

**Town of North Salem
BOARD of APPEALS
Public Hearing
June 10, 2010
8 p.m., The Annex**

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

MEMBER ABSENT: Deidre Sokol

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

Chairman Ivanhoe called the June 10, 2010 Town of North Salem Zoning Board of Appeals meeting to order.

Chairman Ivanhoe set the next meeting for Thursday, July 8, 2010.

The minutes of the May 13, 2010 meeting were unanimously accepted.

The Chairman announced that, as only 3 Board members were present, a unanimous decision would be required for any application to be approved. Any parties who would rather have their applications heard by a full Board would have the right to postpone their appearance until the next Board meeting at no additional cost to them.

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.

BA10-25 Three Cocks and a Hen (4 West Cross Street) – Appeal – To overturn a determination by the Building Inspector that the applicants must pursue Planning Board Site Plan Review in order to landscape and add seasonal outdoor dining to the current use of an area adjacent to a restaurant in a GB district, per Article XVII Section 250-108A and 109.

Carried over pending review of Zoning Ordinance/Permitted Uses.

PUBLIC HEARINGS

BA10-26 Sara and Manuel DeVengoechea (15 June Road) – Area Variance – To increase the maximum height of a fence in a side yard per Article VI Section 250-22. A variance of 2 ft. is requested (5 ft. permitted; 6 ft. 4 in. proposed) for installation of new stockade fencing to replace existing 5 ft.- to 6 ft.-high fencing that was installed without issuance of a building permit.

Manuel DeVengoechea addressed the Board, stating that he seeks to replace existing fencing on his property because it is coming apart; 100 ft. of the fence fell during the

past winter, leaving a wide gap between his property and the neighbors. After trying to repair the fence, Mr. DeVengoechea spoke to the Building Inspector about replacing it and was informed that he would need a building permit. Mr. Thompson discovered there was no Building Permit for the original fence, which was present on the property when Mr. DeVengoechea purchased it in 2000.

Mr. DeVengoechea stated that 83% of the existing fence is well back on his property, and the rest is right on the property line. He added that he learned he would need a variance for the 6 ft. fence he wants (6 ft. 4 in. to clear the ground), and the 2 sides of the fence must be equal in quality and appearance. Mr. DeVengoechea commented that if the fence were put up with the "good" side facing his property, there would be no need to go onto his neighbor's property to install it, but the "good" side must face out/to the neighbor (Amus, 27 June Road).

Bruce Thompson clarified that the application is for a variance to permit a 6+ ft.-high fence and is not about which way the fencing is installed; the Ordinance requires the "good" side of all fences to face adjoining properties.

Mr. DeVengoechea said he needs his neighbors' permission to go onto their property in order to attach the fencing to the posts. He said he sent them a letter but has not received a response.

Chairman Ivanhoe noted that the current variance application is only for the height of the fence; if it is important to Mr. DeVengoechea to have the "good" side of the fence face his own property, it would require a new variance application.

Mr. DeVengoechea said he would proceed with the application as is.

Richard O'Leary commented that he has seen the existing fence and it is pretty far from both houses and goes through the woods, so he doesn't see that it would have any negative impact.

The Chairman opened the hearing up to public comment, and Nora Amus of 27 June Road approached the Board.

Ms. Amus said she received the letter from Mr. DeVengoechea, and she had questions for the Building Inspector about it, but there was not time for him to respond before the meeting. Ms. Amus stated that Mr. DeVengoechea's letter said he will install the fence with the "good" side facing her property, and 83% of the fence is well onto his own property/17% is on the property line.

Ms. Amus said she had found a copy of the application for the original fence that the Building Inspector said he could not find.

Ms. Amus said the application of the previous owner of the property stated that the fence would be 5 ft. high on the side and 4 ft. high toward the road. She stated that the

existing fence is not in compliance with the application, and there is no Certificate of Occupancy for it. Ms. Amus added that Mr. Thompson was not the Building Inspector at the time.

Ms. Amus said she does not object to the height of the fence; but, on the advice of her attorney, she would like something in writing from Mr. DeVengoechea's contractor verifying that he has a County license and liability/workmen's compensation insurance before she consents to have the contractor/his employees come onto her property to remove the old fence. Ms. Amus explained that Mr. DeVengoechea's letter asked her to take responsibility/liability for any injury to the workers or to him while on her property. Ms. Amus said that in the past, Mr. DeVengoechea claimed the fence was hers, and she asked if the new fence has been staked now. She said she would like to see both the property lines and the fence line on a survey done by a certified surveyor.

Ms. Amus said Mr. DeVengoechea's notes indicated that existing trees and shrubs are an issue. She stated that if they are a problem, the problem is self-created, as the trees were planted after the fence was already in place. Ms. Amus said under no circumstances should the fence be built in such a way that maintenance requires access to her property. She handed photos of the trees to the Board, saying that they pushed part of the fence down. She said she agreed with Mr. DeVengoechea that water is an issue, as water running from their paddock knocked some of the fencing down. She said she would like to see the drainage issue addressed, as drainage put in near the front paddock is not working. Ms. Amus showed photos taken in February after the fence fell down. She suggested Mr. DeVengoechea move his trees.

Ms. Amus said she consulted with her architect, who is also a building inspector and contractor, and he told her it is possible to construct a fence on a property line from one side only and is commonly done. She provided a letter from the architect attesting to this.

The Chairman asked what Ms. Amus objects to.

She replied that she does not want to have to provide access to her property to facilitate installation of the fence. She reiterated that she has no problem with the proposed height of the fence, although she does not know what the neighbors would think about it. She said that, regarding access to her property, her lawyer advised her to suggest Mr. DeVengoechea's attorney contact her so they can work out an agreement and all the documents can be reviewed. Ms. Amus said she brought her attorney's card to give to Mr. DeVengoechea for his attorney.

Ms. Amus stated that her lawyer said she should ask that no wording about liability or access to her property be included in the variance, as those things are part of a civil matter and not Zoning Board issues. She said she really has no objection to the height variance.

The Chairman said that is all the Board is reviewing, not the civil matter.

Stating that she wants to protect herself, Ms. Amus said she wants a hold harmless agreement, proof that the contractor has a current license and appropriate insurance, and to be named a certificate-holder on the insurance. She said there is a lack of trust between the DeVengoecheas and her husband and her, and allegations have been made to the Board that unfairly represented the Amuses in the past. She said she wants this written agreement to protect herself.

Chairman Ivanhoe said these are not matters for the ZBA's consideration; they will only review and decide on the application for a variance for the height of the fence.

Mr. Reilly suggested Mrs. Amus have her lawyer send a letter to the DeVengoecheas' lawyer, because the Board of Appeals cannot go into these other matters.

Ms. Amus said the letter from Mr. DeVengoechea specifically asked her to sign off on this request.

Mr. Reilly said Mr. DeVengoechea will not be able to install the fence without permission to go onto the Amus property unless he can somehow do it all from his own property, but it is for the DeVengoecheas and Amuses to deal with/not the Board.

Ms. Amus said her architect said that can be done. She reiterated that there have been problems between the 2 neighbors in the past. She said she agrees that the fence needs to be replaced, and she added that she wants the "good" side of the fence face her property.

Mr. Reilly said that point was already settled.

The Chairman thanked Ms. Amus and called on Carol Molony of 172 Baxter Road.

Ms. Molony asked if the Amuses are living in the house at 27 June Road.

Ms. Amus responded that they do not live there now/there is no Certificate of Occupancy for the house yet, but she goes there everyday to check on things on her property.

Ms. Molony said she has observed the condition of the DeVengoecheas' fence when she goes there to give riding lessons, and she thinks a proper fence should be put up to incorporate the nice views in North Salem.

Ms. Amus commented that there are a lot of deer in the area, and they jump over the existing fence to get to the DeVengoecheas' land to drink from their pond. She said she did not know if they would be able to get over the new fence, wondered if maybe the fence should be lower towards the front of the property.

The Chairman said the Board does not usually request that a fence be built shorter for deer.

Sara DeVengoechea said the fence behind the barn does not go into the wetlands, and there is room for deer to pass between the 2 properties.

Mr. DeVengoechea asked to clarify points made by Ms. Amus, but the Chairman said the Board was clear on things already.

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

Mr. Reilly read a draft resolution, including a statement that the fence must be installed with the "good" side facing the neighbors' property as required by the local Statute.

Motion by: William Monti
Seconded by: Richard O'Leary

Mr. O'Leary: Aye
Mr. Monti: Aye
Chairman: Aye

Area variance granted, as requested.

BA10-27 Trevor Havard (7 Mills Road) – **Area Variance** – To decrease the minimum rear and side yard setbacks in an R-1/2 zoning district per Article V Section 250-15. A rear yard setback variance of 25 ft. (35 ft. required; 10 ft. proposed) and a side yard setback variance of 8 ft. (15 ft. required; 7 ft. proposed) for construction of a detached 2-car garage.

Michael Sirignano, attorney, was present along with Trevor Havard. Mr. Sirignano stated that his client purchased the property at 7 Mills Road approximately a year ago. He described a very steep change in grade from the road to the front door of the house. Mr. Sirignano said there is an existing garage set into the hill at the front of the property. Commenting that the garage is very old, Mr. Sirignano said it is very inconvenient to use the garage at street level and then climb 30 steps up to the front door, especially for Mrs. Havard when she is traveling with their baby.

Mr. Sirignano stated that the plan is to remove the existing garage and build a new driveway along the side to the rear of the property where a 22 ft. x 22 ft. 2-car garage is proposed to be built. He said it is a simple structure with one door. Mr. Sirignano said topography and the location of the house limit the placement of the proposed garage, and the site chosen will be much more convenient. He added that his client spoke to the 2 closest neighbors. The neighbor to the rear has no concerns; the next-door neighbor expressed concern only about the new driveway and the need to remove a few small trees. Mr. Sirignano said his client will plant screening.

The Chairman commented that the new garage/driveway will be a big improvement, and Mr. Sirignano said it will also be safer.

Mr. Havard said when he has older visitors, they struggle with all the front steps.

Chairman Ivanhoe asked if the existing front steps will be removed.

Mr. Sirignano said they will; there will be a few steps built from the new driveway to the front door.

The Chairman asked if Mr. Havard will do some landscaping, and Mr. Havard replied that he will.

Regarding the trees to be removed, Mr. Havard said they are not very old/were just planted for privacy.

Chairman Ivanhoe asked if there is anyway to pull the curve of the driveway inward.

Mr. Sirignano said there really is not room, as a turn-around is needed at the rear.

Mr. Havard said the neighbor to the rear has a garage there also, so the new garage won't spoil anyone's view. He added that he told his next-door neighbor that he will put in more plantings for privacy.

The Chairman pointed out that the curve of the driveway is right on the property line.

Mr. Sirignano said his client will have to plant on the neighbor's side if planting is desired there.

Mr. O'Leary asked if anyone had any objections, and the Chairman said there were none.

Mr. O'Leary commented that if the driveway can be pulled in enough for Mr. Havard to plant the landscape buffer on his own property, it would be better.

Mr. Sirignano said they will consult with the contractor to see if it can be moved a little bit.

Chairman Ivanhoe said that otherwise, Mr. Havard must simply work something out with his neighbor.

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

Mr. Reilly read a draft resolution, including the finding that the location of the garage and driveway are necessitated by the configuration of the subject property. He added that as the applicant has spoken to his neighbor, it seems they can come to some agreement about landscaping without making it a formal condition of the resolution.

Noting 2 motion-sensor spotlights over the garage door in the plans, Chairman Ivanhoe asked that the lights be hooded.

Motion by: William Monti
Seconded by: Richard O'Leary

Mr. O'Leary: Aye
Mr. Monti: Aye
Chairman: Aye

Area variance granted, as requested.

BA10-28 William Wagers (8 Juengst Road) – **Area Variance** – To decrease the minimum combined side yard setbacks in an R-1 zoning district per Article V Section 250-15. A variance of 31 ft. (20 ft./50 ft. required; 3.6 ft./19.9 ft. proposed) is requested to permit 2 sheds and an addition/roof-line change to a garage to remain as constructed.

Re Hagele, Mr. Wagers' architect, addressed the Board, stating that he was the architect for the additions made to the Wagers house in the past. There are 2 sheds with no foundations and an old garage with a re-done roof. The 8 ft. x 8 ft. shed was put up in 1974 and is adjacent to the shed on the Polish property for which a variance was granted in May. The 10 ft. x 10 ft. shed was put up in 1983. It is on the side of the property that adjoins the Campbells, and Mr. Campbell helped to install it. Mr. Hagele said there have been no objections to either shed. He added that Mr. Wagers considered moving one of the sheds, but it would interfere with access to the garage and also pull it out of the line of trees that currently help to conceal it.

Mr. Monti commented that there are a lot of lines drawn on the submitted survey.

Mr. Hagele agreed, adding that it appears there were once plans for a subdivision.

The Chairman commented that all the buildings are existing, and he added if there are lights on any of them.

Mr. Hagele said there are no lights on the outside of any of the 3 buildings.

Mr. O'Leary asked about the change to the garage roof.

Mr. Hagele said the original roof was flat; the new one is slanted. He explained that his client was told by a previous Building Inspector that he would not need a building permit to replace the roof, but then he changed the pitch also.

The Chairman asked the Building Inspector if the garage meets Code requirements.

Mr. Thompson answered that it will require some structural work for safety, and Mr. Hagele added that those things will be done.

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

Mr. Reilly read a draft resolution, including a condition that the garage shall be brought up to Code.

Motion by: *William Monti*
Seconded by: *Richard O'Leary*

Mr. O'Leary: *Aye*
Mr. Monti: *Aye*
Chairman; *Aye*

Area variance granted, as requested, with specific condition per discussion and agreement.

All the agenda items having been heard, the Chairman closed the meeting.

Respectfully submitted,


Janice Will, Recording Secretary