

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

MEMBERS PRESENT: Brian Ivanhoe, Chairman
Deidre Sokol
William Monti

MEMBERS ABSENT: Patrick Browne
Richard O'Leary

OTHERS PRESENT: Gerald Reilly, Counsel
Janice Will, Recording Secretary
Members of the Public

OTHERS ABSENT: Bruce Thompson, Building Inspector

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

Chairman Ivanhoe set the next meeting for Thursday, August 12, 2010.

The minutes of the June 10, 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.

William Monti stated that he has seen the patio put in at Croton Creek for outdoor dining, and the proprietors should be commended for the nice job they've done. Mr. Monti said he was also very pleased to see that the new manager at Old Salem Farm is working to clean up the 2 houses on Hardscrabble Road that are owned by the Farm.

Deidre Sokol seconded Mr. Monti's comments about Old Salem Farm, and Chairman Ivanhoe said he was in agreement also.

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 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

BA10-29 Gotham Enterprises, LLC (741 Titicus Road) – **Special Permit** – To renew Special Permit BA00-54 for the keeping of not more than 20 horses for private use and including amendments BA01-54 (for 3 grooms' quarters) and BA04-46 (for 1 additional groom's quarters), per Article XIII Section 250-72.

Michael Sirignano, attorney, addressed the Board, explaining that the subject property is a 25.89 acre private horse farm. Gotham's original special permit was for the keeping of 20 horses for private use, and it was amended twice: once to add 3 grooms' quarters and again to add a fourth groom's quarters. Mr. Sirignano said there have been no changes to the farm since 2004 and none are proposed now; the farm will continue to be used privately and there will be no public events. Mr. Sirignano asked that a special permit be granted for another 10 years.

Chairman Ivanhoe commented that the farm looks good. He said that since the time when Gotham's first special permit was granted, the Board has sought to implement a lighting standard in keeping with the "dark sky" ideal and to minimize visual impact. For these reasons, the Chairman asked the applicant to consider installation of black-out shades in the clerestory of the indoor riding arena so that when the ring is used at night the bright light will not be seen. Chairman Ivanhoe stated that the Board also requires that outdoor lighting not be visible at its source, so existing flood-type lighting on the farm (with the exception of short-time security lights) should also be changed.

Mr. Sirignano said he will need to check with his client before agreeing to any changes, so perhaps the Board would like the application held over.

Gerald Reilly said that would be the right thing to do, as the existing special permit will not expire immediately and it would be preferable to putting contingencies on the new permit.

Mr. Sirignano asked if the Board wants to conduct a walk-through before the August meeting, or just specify what lights need to be changed/shaded.

The Chairman said the need to shade the light in the clerestory on the indoor arena is the main thing.

Mr. Reilly said the Board could vote on the Special Permit with the 2 specific conditions about lighting included. If Mr. Sirignano's client has a problem with the conditions, he may return to the Board in August.

Mr. Sirignano asked for a statement of the other lighting condition.

Chairman Ivanhoe said it would be that any non-photoelectric-controlled, hard-wired flood lights must either be shaded or aimed downward so they will not be visible at their sources.

Mr. Sirignano said he would prefer to have the special permit granted with the conditions.

Mr. Reilly said it is a condition of all special permits that if the Building Inspector finds that conditions are not complied with, the special permit may be terminated. Mr. Reilly suggested that Mr. Sirignano send a letter to the secretary, stating his clients' agreement with the conditions or otherwise let her know 4 to 5 days before the August meeting that he wants to address the Board again.

Chairman Ivanhoe noted there were no questions, and he closed the public hearing.

Mr. Reilly read a draft resolution including the 2 conditions about lighting and the need for the applicant to affirm acceptance of the conditions.

Motion by: William Monti
Seconded by: Deidre Sokol

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

Special permit granted, as requested, with specific conditions per discussion and agreement.

BA10-30 Claire and Donald Navin (10 Vails Lake Shore Drive) – **Area Variance** - To decrease the minimum front yard setback 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 setback variance of 13 ft. is requested (30 ft. required; 17 ft. existing/proposed) to permit a deck to remain as constructed.

Claire Navin stated that she and her husband received permission from the Vails Grove Co-op to have their deck built in 1984. They thought the contractor filed for a building permit from the Town but recently learned that he did not, so they were requesting a variance in order to legalize the deck now.

The Chairman noted that the Board received copies of the co-op's approval.

Mr. Monti asked if the deck was built according to code standards, and Ms. Navin replied that it was.

Mr. Monti asked if the Building Inspector looked at the deck.

Ms. Navin said the Assistant Building Inspector, Maureen Eckman, inspected her deck.

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

Mr. Reilly read a draft resolution.

Motion by: Deidre Sokol
Seconded by: William Monti

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

Area variance granted, as requested.

BA10-31 Nancy Falls-Aronchick (672 Titicus Road) – Area Variance - To increase the maximum height of a fence in a front yard from 4 ft. permitted to 6 ft. proposed per Article VI Section 250-22 (C).

Chairman Ivanhoe called on Nancy Falls-Aronchick who explained that she wants to install 90 ft. of fencing on the elevated part of her property as a sound barrier. She added that the fence will not be very visible.

The Chairman stated that he visited the all properties cited on the agenda. He commented that Ms. Falls-Aronchick had not provided elevation drawings in her application and asked her to describe the fencing.

Ms. Falls-Aronchick said the fence will be constructed of natural cedar that will turn gray and match her deck.

Chairman Ivanhoe asked why Ms. Falls-Aronchick wants a 6 ft.-high fence, and she replied that a 4 ft.-high fence would not block the road sounds if one were standing up.

The Chairman commented that the fence will be fairly apparent from the area of the stop sign at Routes 121 and 116.

Ms. Falls-Aronchick countered that there are existing trees in front of the area where she wants the fence, it will be set back approximately 20 ft. from the road, and the fence will fade/weather with time. She added that there are about a dozen trees.

Mr. Reilly asked Ms. Falls-Aronchick to indicate on the survey where the trees are.

Ms. Falls-Aronchick showed the Board where the trees are. She stated that any evergreens she might plant there would not live because the area is completely shaded.

The Chairman said rhododendron would grow in the shade.

Ms. Falls-Aronchick said deer would eat rhododendron. She said she also does not trim the existing brambles and wild berry bushes in the area.

Mr. Monti commented that anything planted in front of the fence would also contribute to the sound barrier.

Ms. Falls-Aronchick said she has mountain laurels on the inside of the fence, and deer don't eat them, but they also do not fall all the way to the ground because they don't get much sun.

Chairman Ivanhoe asked the other Board members to consider requiring some planting in front of the fence and asked for suggestions of plants that would grow in the shade and not be consumed by deer. He said boxwood might thrive, but it would not fit in with the rural-type of garden Ms. Falls-Aronchick has. The Chairman suggested that the raspberries might grow on a trellis in front of the fence.

Ms. Falls-Aronchick said she could try that, and she reiterated that once the fence begins to weather it will not be very visible.

The Chairman noted there were no further questions or comments and closed the public hearing.

Mr. Reilly read a draft resolution including a condition that the applicant attempt to grow something in front of the fence to break up its appearance.

Motion by: William Monti
Seconded by: Deidre Sokol

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

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

BA10-32 Nora and Todd Amus (27 June Road) – For extension of Building Permit #5508. Per resolution BA10-04, the applicants were directed to return to the Board of Appeals in the event the Building Permit requires extension beyond its July 14, 2010 expiration date.

Milton Gregory Grew (architect) and Judith Reardon (attorney) approached the Board.

Chairman Ivanhoe noted that the application includes a construction sequence. He stated that the BA10-04 resolution contained specific requirements pertaining to the site.

Ms. Reardon offered the Board photographs of the site.

Mr. Grew stated that he has visited the site from time to time, and he has also communicated with the Building Inspector over the construction period. He explained that the stock-piled soil has been removed from the site and the area re-graded and seeded.

The Chairman said he noted the seeding when he visited the site, and he asked when the work was done.

Mr. Grew said it was completed fairly recently. He added that the stone driveway has been installed and the storage containers have both been removed/the areas seeded and stabilized. Mr. Grew stated that a lot of site work has been done, including septic and underground drainage. He said 2 parts of the wetlands mitigation have been completed, but the planting still needs to be done on the west side of the pond. Mr. Grew said the plan calls for planting on the south side of the property as well, although he could not see the need for additional planting there. He stated that he will ask the Building Inspector to look at it.

Chairman Ivanhoe said the Board would leave wetlands issues up to the Building Inspector.

Regarding the other proposed planting, Mr. Grew said plants have been ordered and pre-paid for. He explained that the supplier felt the spring was too wet to plant and the summer has been too dry, so he expects to start in September.

The Chairman said he thought the planting could have been done in the spring, but September is reasonable.

Mr. Reilly stated that the Building Inspector asked for a priority list of things to be taken care of, and Mr. Grew said he will provide the list.

Mr. Reilly asked if the maximum 25-watt light fixtures on the pillars at the driveway entrance have been taken care of yet.

The Chairman commented that there are no lights yet, and he said he thought the Board had asked that the lights be set into the pillars/not placed on top.

Mr. Reilly read the condition from BA10-04 (same as in BA08-37). He asked if the yellow police tape is gone, and the Chairman said it is.

Mr. Grew said he thought it was reasonable to state that the site has been neatened up and looks pretty good.

Chairman Ivanhoe agreed that it looks considerably better, but he asked what is to be done with an unsightly orange highway cone in the old driveway.

Mrs. Amus said she put it there to warn people against turning around there.

The Chairman said it is too far back on the driveway to be of much help, and he asked if there is something that could be put out close to the road.

Mr. Grew said perhaps they could take it up with the County, explaining that the County has plans for roadwork in that area including the driveway culvert.

The Chairman asked how soon the old driveway cut will be removed.

Mr. Grew said the County does not have a date for start of construction on June Road yet, and the driveway cut removal will be done in conjunction with the road work.

The Chairman suggested that perhaps some boulders could be put in the old drive to close it for the time being. He said posts with a chain across the driveway would work also.

Mrs. Amus said there might still be some boulders on the property, or she might be able to put large tree trunk sections in the drive.

It was agreed that the Amuses will use something other than the orange cone to block the old driveway.

Mr. Monti asked for confirmation that Mr. Grew will discuss remaining wetlands mitigation tasks with the Building Inspector, and Mr. Grew said he will do so.

The Chairman suggested that now that the grass has come in on the northwest side of the site, perhaps the silt fence may be removed. He said the Building Inspector will decide if that should be done.

Regarding the construction sequence, Mr. Grew said he first submitted a list on March 1 and then revised it in May based on Mr. Thompson's comments. Mr. Grew added that the interior plans have also been revised/reduced in scope in order to get a Certificate of Occupancy with a little less effort. A further revision of the construction sequence was made on June 9 based on additional comments from Mr. Thompson. Mr. Grew offered to go through the list one point at a time.

Chairman Ivanhoe said that would not be necessary/the Board was mainly concerned with the exterior work which seems to be moving along.

Mr. Grew said work is also progressing indoors.

Mr. Monti asked for an estimated date of completion.

Mr. Grew said there continue to be financing issues, and the Amuses have been funding most of the work themselves. He said he would want to ask for a year to finish the job.

Mr. Reilly said the Building Inspector wants the exterior work finished within 4 to 6 months.

The Chairman said he was thinking of a 4-month extension after which the Amuses would return to the ZBA.

Ms. Reardon said there is no provision in the Zoning Ordinance to come back to the Board.

Mr. Reilly said there is if the applicants agree to the condition that all exterior work is to be completed in 4 months; then they would return to bring the Board up to date on interior progress.

Mr. Grew said he thought that could be accomplished.

Mr. Reilly said the extension will go up to November 14, which should be enough time to finish the planting.

Mr. Grew said he was concerned about premature expiration of the permit forcing a new building permit application. He stated that when a house is framed and the mechanicals are roughed in, the job is 60% completed. To have a building permit tied to one edition of the New York State Building Code expire and require renewal under the current edition of the Code would be a huge complication.

The Chairman said the Board did not wish to see that happen; they are trying to help the situation along with periodic extensions.

Ms. Reardon asked if the extension will be for a year contingent upon completion of exterior work.

Mr. Reilly said the extension will be for 4 months with the applicants agreeing that they will return to the Board at their December meeting to establish that the exterior requirements have been met and to demonstrate progress on the interior plan.

Chairman Ivanhoe added that the Board views the construction sequence as a sort of punch list.

Mr. Grew asked what comes next, if the Board is satisfied in December.

Mr. Reilly said the Amuses will apply for the balance of the one-year extension of the Building Permit.

Mr. Monti commented that it is not the Board's goal to have the applicants return over and over. He said the Amuses should have their Certificate of Occupancy by July.

The Chairman said the applicants will update the Board about progress with the punch-list when they return in December.

Manuel DeVengoechea of 15 June Road stated that after 5 years, he was glad to see the job coming along.

The Chairman thanked him for his positive comment.

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

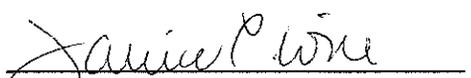
Mr. Reilly said he would not recite the conditions again.

Motion by: William Monti
Seconded by: Deidre Sokol

Building permit extension granted, as requested, with specific conditions per discussion and agreement.

There were no further agenda items to discuss. The Chairman closed the meeting.

Respectfully submitted,


Janice Will, Recording Secretary