she felt she was doing that.

Mr. Reilly said condition #3 clearly states that both old sheds must be removed before any certificates are issued.

Ms. Freydberg said she would not dispute the language, but her understanding was different.

Mr. Reilly said the Board was trying to help the Freydbergs have 2 structures and help the neighbors who want both old buildings removed.

Ms. Freydberg said Mr. Reilly seemed to be of the opinion that the neighbors have equal rights on her property, and she asked why people kept bringing up the neighbors' desire to destroy her shed.

Mr. Reilly said the issue is simply that there is a condition in the variance which states that both old buildings will be taken down.

Ms. Freydberg said the genesis of the situation was her neighbors' desire to destroy her shed.

The Chairman disagreed, saying it is a matter of reading the resolution, and destruction of the sheds arose from a joint solution that was reached. He stated that he was at the first meeting to hear the Freydbergs' variance application, and the neighbors did not state that they wanted both sheds taken down but listened to the proposal. The Board suggested moving the new shed to another location and leaving the run-in shed where it was proposed to be. The Chairman pointed out that the Freydbergs' original application's goal could not have been met without removing the existing buildings. He also said that the only way the Freydbergs could have done anything without a variance would have been to submit a building permit application to repair/restore the existing buildings exactly as they were (not moved and not made any larger).

Ms. Freydberg said her sense of the Board was that she will have to do that with the existing shed now. She said she thought the variance request would be an improvement to the neighborhood, but if the Board and her neighbors disagree, she can leave the old shed in place. She said she has worked in good faith. Ms. Freydberg apologized for missing the second meeting, but said she thought she understood the agreement reached at the site meeting and failed to realize the significance of being required to demolish both buildings in order to get a Certificate for a run-in shed. She stated that if she had realized she would need to demolish 2 buildings, she would not have gone ahead with the variance. She added that she could have destroyed the 2 buildings 10 years ago.

The Chairman said the difference was that the Freydbergs were going to replace them; one with a run-in shed, and one with an addition. The compromise reached was a better arrangement; moving the replacement storage shed closer to the barn would make it more convenient to use and would resolve an undesirable facet of the subdivision wherein there were 2 buildings very close to the property line.

Mr. Browne stated that Ms. Freydberg was misconstruing the ZBA's purpose, which is not to settle arguments between neighbors. The Freydbergs came to the Board to request something. When that occurs, the Board tries to alleviate the applicant's hardship, improve neighborhood character and redress things poorly planned if they can get agreement from parties involved as part of the variance process. Mr. Browne said the Freydberg's request was difficult due to the history and the condition and proximity of the old buildings to the property line, but an agreement was reached through the efforts of the Freydbergs, their neighbors and the Board that the Board thought would work. Now Ms. Freydberg says that she was not present at the final meeting and she is concerned about the economy, and she does not want to do what was agreed to. Mr. Browne stated that the process the Board of Appeals operates under is one of granting variances with a resolution containing certain conditions, and that is what stands until the Board decides otherwise. Now Ms. Freydberg wants to change the terms of agreement. He said it is not a matter of the Board acceding to the neighbors' wish that the remaining shed be demolished. Mr. Browne said the Board offers suggestions to try and help. He said Ms. Freydberg said she doesn't want to be told what to do, but the Board is just trying to be helpful. He said the Board has to stick to a process, and that was all they were trying to do/not taking sides against the applicant.

Ms. Freyberg said that she knows it is in the resolution, but she does not understand the need to destroy 2 buildings in order to be given a certificate.

Mr. Browne said it was the Board's best judgment at the time and was agreed to by all involved with no objection until now.

The Chairman said that if there were no further comments, he would like to close the public hearing.

Mr. Reilly explained that if the application is denied, a negative resolution is needed which requires 3 Board members to vote no (or aye in favor of a denial).

Chairman Ivanhoe said it was his sense of the Board that the vote would be negative.

Mr. Reilly said that as the application was actually a variance application, the Board would deny it. He read a draft resolution including the following: The resolution will state that the Board reviewed the materials submitted, both sides were given the opportunity to give testimony and present evidence, and the Board determined that the Freybergs' hardship is self-created in as much as the agreed-upon condition #3 was voted on at a regular meeting of the ZBA and the determination provided to all parties at the time, including Mrs. Freyberg, and no challenge has come forth. In the interests of justice, the resolution contained a time-frame of 36 months and would expire in August 2011 if no building permit were issued. A building permit would last for one year, giving the applicant until 2012 to complete the work. The Board has informed the applicant that if she is unable to complete construction within that time frame, she has the right to ask for an extension of the variance (as limited in condition #6). The agreement reached was fair at the time between all parties, and it is the recollection of the Board that both parties were represented by attorneys at the time. The original application was for variances and it was within the framework of the variance application that the Board and both parties (applicants and neighbors) were involved in the determination that came to be known as the August 21, 2008 resolution (BA08-27). The Board's determination was to help both parties affected by a subdivision created prior to their ownership of the properties and would be in the best interests of both parties and the Town. For all those reasons, the fact that the alternative which exists (requesting an extension of condition #6 of the variance) has not been agreed upon, and based on the Board's review of all those factors, per Section 267-B of Town Law, the application to amend condition #3 of the resolution BA08-27 is hereby denied.

Mr. Monti asked Ms. Freyberg if she understood everything Mr. Reilly said, and she replied that she did not.

He explained that the Board's resolution is to deny her current application, but she has the right to return to request an extension (of time to build the new storage shed per BA08-27), which the Board would look favorably on.

Mr. Betz said that as long as the old shed comes down, he too would be agreeable (to an application for additional time to build the new storage shed).

Mr. Reilly explained that to extend condition #6 of the existing variance would require a variance application.

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

**Mr. O'Leary:** Abstained  
**Ms. Sokol:** Aye  
**Mr. Monti:** Aye  
**Mr. Browne:** Aye  
**Chairman:** Aye

**Variance to amend variance BA08-27 denied.**

For the record, Mr. Reilly explained to Mr. O'Leary that when a Board member is new or has missed a meeting, as long as he has read the record preceding the vote, he may vote/does not need to abstain, although members may abstain at any time.

**BA10-18** Old Salem Farm Acquisition Corp. (190 June Road) – **Area Variance** – To decrease the minimum setback requirement for a "Use Group A" property per Article V Section 250-15. A front yard setback variance of 55 ft. is requested (100 ft. required; 45 ft. existing/proposed) for replacement of an existing non-conforming judges' stand with construction of a new gazebo in the same location.

Alan Bietsch, General manager of Old Salem Farm, addressed the Board, stating that he would like to replace a judges' stand for the front sand ring with a safer structure which will also keep up with other improvements made on the property.

Chairman Ivanhoe noted that the gazebo is a different shape than the judges' stand, and he asked about its size.

Mr. Bietsch said it is a little bigger and matches another gazebo on the property.

Pointing out a speaker pole on the site plan, the Chairman asked if the gazebo will be to the right, left, rear or in front of it.

Mr. Bietsch said that, facing the main barn from the street, the gazebo will be a little to the right of the speaker pole. He added that the footprint of the gazebo is somewhat different from that of the judges' stand, but it will be the exact same distance from the front property line.

The Chairman asked about lighting/electricity, and Mr. Bietsch responded that the gazebo will employ existing electricity for a microphone and there is an outlet, but there will be no lighting.

Mr. Monti stated that in December 2006, Karl Direske of Earth Wind Structures and Kamron Hakim (principal) came before the Board. Mr. Monti said that at that time, he raised the issue of 2 properties on Hardscrabble Road which are owned by Old Salem Farm, and the

resolution contains a statement that the principals would do something about the appearance of the 2 houses. Mr. Hakim asked the ZBA what they wanted done, and Mr. Monti told him the houses should look as nice as the farm. Today, there has still been nothing done. Mr. Monti said the driveway of the property closest to June Road (489 Hardscrabble Road) recently washed out, and someone is storing a boat on the property. At the other property (485 Hardscrabble), there was grass growing in the gutters and wires hanging out the windows in the past. He said the buildings are more deteriorated than ever. He raised the issue again in 2007, when Old Salem Farm had applications before the ZBA. Mr. Monti commented that Mr. Hakim seems not to intend to fix these properties, although in the past he said he would fix them up and sell them.

Ms. Sokol said she lives across the street from one of the properties; she has noted a lot of people going in and out and the house looks bad. She agreed with Mr. Monti that nothing has been done.

Mr. Monti said Mr. Hakim had asked the Board what they wanted him to do, and he was told that he should apply the same standard to the 2 properties as the farm. The appearance of the 2 lots is an insult to a neighbor in between the 2 lots; 4 years have passed, and nothing has changed.

Mr. Bietsch said that within the last 2 years, new roofs and gutters have been put on both houses. 485 Hardscrabble Road has been vacant since November 2009, and renovations will begin soon to replace the heating and renovate the home. Some driveway work has been done on the other property, but the drainage issue is also a County problem due to the condition of the road. He said he believes renovations for both houses are still in the plans.

Mr. Bietsch said the owner has spent a lot of money and lately has followed through with the plans, although not on the schedule originally forecast. A lot of things were not done on a timely basis; it was necessary to re-apply for some permits, go to the State and get the proper permits in place, and spend a lot of money getting the facility intact. Mr. Bietsch said they are still focused on getting the 2 houses ready.

Mr. Monti asked if the repairs will be done within this decade.

Mr. Bietsch said they will, although there is an issue with the ownership of the houses.

Mr. Monti expressed skepticism, reiterating that nothing has been done in 4 years. He said one of the properties contributes to a drainage problem; at the other property there is vegetation debris on the lawn, and the houses look terrible. It was promised 4 years ago that the lots would be cleaned up. The farm is being improved, but the houses are not.

Mr. Bietsch said he has spoken to Mrs. Yates (483 Hardscrabble Road), and he has received no complaints in the past year. He said he had not received any complaints from any other neighbor either.

Mr. Monti said he was complaining, and he told the Chairman he was not favorably disposed towards the current application unless positive action is taken.

The Building Inspector stated that while he was aware of these concerns, he has not done a good job of relaying them to the farm. He went on to say that 4 years ago, the owners were undecided about housing, but they have a definite plan now. Mr. Thompson said he does not know how the 2 houses figure into the housing plan, and he asked Mr. Bietsch to let the Board know what will be done with the houses.

Mr. Monti read from the 2006 resolution, "The exterior of two houses owned by Old Salem Farm Acquisition Corp, located at 485 and 489 Hardscrabble Road, must be cleaned and repaired where necessary, said work to be approved by the Building Inspector".

Mr. Monti then read a condition from the 2007 resolution: "Effective immediately, the applicant has until May 1, 2008 at the latest to make all repairs and improvements necessary to achieve an acceptable/appropriate appearance of two houses it owns at 485 and 489 Hardscrabble Road".

Mr. Monti said these were conditions of granting special permits, and they were not followed, so he didn't see why he should believe Mr. Bietsch now when he says the houses will be renovated.

Mr. Bietsch said he heard what Mr. Monti was saying. He said he inherited a lot of history and has done everything at the farm with proper permits in place. He said he would not make excuses for what was not done in the past, but there were even issues of ownership of the properties on Hardscrabble Road and another party's association that needed to be resolved before money could be spent to improve them. Mr. Bietsch stated that if he had known these properties were to be discussed at the meeting, he would have come prepared. He said the plan now is to fix up #489 for a trainer to reside there, and to renovate 485 for staff.

Ms. Sokol said that is not what the Board was told in the past; Mr. Hakim said the houses would be sold and the proceeds used for on-site housing at the farm.

Mr. Bietsch said he knew there had been a plan for a 28-room building.

Mr. Thompson said he wanted to offer clarification. He said Ms. Sokol and Mr. Bietsch were both correct. Mr. Thompson said it was also correct that Mr. Bietsch has done what he said and there has been no problem with follow-through. There was a variance granted for a boarding house, and then the owners changed their minds. He said he believed Mr. Bietsch's representation was accurate, adding that Mr. Bietsch had heard the Board's disappointment about the state of the houses on Hardscrabble Road.

Ms. Sokol said that if the houses are to be part of the farm, they should be kept up to neighborhood standards.

Mr. Thompson said he was trying to make it clear what he did not do and that Mr. Bietsch is a new person who has established a good track record with the Building Department.

Mr. Monti said the Building Inspector did not need to apologize; the responsibility is the owner's and the manager's. Whoever turned the job over to Mr. Bietsch should have turned

over the entire package, but they failed in this regard. He added that he had no faith that anything positive will be done on the 2 properties on Hardscrabble Road after 4 years.

Mr. Bietsch said \$30,000 has already been spent on new roofs and gutters.

Mr. Monti said the properties appear unchanged.

Chairman Ivanhoe noted that the application was simple and straightforward but there were background issues, so he was not sure how the vote would go unless the Board could be convinced they will see some action on these parts of prior resolutions.

Mr. Reilly suggested the applicant speak to the owner and get specific answers to the Board's questions. He said he recalled that the houses were to be sold and housing for grooms provided on the farm, and he thought the owner should send his agent back to the Board with real answers addressing the issues from 2006 and 2007.

The Chairman said the ZBA could keep the public hearing open and have Mr. Bietsch address the previous conditions/return for the next meeting.

Mr. Browne asked when the gazebo is needed, and Mr. Bietsch responded that it is needed for May 9 at the latest.

Mr. Browne asked if the gazebo is a pre-fab unit.

Mr. Bietsch answered that it is, adding that he actually needs it installed by the end of April.

The Chairman suggested that something temporary could be arranged for the May show if the variance application isn't resolved.

Mr. Bietsch said that would not be ideal. He explained that he applied for a building permit and found out a variance would be necessary. After 2 years at Old Salem Farm, he was unaware there was an issue; he had received no notification that there was a problem, and had he known, he would have come prepared to address the Board's concerns. Mr. Bietsch said work is being done on the houses. He stated that he could report to the owner that there is an open issue that needs to be resolved, and he asked for a copy of the 2006 meeting minutes to show to Mr. Hakim.

Mr. Reilly said Mr. Hakim had been present at the meeting.

Mr. Monti reiterated that he asked Mr. Hakim to make the houses look as good as the farm. He suggested that the person Mr. Bietsch took over for had not been forthright.

Mr. Thompson said he agreed that Mr. Hakim should be aware, but Mr. Hakim/Mr. Bietsch have also never heard anything from him in the way of complaining about the 2 properties. Now the farm is coming up on the May show. Mr. Thompson suggested that if the variance resolution includes a condition with a completion date for repairs/renovations on the 2 houses on Hardscrabble Road, he will make sure the work is done. Mr. Thompson apologized for losing track of the situation and said he will follow up from now on. He stated that he was

confident that, given the impressive amount of work completed over the past 3 years, this job will be done also. He added that he felt partly responsible, and he would like to see the farm get consideration now.

Mr. Browne asked if there is a mechanism whereby the Building Inspector can serve notice on the farm that such a condition was not satisfied, and Mr. Thompson said there is/he could do that.

Mr. Monti stated that the Building Inspector is not responsible; the owner is. He added that Mr. Bietsch took a bad turn-over when he accepted the position as general manager, but responsibility lies with the farm and not the Building Department.

Mr. Reilly said the Board could grant the variance for May, with conditions to be addressed by a certain date. If the owner is notified that he is in violation of the conditions, he will end up in court if the violations are not cleared up within a limited period of time. Mr. Reilly informed the Board that they could grant the variance for the gazebo with a condition requiring compliance with the 2006 and 2007 conditions, and the variance will be retracted/the gazebo will have to be removed if the farm does not comply.

Mr. Thompson pointed out that the final condition of the 2006 special permit is that the special permit may be revoked for failure to correct violations of any of the other conditions within 30 days' written notice by the Building Inspector.

Mr. Bietsch stated his desire to comply and be a good neighbor.

Mr. Reilly said the Board should move to advise the Building Inspector that they have reviewed the 2 special permits and that the applicant is being advised that the Board will take the enforcement measures that are included therein.

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

Mr. Reilly read a draft resolution, noting there will be no additional conditions in the variance resolution regarding the conditions of the 2006 and 2007 special permits.

**Motion by:** *Patrick Browne*  
**Seconded by:** *William Monti*

**Mr. O'Leary:** *Aye*  
**Ms. Sokol:** *Aye*  
**Mr. Monti:** *Aye*  
**Mr. Browne:** *Aye*  
**Chairman:** *Aye*

***Area variance granted, as requested.***

**BA10-20** Prudence B. Lev (736 Titicus Road) – **Special Permit** – For the keeping of up to 6 horses for personal use, per Article XIII Section 250-72.

Don Rossi, attorney for the applicant, addressed the Board, stating that his client wishes to renew a special permit for six horses. He said the subject property has recently been listed for sale; and, in connection with the listing agreement, defects were discovered. The special permit had inadvertently been allowed to expire, but Ms. Lev wants to renew it now.

Mr. O’Leary asked if a new owner wouldn’t have to get a new special permit, and Mr. Reilly said they would, as these special permits are personal to the property-owner.

The Chairman noted that there have been no horses on the property for a few years.

Mr. Browne asked if the special permit should be granted for less than the standard 10 years.

Mr. Reilly said it should be for 10 years, because if the applicant keeps the property the special permit will be in place; whenever the property is sold, the new owner will need to apply for a new permit any way.

The Chairman noted that the special permit is for 6 horses, but 2 stalls are in the building that has an apartment on the second floor. He said there will be some questions about what the applicant will do there.

Mr. Rossi said his client does not wish to abandon the 2 stalls, so a two-hour fire-separation will have to be installed between the stalls and the apartment.

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

**Motion by:** William Monti  
**Secinded by:** Deidre Sokol

**Mr. O’Leary:** Aye  
**Ms. Sokol:** Aye  
**Mr. Monti:** Aye  
**Mr. Browne:** Aye  
**Chairman:** Aye

**Special permit granted, as requested.**

**BA10-21** Prudence B. Lev (736 Titicus Road) – **Special Permit** – For the maintenance of an accessory apartment in an accessory building per Article XIII Section 250-68.

Mr. Rossi stated that the apartment has been in existence for years and has been taxed since 1998. He said he did not know why his client didn’t realize it was not part of the building permit and certificate of occupancy for the building, but he was present to have the apartment legalized.

Mr. Rossi handed out copies of a floor plan.

Mr. Thompson said that the existing C/O is for a barn and loft.

Mr. Reilly asked if a new building permit and certificate of occupancy are required, and Mr. Thompson said they are.

Mr. Reilly asked how large the apartment is, and Mr. Rossi replied that it is 720 sq. ft.

The Chairman noted that there is parking.

Referring to the floor plan, Mr. Browne asked if there is a sleeping loft or just a partition.

Chairman Ivanhoe said it is open like a studio apartment, and there is just a half wall separating the sleeping area from the kitchen.

Mr. Thompson commented that the apartment is very well kept.

Mr. Monti asked if the Building Inspector evaluated the construction of the apartment in terms of Code requirements at the time when it was constructed, and Mr. Thompson replied that the Code permits building inspectors to use the Code operable at the time of construction. The Chairman asked if the fire separation will be required only for the first level ceiling/ second level floor.

The Building Inspector explained that it will be installed to protect all the parts of the building that hold up the second floor (exterior walls and ceiling).

The Chairman commented that sheet rock would not be a good material to use in the stalls.

Mr. Thompson said the special permit for the accessory apartment will stipulate that it must comply with all other laws and regulations that apply.

Mr. Monti said he thought the Chairman was pointing out that dry wall would not be practical in the stalls due to moisture, etc.

Mr. Thompson suggested that the ZBA does not need to go into such detail in its resolution, since these issues are Building Code-related and therefore covered by the standard condition that approval is given subject to all other applicable laws and regulations.

Mr. O'Leary asked what was meant by the agenda description, " ... for the maintenance of an accessory apartment ... ".

The Building Inspector explained that the application is for the continued use of an as-built apartment as opposed to one being proposed to be built.

The Chairman noted that the 2-hour fire separation is included in the submitted drawings.

Mr. Rossi said his client will discuss appropriate alternatives with the Building Inspector.

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

**Motion by:** William Monti  
**Seconded by:** Patrick Browne

**Mr. O'Leary:** Aye  
**Ms. Sokol:** Aye  
**Mr. Monti:** Aye  
**Mr. Browne:** Aye  
**Chairman:** Aye

**Special permit granted, as requested.**

There being no further business to discuss, the Chairman closed the meeting.

Respectfully submitted,

  
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Janice Will, Recording Secretary