

**Town of North Salem  
BOARD of APPEALS  
Public Hearing  
August 12, 2010  
8 p.m., The Annex**

**MEMBERS PRESENT:** William Monti, Acting Chairman  
Richard O'Leary  
Deidre Sokol

**MEMBERS ABSENT:** Patrick Browne  
Brian Ivanhoe, Chairman

**OTHERS PRESENT:** Gerald Reilly, Counsel  
Bruce Thompson, Building Inspector  
Janice Will, Recording Secretary  
Members of the Public

***Acting Chairman Monti called the August 12, 2010 Town of North Salem Zoning Board of Appeals meeting to order.***

Mr. Monti announced that, as only 3 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.

Mr. Monti set the next meeting for Thursday, September 16, 2010.

The minutes of the July 8, 2010 meeting were unanimously accepted.

**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.

Mr. Monti stated that the Board received a Negative Declaration from the Planning Board as part of the SEQRA process. He asked if there were any further comments on the application.

Don Rossi, attorney for the applicant, said the Neg Dec and an approved final plat were received from the Planning Board 2 weeks ago.

Noting there were no questions, Mr. Monti closed the public hearing.

Gerald Reilly read a draft resolution including the finding that the Negative Declaration and site plan approval received were necessary to permit the Board of Appeals to vote on the variance application.

**Motion by:** *Deidre Sokol*  
**Seconded by:** *Richard O'Leary*

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

**Area Variance granted, as requested.**

**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.*

Mr. Monti explained that the Town Board is working on a change to the Zoning Ordinance in order to permit outdoor dining.

#### PUBLIC HEARINGS

✓ **BA10-33** Peach Lake, LLC (861 Peach Lake Road) – **Area Variance** – To decrease the minimum separation distance from an intersection, per Article VIII Section 250-36. A variance of 75 ft. is requested (75 ft required; 0 ft. proposed) for construction of a site entrance directly across from an intersection (Route 121 at Bloomer Road).

Matthew Gironda of Bibbo Associates (engineers for the applicant) addressed the Board, stating that the Planning Board actually approved 2 site plans for the subject project. The first site plan (approved in November, 2007) proposed an entrance approximately 100 ft. east of the existing intersection, but as part of the review process, the Department of Transportation instructed that the entrance be moved to a location directly opposite the intersection. Bibbo did not agree with the DOT about this entrance location but could not convince them otherwise.

Mr. Gironda stated that the Planning Board issued a SEQRA Negative Declaration and approved this second plan on July 22, 2010, subject to certain conditions, including the ZBA's granting of the area variance.

Mr. Reilly said the Board could accept the statement in the Neg Dec about the need for an area variance and make a motion to approve it, but there is usually a memo of referral from the Planning Board to the Board of Appeals. He added that by accepting the statement as a referral, the ZBA could proceed and not hold up the applicant.

Mr. Monti asked if there are any other options for the site entrance.

Mr. Gironda said there are not, as the applicant was instructed to propose a "t" intersection or they would not get DOT approval.

Mr. Monti asked if there is anything besides Bibbo's original proposal.

Mr. Gironda said there is not, adding that they thought the first proposal was the best option.

Mr. Monti asked if they couldn't somehow enter via Dingle Ridge Road and come through the parking area of the 121 Next Door property that adjoins the subject property.

Mr. Gironda said the intent was always to enter via Route 121. He commented that entry via Dingle Ridge Road would not be ideal, and the owner of the adjoining property would have to agree to it.

Mr. Monti asked what the consequences of the "t" intersection are.

Mr. Gironda said the DOT seeks to avoid having vehicles turn left across 121 to make an immediate right onto Bloomer Road, and moving the entrance does solve that issue. He said the consequences of the "t" intersection are minimal.

Mr. O'Leary asked if the DOT made any recommendations or comments about future traffic flow or traffic management.

Mr. Gironda replied that they did, which was part of their reasoning when they recommended the "t" intersection. He went on to say that the DOT recommendation included monitoring traffic 6 months after completion to see if it increased/there would reason to install a traffic light. Mr. Gironda stated that Bibbo's reports indicate that a light will not be necessary.

Mr. O'Leary asked about moving the site entrance to the south end of the front of the site.

Mr. Gironda responded that there is an infiltration basin for storm water there which really cannot be moved.

Mr. Monti suggested connecting through the Salem Saddlery parking area on the south side of the subject property.

Mr. Gironda said the applicant does not own the property, and he reiterated his position that no traffic light will be needed for the "t" intersection proposed. Mr. Gironda said traffic will be monitored 6 months after completion, and he commented that the Planning Board favors a roundabout over a traffic light.

Mr. Monti said that would require a great deal of work and would cut into several properties.

Tim Allen, also of Bibbo, said he has spoken to some Town Board members, and he promised to look at the Salem Saddlery lot for an entrance, but the storm water and septic systems are there as well as a retaining wall/grade issue that would all be impediments. He further stated that the owner of the Saddlery property was not receptive to the idea in the past, although it seems he may be more open to it now. Mr. Allen said the suggestion is probably not going to work from an engineering standpoint, adding that it is the low point of the subject property.

Mr. O'Leary asked if the DOT has a standard for measurement of traffic flow that would trigger other control features vs. current traffic flow.

Mr. Gironda said Bibbo's traffic analysis report will be used for comparison when the DOT measures traffic 6 months from completion, and there are thresholds.

Mr. O'Leary asked if the DOT had other comments, or merely stated that they want the "t" intersection.

Mr. Allen said he fought the DOT, even going so far as to write to the Commissioner, because the original entrance was already approved. He said all his efforts were rejected, and the DOT said their proposal is the only one that will be accepted. Now, the Planning Board has approved the "t" configuration with further traffic study and other issues. Mr. Allen said that in his professional opinion it is not the best location, but the DOT is the traffic expert.

Mr. Monti said he does not like the newly-proposed entrance, adding that it seems a severe solution at a quiet corner. He said an entrance at another location on the site would even look better from Bloomer Road.

Mr. Gironda said the DOT was adamant about the "t" configuration being the only acceptable option.

Mr. Monti asked to return to the possibility of entering from the Saddlery lot.

Mr. Allen said a Town Board member asked him to speak to the Saddlery owner and try to work something out. Mr. Allen commented that it would be cheaper than the "t", but he doesn't think it will work from an engineering standpoint. He further stated that he would like to get the variance approved, and he will continue to look into the Saddlery option.

Mr. O'Leary suggested that perhaps the shape of the catch basin area could be modified to accommodate using the Saddlery entrance. He said that if parking spaces were lost due to this, there would be room for more where the entrance is currently proposed.

Mr. Allen said the grade change between the 2 properties is 4 to 5 ft. with drainage and septic in place, leaving a lot of engineering issues to be worked out. He reiterated his desire to have the variance approved subject to an application being made to the Town Engineer about the Saddlery option, which may work but he does not think will work. Mr. Allen said he would promise the ZBA and already promised the Planning Board he would look into the Saddlery entrance.

Mr. Thompson, the Building Inspector pointed out a similar instance in Mt. Kisco where the CVS store can be accessed via the Staples entrance; there is a grade change and the drive rises at least 5 to 6 ft. He said he did not know how it was done, but it is an example that such a thing can be done.

Mr. Allen pointed out that it isn't known if the Saddlery owner will even agree to the use of their entrance. He explained that the Planning Board approved the site entrance as is, and

then during re-approval (necessitated by the lapsing of the permit), realized that an area variance would be needed for the entrance. He said the current entrance proposal is the only legal one now, because the DOT insists on it. Mr. Allen stated that he promised to look into the Saddlery as an alternate access, but he also wants to start construction, and the requested variance is the last step.

Mr. O'Leary commented that there are sections of 8 and 12 parking spaces, respectively, on either side of the proposed entrance. He asked how the parking would differ if the entrance is changed.

Mr. Gironda replied that there would be areas of 10 and 8 spaces.

Mr. O'Leary said he thought if some of the spaces at the south end were lost to the entrance change/catch basin reconfiguration, they could be moved to the north and the currently-proposed entrance area incorporated to provide up to another 4 to 5 spaces.

Mr. Reilly questioned the logic of starting construction and simultaneously negotiating with the Salem Saddlery owner, saying it would seem to be a waste of time.

Mr. Allen explained that this would not be the case, because he would access the property by way of a temporary entrance put in for construction of the sewer district pump station.

Mr. O'Leary asked what the construction sequence will be.

Mr. Allen said he will use the temporary access, and there will be work going on at both the pump station and his client's property.

Mr. Monti asked why a septic system is being put in on the subject property if it is part of the sewer district.

Mr. Allen stated that it was necessary to get a septic system approved as part of the Planning Board review process, and the sewer plant completion date is more important than construction of the pump station. He went on to say that they don't know when the sewer plant will be built, although it is supposed to be done in late 2011/he plans to start construction this fall.

Mr. O'Leary asked if Mr. Allen would build the septic system and then abandon it.

Mr. Allen replied that he would, adding that completion of the sewer plant may be delayed.

Mr. O'Leary asked if an area once used as a septic field may be re-purposed, and Mr. Allen responded that it would be planted/a landscaped area.

Mr. O'Leary asked if it could be used for storm water.

Mr. Allen answered that it wouldn't be necessary, because storm water is already taken care of in the plans. As for access, he re-stated that there is a significant difference in grade between the subject property in that area and the Saddlery property next door.

Mr. Monti noted that no variance would be necessary if the subject property were to be accessed via the Saddlery entrance. He stated that he would prefer to hold the matter over to the September meeting, during which time Mr. Allen could negotiate with the Saddlery owner and look into the engineering elements of moving the entrance. He added that only 3 ZBA members were present/a unanimous vote would be required for the application to be approved.

Mr. Allen asked if, to facilitate the approval, he could send a report to the ZBA and the Planning Board stating that all other options for the entrance have been exhausted, with the understanding that issuance of the building permit will be subject to receipt of this report. He said he was willing to investigate the possibility of entering the subject property via the Saddlery lot, but there are many variables to be considered.

Mr. Monti asked if a partial building permit could be issued.

Mr. Thompson pointed out that he cannot issue the building permit before the Planning Board's endorsement of final plans, adding that there are 18 conditions to be completed before the building permit may be issued (*10 to be met prior to Planning Board endorsement of final plans and 8 to be met prior to issuance of a building permit*).

Mr. Allen said one of the conditions is getting a variance from the Board of Appeals, and the Building Inspector asked what number on the list the variance is.

Mr. Gironda said it is #3.

Mr. Allen said the Planning Board resolution is protective in terms of all the conditions to be met, but he also acknowledged the need for a unanimous vote of approval from the ZBA.

Mr. Monti said the application would be held over to September without prejudice, and he asked Mr. Allen to look into using the Saddlery entrance.

**BA10-34 Lidia Marquez (2 Morris Road) – Area Variance** - To decrease the minimum front yard setback in an R-1/2 zoning district, per Article V Section 250-15 and Article VI Section 250-24 (because a front yard setback is required on a corner lot from each street line). A setback variance of 6 ft. is requested) 30 ft. required; 24.65 ft. existing) to allow a shed to remain as constructed.

Lidia Marquez identified herself.

Mr. Monti asked if she had anything to add to the application, and Ms. Marquez said she did not.

Mr. Monti asked if the shed was on the property when she bought it, and Ms. Marquez replied that it was.

Mr. Monti mentioned that he has seen the shed many times, and he asked if Ms. Marquez had any idea how long it has been on the property.

Ms. Marquez said she did not know.

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

Mr. Reilly read a draft resolution.

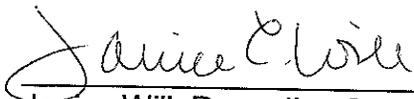
**Motion by:**            **Deidre Sokol**  
**Seconded by:**       **Richard O'Leary**

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

**Area variance granted, as requested.**

There were no further items to be discussed, and Mr. Monti closed the meeting.

Respectfully submitted,

  
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Janice Will, Recording Secretary