

**Town of North Salem  
BOARD of APPEALS  
Public Hearing  
September 16, 2010  
8 p.m., The Annex**

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

**MEMBER ABSENT:** Deidre Sokol

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

***Chairman Ivanhoe called the September 16, 2010 Town of North Salem Zoning Board of Appeals meeting to order.***

The Chairman announced that, given the large number of people present, he wanted to make a few civics points. He explained that the Board would first hear from the applicants; next the Board would ask questions/offer comments; then discussion would be opened up to members of the public. Chairman Ivanhoe said that after giving their names and addresses people should direct their questions to him, and he asked everyone to speak up.

The Chairman also stated that the order of the agenda would be changed/BA10-33, BA10-37 and BA10-40 would be heard at the end of the meeting, because it seemed likely that these applications would run much longer than the other items on the agenda.

Chairman Ivanhoe chose not to vote regarding the August 14, 2010 meeting minutes, because he was not present at the meeting.

Messrs. O'Leary, Monti and Browne approved the August minutes.

The Chairman set the next meeting date for October 14, 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.*

**BA10-25** 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

**BA10-36** Barbara Silvestri/Paul Bissonette (10 Bogtown Road) – **Area Variance** – To decrease the minimum side yard setback in an R-2 zoning district to permit installation of a generator, per Article V Section 250-15. A setback variance of 5 ft. is requested (30 ft. required; 25 ft. proposed).

Greg Morin, electrician/contractor for Ms. Silvestri/Mr. Bissonette, explained to the Board that the desired location for the generator (next to the air-conditioning condenser) juts just a little into the required side yard setback.

Chairman Ivanhoe read a letter from Gina Funicello of 34 Yerkes Road in which she stated that she is the owner of the adjoining property to the east. Ms. Funicello had no objection to the granting of the variance.

William Monti asked what kind of fuel will be used by the generator, and Mr. Morin replied that it will run on propane.

Commenting that the generator will be close to the house, Mr. Monti asked what the house is built of.

Mr. Morin said the house has a stone foundation and fire-rated wood siding.

Mr. Monti asked about noise from the generator, and Mr. Morin responded that it is well within the DBA rating (national code).

Mr. Monti said that, as it will be enclosed on 2 sides, the generator could still make enough noise to disturb the neighbor.

Mr. Morin stated that it is only a 10K generator, and the property-owners intend to plant bushes rather densely to screen the generator visually and to absorb sound.

Chairman Ivanhoe proposed installing the generator in another area that he showed Mr. Morin on the survey.

Mr. Morin explained that this location is near large windows of the house, so the generator would be visible from inside the house. He added that the area has already been landscaped, too.

Mr. Monti said he thought the proposed site would be acceptable with screening planted, but he had some concerns about the building reflecting sound from it.

Chairman Ivanhoe wondered whether to require plants or some kind of lattice.

Mr. Morin suggested that dense planting would be adequate.

Noting there were no questions or comments from the public, the Chairman closed the public hearing. He explained that because the attorney for the Board was not present to compose a draft resolution, the Board would not vote on the application; rather, they would give a sense of their intention to approve it and will vote at the next meeting.

Mr. Morin asked if that meant he would not be able to install the generator yet.

The Chairman said he was not sure; he deferred to the Building Inspector, saying he would not like to hold up the job.

Bruce Thompson said he would speak to Mr. Reilly (attorney) and let Mr. Morin know.

Mr. Monti said he would like to see a drawing including plantings around the generator. The Chairman asked for a show of hands to indicate approval of the application; all the Board members were in favor.

**BA10-38** Natalie Axton (6 Warner Drive) – **Area Variance** – The following variances are requested to permit construction of an addition to a non-conforming single-family residence on a non-conforming lot in an R-1/2 zoning district, per Article V Section 250-15:

- A side yard setback variance of 5 ft. (15 ft. required; 7.3 ft. existing; 10.6 ft. proposed).
- A building coverage increase of 2% (10% permitted; 9.7% existing; 11.1% proposed).
- A development coverage increase of 2% (25% permitted; 25.5% existing; 26.9 proposed).

Trevor Spearman, architect, and Natalie Axton were present. Mr. Spearman explained that the proposed first floor addition, while requiring a variance, will be farther from the property line than the existing house. He said the 128 sq. ft. addition is for a dining room and work area.

Mr. Spearman said the existing, unsafe stairway is in the kitchen; he seeks to correct this by constructing a stair tower that will also access the garage. The second floor addition will also accommodate expansion of a closet in the master bedroom. Mr. Spearman added that he thinks the addition will enhance the appearance of the house.

Mr. Spearman said there was a letter of objection sent to the Board by Nancy Baker and Carlos Duque of 10 Warner Drive, and he spoke to them at length. Mr. Spearman displayed a new drawing of the rear of the house, explaining that it is a proposed solution to Ms. Baker's concerns about privacy. The drawing shows a trellis on the north side of the second floor balcony. Mr. Spearman stated that with the railing and flower boxes, the trellis should provide enough privacy to suit Ms. Baker/Mr. Duque, and they have said they are satisfied.

Mr. Spearman said the proposed additions otherwise pose no detriment to the character of the neighborhood and should actually subtly enhance both the property and the neighborhood. He said his client is anxious to move into her house and take care of the property.

Chairman Ivanhoe said the additions look nice, and the trellis is a good solution to the Baker/Duque concerns.

Mr. Monti asked why the property address is 6 Warner Drive since it seems to be on Route 22/the front of the house faces 22.

Mr. Spearman said he and his client agreed that it is a problem, adding that it is important for 911 reasons. He said his client will probably look into getting the address changed.

Mr. Browne commented that he had been unable to make a site inspection because he couldn't find the house on Warner drive.

The Chairman asked if any new outdoor lighting will be installed. He explained that the Board will put a condition in the resolution that any new lighting may not be visible at its source/no floodlights may be used.

Chairman Ivanhoe recognized Nancy Baker, who said she wanted to confirm that she is in agreement about the proposed balcony screening but wants to be sure it will be adequate.

Mr. Spearman said the trellis will not be as transparent as it may appear on the drawing, and his client agreed to offer to show the proposed trellis to Ms. Baker for her approval before installing it. He described it as a natural wood product, providing 75 to 80% screening.

Ms. Baker thanked Mr. Spearman, and said she also has concerns about septic issues with the subject property and asked that it be looked into.

Mr. Spearman said a licensed septic contractor will be called out to check the septic. He added that the additions to the house do not require the involvement of the Department of Health, but it will be a good time to take care of any existing issues.

Chairman Ivanhoe closed the public hearing. He reiterated that because the attorney for the Board was not present to compose a draft resolution, the Board would not vote on the application; rather, they would give a sense of their intention to approve it and will vote at the next meeting.

The Board expressed no objections to the granting of the variance.

**BA10-35 Stephen Aronson (318 Mills Road) – Area Variance** – The following variances are requested, per Article V Section 250-15 and Article VI Section 250-22 C:

- A side yard setback variance of 71 ft. (75 ft. required; 4 ft. existing) to permit a shed to remain as constructed.
- An increase of 2 ft. in the maximum permitted height of a fence in a front yard (4 ft. permitted; 6 ft. proposed) for the reconstruction of two pillars and the addition of light fixtures on top of them.

The secretary explained that the agenda description was incorrect, stating that the subject property is non-conforming and subject to R-2 bulk requirements.

The Chairman read the corrected description which states that a side yard setback variance of 26 ft. is requested (30 ft. required; 4 ft. existing).

Stephen Aronson stated that he put the 8 ft. x 10 ft. wooden shed in his backyard for storage of garden tools. He explained that the shed is painted to go with his house and was installed on blocks. He said the shed would not be noticed from the road, and he asked to be permitted to keep it where it is. Mr. Aronson said his yard is an open field, and the shed would look strange sitting out in the middle of the field.

Regarding his pillars, Mr. Aronson said the original pillars were very small and too close to the road (there is a sharp turn into his narrow driveway). He will re-build the new, 4 ft.-high pillars farther back, but he did not know that the lights to be installed on top would count toward the height of the pillars. He said he feels he needs the lights for safety in turning into the driveway.

The Chairman said he had no questions about the shed, but he did want to know if Mr. Aronson intended to have a gate installed between the pillars.

Mr. Aronson said he does not want a gate.

Mr. O'Leary noted that the survey submitted after the variance application shows a lesser distance from the shed to the side property line, so he assumed the survey would override the other site drawing.

Mr. Aronson said that was correct.

Mr. O'Leary noted that the Building Permit Application Objection also states that the shed is 15 ft. from the property line.

Mr. Thompson said the change will be noted for the file.

There were no further questions or comments, and the Chairman closed the public hearing. He said there would be no draft resolution read.

All the Board members viewed the application favorably.

**BA10-39** Mary Ellen and Steven LaRocca (722 Titicus Road) – **Area Variance** – To decrease the minimum front and side yard setbacks in an R-4 zoning district, per Article V Section 250-15. A front yard setback variance of 20 ft. (75 ft. required; 40 ft. existing; 55 ft. proposed) and a side yard setback variance of 42 ft. (75 ft. required; 38 ft. existing; 33 ft. proposed) are requested to permit construction of an addition to a non-conforming single-family residence.

Steven LaRocca showed the Board a photograph of his approximately 200-year-old house. He stated that a wing on the west side of the house is badly deteriorated and not in keeping with the style of the house, and he wants to replace it. He explained that he needs a variance because the lot is non-conforming and almost the entire house is inside the setbacks. Mr. LaRocca said the proposed addition will be no closer to the setbacks except for a small porch on the side.

Mr. Browne commented that the new addition will be a big improvement.

Chairman Ivanhoe asked if Mr. LaRocca intends to install any new outdoor lighting.

Mr. LaRocca said he would like to have 2 wall-mounted box-type light fixtures on either side of the door.

Mr. O'Leary asked if the existing gravel driveway and terrace will remain.

Mr. LaRocca said the terrace portion close to the road will probably be converted to planting; the terrace facing the rear will be built up with a little retaining wall, and the driveway will remain the same or be shortened a little.

Mr. Monti said he thought the addition would be very nice.

Mr. Browne asked if the house is historically designated, which could limit what may be done to change it.

Mr. LaRocca said his house is not an historic landmark; it has been changed many times in the past.

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

A show of hands indicated the Board's approval of the variance application.

**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).

Chairman Ivanhoe explained that this application was held over from the August meeting which he had been unable to attend/was presided over by Mr. Monti.

Tim Allen of Bibbo Associates displayed a site plan, pointing out the subject property adjacent to 121 Next Door and Beval Saddlery. He stated that the original site entrance proposed met zoning requirements, but the New York State Department of Transportation insisted that it be moved to a location directly opposite Bloomer Road. This location has been approved by the Planning Board. Mr. Allen said the variance is the last step before construction may begin. He said alternative access was discussed at the last ZBA hearing, and a memo with sketch and photographs has since been submitted to the Board.

Mr. Allen spoke to the owner of the property on which the Saddlery is located. Although the owner did not say he would not allow his property to be used to access the subject property, it was noted that both the Saddlery and the subject property would lose parking spaces, which would in turn require variances (fewer spaces than the minimum requirement). Mr. Allen said he would like the Board to consider the fact that the subject property needs access. It would be cheaper for his client to access the property through the Saddlery parking lot, and if an agreement can be reached between the 2 parties, that would be worked out. He remarked that the Board of Appeals may not mandate a private agreement, and he asked that the currently-proposed entrance be approved. Mr. Allen vowed to continue to pursue alternatives, including the entrance at the Saddlery. He stated that the idea of using the 121 Next Door lot was exhausted long ago.

Chairman Ivanhoe said he learned from reading the August meeting minutes that the Board was concerned that if they granted the variance, it would create a 4-way stop. This in turn could possibly lead to the DOT's installation of a traffic light, which would have a very strong negative impact on the neighborhood.

Mr. Allen said that was discussed at the last meeting, but the traffic engineer for the project does not believe the entrance will trigger either stop signs or a light. He added that the Planning Board made it a condition of granting the site plan approval that the situation be looked at again 1 year after construction is completed.

Mr. Browne asked what Mr. Allen meant when he said the DOT said there was no choice about the site entrance.

Mr. Allen explained that Peach Lake Road is a State road, so they can decide where an entrance cut will be. He added that the DOT will not consider another option now.

Mr. Browne asked what the DOT thinks of entering the site from the Saddlery property.

Mr. Allen said they would have no say-so in that case, but there are other problems of elevation grade changes, storm drains, etc.

Mr. Browne said that would mean there is an alternative that would not require DOT approval. He asked about an old entrance to a business no longer present on the subject property.

Mr. Allen said he tried everything to get the DOT to consider alternatives, but they would not.

Mr. Browne asked what Mr. Allen's objections are to using the Saddlery entrance, assuming the Saddlery property-owner would agree.

Mr. Allen said the grade change from the Saddlery up to the subject property is 12 ft. in height, which would require grading back into the Saddlery lot and cause the loss of 2 or 3 parking spaces. Further grading on the subject property would be prohibitive from an engineering standpoint, and the storm water basin would also have to be reconfigured. The storm water basin is in the best possible place, as it is the lowest point on the site. Mr. Allen stated that the concept does not really work, but he will continue to pursue the possibility with the Saddlery property-owner. He admitted there would be some advantages to his client to do this (cheaper, no need for DOT approval, no need for traffic control), but it would be a private agreement that cannot be mandated by the ZBA.

Mr. Browne said if it is possible, and possibly more advantageous to the applicant and/or the adjoining property-owner, he would like to see a way to do it. He commented that he has seen driveways much steeper than the grade-change from the Saddlery to the subject property, and he suggested there were other ways to create the access than the one provided in the submitted drawing.

Mr. Allen stated that he sought to minimize the loss of parking spaces on the Saddlery lot, and there must be a radius provided for turning onto the subject property.

Mr. Browne said he felt more thought could be put into how to work with an existing cut instead of dealing with the DOT over a new cut that could result in the installation of a traffic light.

Mr. Allen said he agreed to continue to pursue use of the Saddlery entrance, and asked if that could be put into a resolution approving the requested variance.

Mr. Browne commented that the submitted drawing was not a very aggressive engineering attempt.

Mr. Allen countered that he felt it would be unfair to his client to re-engineer the entire site

now, and they have DOT approval/are ready to start construction.

The Chairman said the Board would certainly include language in the resolution that the applicant should continue to pursue an arrangement with the Saddlery people, although the agreement would be private.

Mr. Allen said there might be monetary issues also, in addition to engineering and codes, that would create hurdles.

The Chairman said the ZBA would like additional traffic information regarding the currently-proposed entrance.

Mr. Allen stated that the Planning Board traffic consultant did his study for the Town, and the Planning Board signed off on it in their Negative Declaration.

The Chairman said he thought the Planning Board might not have considered the possibility of a traffic light being installed in the future.

Mr. Allen said they did consider that, but they did not look at the possibility of using the Saddlery entrance. He suggested that the ZBA could craft a resolution in a way that accommodates their wishes and also permits his client to move forward.

Mr. Browne asked if Mr. Allen were asking the Board to state that the proposed entrance is approved, subject to pursuit of the Saddlery entrance without requiring the applicant to return to the Board.

Mr. Allen said if the Saddlery entrance is to be proposed, his client will need to return to the Planning Board for site plan approval again.

Mr. Monti asked why, when first designing the site, the existing driveway cuts were not used.

Mr. Allen said that entrance by 121 Next Door (to the north), was disapproved by the DOT.

Mr. Monti asked if driveway cuts expire, and Mr. Allen explained that if a cut needs to be re-done, it does essentially expire as it is not an established, finished cut with curbs.

Mr. Monti said the entrance had been on a site plan that was approved by the Planning Board and by the DOT.

Mr. Allen said he did not think the DOT would have signed off on it as it is now. He said the Saddlery entrance is formal and finished with curbs.

Mr. Monti said he saw 2 formal drawings in the Building Department files that were site plans with DOT cuts for the old restaurant (one on the north side and one on the south side).

Mr. Allen said one entrance was for an old apartment on the north side and the south side entrance came around the back of the restaurant. He said he had pursued approval by the DOT to no avail.

Mr. Monti said his question was whether driveway cuts expire.

Mr. Allen replied that apparently they do, because he had tried to use that very argument with the DOT. It seems that where there is no building there is no use.

Mr. O'Leary mentioned that Mr. Allen had said that if a gentlemen's agreement with the Saddlery property-owner went ahead, it would require additional engineering,

Mr. Allen said both sites would probably require engineering, and variances would be needed for grades and parking. He agreed with Mr. Browne that there are plenty of steep driveways in Town, but commercial standards are different from residential standards. He said an instantaneous 2 ft. change from one property to the other would not work.

Laura Hollister of 725 Titicus Road stated that she owns the Country Farmer right across the street from the subject property, and she said she found the plan frightening. She said the traffic situation is already scary, and even the possible northern driveway cut would be scary. Ms. Hollister said that if the Saddlery entrance could be used it would be good for both businesses, and it removes the need for an additional driveway opening on Peach Lake Road.

Mr. Allen responded that drivers approaching Peach Lake Road from Bloomer Road do have to stick way out in order to be able to see oncoming traffic, and that should be changed/made safer for cars on Bloomer Road.

Andrew Sternlieb of 55 Finch Lane said he was not happy about the situation and feared a traffic light would be installed. The light would make it harder to get out of Dingle Ridge Road to go south.

Mr. Browne said that was similar to the situation at Route 116 and 22 in Purdys. A traffic light has been installed, and now it is hard to get out of 116 to go south on 22.

Steve Mulligan of 126 Dingle Ridge Road stated that he drives on Peach Lake Road regularly and if the DOT-approved entrance to the subject property goes through, a light will be needed at Dingle Ridge Road also. He said there are no turn lanes in the plans which he feels are poorly thought-out. He said the new business could use the Saddlery entrance and the developer should propose turn lanes.

Chairman Ivanhoe pointed out that the Planning Board has already approved the site plan, and the developer is not proposing a traffic light.

Mr. Browne stated that he would like to see the alternative pursued with more effort.

The Chairman said that as the Board was without benefit of counsel there would be no vote, and the public hearing would remain open. He added that he didn't know how taking a census of the Board would turn out. Chairman Ivanhoe pointed out that the October meeting was only 3 weeks away. He said it will certainly be included in any resolution that the applicant will continue to pursue the possibility of using the Saddlery entrance. He told Mr. Allen that it was in the applicant's best interest if the ZBA took the time to study the issue further and carry the application over.

Mr. Allen said he would rather not wait, and he asked if the public hearing could be closed.

Chairman Ivanhoe said that was a fair request, especially as members of the public had been present and offered comments. He noted that the public hearing could be re-opened if there seemed to be reason to do so. The Chairman stated that the public hearing was closed and the application would be carried over to October.

Mr. Allen noted that this variance would not be needed if the Saddlery entrance is used, but others may be required.

Chairman Ivanhoe said he thought the Board would look very favorably on those variances. He apologized for holding the applicant up, but he felt it was necessary in this instance.

Mr. Allen said he presumed that after consulting with the Chairman, Mr. Reilly will start preparing a resolution, and the Chairman assured Mr. Allen that he would.

The Chairman stated that although the public hearing was closed, members of the public would be welcome to attend the hearing in October. When asked if the Board would accept written comments, Chairman Ivanhoe said they would as long as copies are also sent to the Planning Board.

**BA10-37** Alison Estabrook (732 Titicus Road) – **Special Permit** – For the keeping of up to 16 horses and maintenance of a commercial horse-boarding operation including installation of 8 pre-fab stalls, per Article XIII Section 250-72.

**BA10-40** Alison Estabrook (732 Titicus Road) – **Area Variance** - To decrease the minimum parcel size for a boarding stable from 10 acres required to 6.97 acres existing (a variance of 4 acres); and to decrease the minimum front yard setback from 100 ft. required to 80 ft. proposed (a variance of 20 ft.) to allow installation of 8 pre-fabricated stalls, per Article V Section 250-15.

Chairman Ivanhoe stated that all the members present met at the site on the previous Monday, and he commented that he wanted a fair hearing based on facts and not one of hearsay or gossip.

John Marwell, attorney, introduced his clients, Dr. Estabrook and her husband, Dr. William Harrington; proposed farm manager Alex Hamer; transaction counsel David Feureisen; and Mr. Marwell's colleague, Diana Kolev. Mr. Marwell suggested the Board hear the 2 applications together, and Chairman Ivanhoe agreed.

Mr. Marwell said he would like to go over the history of the subject property, and he handed in copies of an up-to-date survey to replace one submitted with the applications (a barn has been removed since the date of the earlier survey).

The Chairman asked that any other materials submitted also be given to Don Rossi, attorney.

Mr. Marwell said the property consists of 6.97 acres, and the current owners have a special permit. He noted that his clients are the contract vendees of the property, and he handed in a redacted copy of the contract of sale. The existing special permit is for 7 horses, as was the permit of the previous owner of the property. Mr. Marwell stated that his client proposes a

renewal of the special permit with modifications. He said Dr. Estabrook will comply with all the conditions of the current special permit, and they seek to increasing the number of horses to 16 (12 horses and 4 ponies). Mr. Marwell said Dr. Estabrook's manager, Alex Hamer, has worked up a management plan for the farm. Mr. Marwell stated that the subject property is in Westchester Agricultural District #1, surrounded by other horse farms, and has access to the riding trails.

Displaying a rendering of the indoor riding ring with the 8 proposed pre-fab stalls running along one side, Mr. Marwell said the only other physical change to the property will be a small retaining wall around an existing curtain drain. He stated that the property was visited on September 15 by Carrie Davis of the Watershed Agricultural Council, whose report was forwarded today. Mr. Marwell said the report concluded that with attention to grazing management and regular export of manure, the property is suited to the boarding of 16 horses. Noting that the report was e-mailed to the ZBA and others, Mr. Marwell handed out paper copies.

Mr. Marwell stated that his clients do not seek a permit to run a "hack stable"; rather, they seek permission to have Alex Hamer live in the house on the property, and run the farm for up to 16 horses including the applicants' animals. Additionally, the property will not be available for visitors to rent horses, and there will be no shows, loudspeakers or any additional outdoor lighting. Mr. Marwell suggested there would be virtually no difference between the proposed use as a commercial operation and the existing use, except for the number of horses and the addition of 8 semi-permanent stalls, given the restrictions his clients will agree to. Mr. Marwell pointed out that with a special permit for the keeping of horses for personal use, there is no limit on the number of people who may visit and also ride the owner's horses. He stated that his clients want to move their horses from a facility in Bedford, and they are being very selective about which other owners' horses they will bring to North Salem; all will become members of the Bridle Lanes Association. No significant increase in traffic/number of visitors is anticipated.

Displaying a drawing of the property with the paddocks delineated, Mr. Marwell said there will be 6 grass paddocks and 4 dry paddocks.

Chairman Ivanhoe said it was suggested during the Board's site inspection that some of the paddocks be divided up more than was being shown on the displayed drawing.

Mr. Marwell displayed another, larger, plan that includes parking areas, and he said Mr. Hamer would respond to the Chairman's comment.

The Chairman asked if the parking depicted is existing, proposed or a combination.

Mr. Marwell said he believed the parking is all existing. He reiterated that the only changes to the property will be the addition of 8 stalls and an increase in the number of horses from 7 to 16, which he believes the property can support.

Mr. Marwell stated that his office researched past special permits in Town, both personal and commercial, and he handed out a chart of special permits granted from 2000 to 2010. He said the list includes many properties with more horses than acres, although each property is

unique. The last column on the chart is for SEQRA and shows that all of the special permits listed for properties in the Agricultural District were determined to be Type II actions, requiring no further environmental review. Mr. Marwell said he did not think it appropriate to seek further environmental review for his clients' application as was suggested to the Board. Mr. Marwell said Dr. Estabrook and Mr. Hamer would address the Board next.

Dr. Estabrook stated that she has known Mr. Hamer for at least 10 years, and he takes good care of her horses. She stated that she knows all the people she currently rides with, including those who will move their horses to North Salem. Dr. Estabrook said she and her husband are avid canoers and hikers, traveling all over the world to pursue these activities. She added that they love the outdoors, she has been a member of the Nature Conservancy for years, and she has donated land on Block Island to US Fish and Wildlife. Dr. Estabrook said she loves the property at 732 Titicus Road and would like to assure the Board that it will be kept green and healthy.

Mr. Hamer stepped up next, handing out copies of his pasture management plan. He said he put the plan together with Ms. Davis of WAC, and he also recently attended a course on pasture management given by Cornell. Mr. Hamer explained that an existing outdoor riding ring will be converted to 4 dry paddocks, and there will actually be 6 large and 2 small grass paddocks. He said he didn't want to chop up the paddocks any further, but he would be willing to do so.

Chairman Ivanhoe said not chopping up the paddocks is good in terms of the view of the farm from neighboring properties, but his concern is mainly keeping the farm green/the paddocks in grass. The Chairman said he thought Mr. Hamer should rely more on Ms. Davis' and Cornell's suggestions so he can rest and rotate paddocks properly.

Mr. Hamer said Ms. Davis' suggestion was to put the horses out in groups of 2 for only 3 hours. She also suggested picking the dry paddocks throughout the day and the grass paddocks on a regular basis.

The Chairman asked what paddock configuration exists on the property now.

Using the site map displayed, Mr. Hamer pointed out existing areas to be split into more individual paddocks.

The Chairman asked if the sand paddocks will be used seasonally.

Mr. Hamer said he will use them year-round/mostly in the winter, although not in wet weather.

Mr. Browne asked about existing paddock fencing that goes into adjacent NYSEG-owned land.

Mr. Hamer said use of the NYSEG land is not included in the plan, but he will look into getting permission to use it in the future. He stated that he will stick to a rule of thumb that once paddock grass is less than 3 inches high, horses will be moved to another paddock until the grass grows back to 4 to 6 inches in height.

Chairman Ivanhoe read the report from Carrie Davis, and he said its points will be incorporated into the resolution if the special permit is granted.

Mr. Marwell stated that his clients also seek 2 variances: a reduction in lot size for a commercial boarding operation from 10 acres required to 6.97 acres existing; and a front yard setback variance for installation of the 8 pre-fab stalls. He said there will be no adverse impact on the environment or the neighborhood, and the proposed use is perfectly appropriate.

The Chairman asked if the subject property is registered with the Agricultural District, and Mr. Marwell answered that it is not registered yet.

Chairman Ivanhoe asked if Mr. Hamer will live on the property, and Mr. Marwell replied that he will live there full time.

The Chairman asked if Mr. Hamer will continue to manage farms in Bedford also.

Mr. Hamer replied that he will continue to manage one small farm (6 horses), and he will give up another one.

The Chairman asked how much help Mr. Hamer will have on the North Salem farm, explaining that his concern is that it is a beautiful property and he wants to see it stay that way.

Mr. Hamer said the North Salem farm will be his primary location.

Mr. Marwell said Drs. Estabrook and Harrington will be very involved in the management of the farm, as it is a passion for them.

Chairman Ivanhoe asked if Mr. Hamer's pasture-management plan is derived from the Cornell course.

Mr. Hamer responded that Carrie Davis had input as well as Cornell.

The Chairman read that the horses will be turned out in 2's.

Mr. Hamer replied that a single horse will be in the smaller paddocks and 2 horses in the larger ones.

The Chairman read that the horses will receive 3 hours of grass turn-out each day. He said he had a list of things he would require, and he asked if the other Board members had questions.

Mr. Browne asked how many of the special permits in Mr. Marwell's list are commercial.

Mr. Marwell replied that all are either commercial or mixed commercial/private use.

Chairman Ivanhoe gave some examples of smaller-size commercial properties in town:

- RP Cam (172 Baxter Road – 7 acres/30 horses
- Kate Levy (42 June Road) – 5.62 acres (+2 adjoining)/16 horses
- Summit Farm (24 Bloomer Road) – 4.65 acres/21 horses
- Walters ((571 Grant Road) – 12.2 acres/20 horses and 4 grooms

The Chairman stated that the Board keeps a close eye on these operations, and the purpose of the special permit process is to make sure those farms operating on smaller parcels remain attractive/don't become detriments to the beautiful Town. Chairman Ivanhoe further stated that although special permits for the keeping of horses usually run for 10 years, the ZBA will want a shorter permit period initially to make sure the farm is being properly run and everything that is proposed regarding management of the farm is carried out; he said the Board was thinking of an initial 2-year permit. He said he was sure Dr. Estabrook and Mr. Hamer will do a good job managing the farm, but the Board wants to shorten the period of the permit.

Mr. Browne asked if it is 2 horses turned out at a time or 2 horses to each paddock.

Mr. Hamer said the plan is to turn out 2 horses in each paddock.

Assuming one paddock would be resting, Mr. Browne said the numbers did not seem to work out for all the horses to be turned out.

Mr. Hamer explained that the horses would not all be turned out at the same time/they would all get out every day.

Mr. Browne asked how grass consumption will be determined.

Mr. Hamer responded that the grass-height will be checked; when it is less than 3 inches high or after a heavy rain, the paddock will not be used.

Mr. Browne said he was especially concerned because the Titicus River runs through the property.

Mr. Hamer agreed that that was a concern/the reason WAC was asked to come out. He stated that Ms. Davis said the grass between the paddocks and the river is very thick and will provide a good buffer.

Chairman Ivanhoe asked if the possibility of drawing up a full farm plan was discussed with Ms. Davis.

Mr. Hamer answered that they discussed doing this in the future; what was submitted was just a basic plan for pasture management. He added that there had been concern about the dumpster, but Ms. Davis thought the location and the slab were very good.

Mr. Browne asked about the parking.

Mr. Hamer put the site map back up and indicated parking space for 14 cars, which he said would not likely all be needed at once.

The Chairman said he would not like the parking to be in clear view of the Lev residence next door, but Mr. Hamer told him most of the parking is hidden from view by the indoor ring, the barn or trees.

Mr. Browne asked if all cars of people coming to the farm will be kept on the farm property.

Mr. Hamer said they will; no parking will be permitted on Wallace Road.

Chairman Ivanhoe said no parking will be permitted on Wallace Road or on the fields. He asked about jump storage.

Mr. Hamer replied that this equipment will be stored indoors at the rear of the indoor riding arena.

The Chairman said the Board would require that no equipment or jumps be stored on the east side of the indoor ring in order to protect the viewshed, and he added that they would want most equipment stored indoors.

Mr. Browne said he is concerned about the increased number of cars and trucks entering/exiting the steep driveway and he asked if consideration has been given to traffic safety.

Mr. Hamer said he does not think it has been looked at. He suggested they might install a mirror, and he said there is about 100 ft. of visibility.

Chairman Ivanhoe asked if the farm will be storing boarders' trailers, but Mr. Hamer said only his trailer will be stored there. He indicated on the site map where it will be parked.

Mr. Monti asked Mr. Marwell if his clients are in contract to purchase the property, and Mr. Marwell responded that they are.

Mr. Monti asked if the horse population will be static (the same horses will be boarded there/horses won't be rotated), and Mr. Marwell replied that it will.

Mr. Monti asked if the river water will be tested coming onto the property and where it exits as a baseline.

Mr. Marwell said he saw no reason to do so; the farm will operate under existing conditions with just an increase in the number of horses to be kept. He added that other measures have been taken to prevent adverse environmental impacts by the present owner per the existing special permit. Mr. Marwell stated that the WAC report did not indicate any reason to believe there would be an adverse affect on water quality.

Mr. Monti said the new owners will be increasing the intensity of use of the property.

Regarding the increased number of horses to be kept, Mr. Marwell said manure will be disposed of properly; otherwise, Ms. Davis felt the existing conditions are sufficient to protect the watershed.

Mr. Monti said he still felt the water should be tested/monitored.

Mr. Marwell said he would be willing to discuss this suggestion with his clients and get back to the ZBA about it.

Mr. Monti pointed out that monitoring the water quality could also protect them if they have test results showing that the water quality is the same coming in and going out.

Mr. Hamer said he will be turning out horses for shorter periods of time than he would if there were just 7 horses.

The Chairman said Mr. Monti's suggestion should be considered, but the Board will not mandate that the water be tested.

Mr. O'Leary asked how often/how many trailers will be moving in and out of the property.

Mr. Hamer said most of the activity will occur on the property, with the exception of a few horses going out on Saturdays or Tuesdays to hunt. These horses will be moved with his trailer.

Chairman Ivanhoe asked about trucks/trailers for hay and shavings and the dumpster.

Mr. Hamer said there is currently a 15-yard dumpster which is removed every other week; he will get a 30-yard dumpster, probably to be removed every other week.

The Chairman said he also wanted to know about deliveries of hay and shavings.

Mr. Hamer said deliveries of 500-600 bales of hay at a time will be made by tractor-trailer. The hay will be kept in a hay loft area above the barn. The same things are true of shavings.

Chairman Ivanhoe asked where the tractor-trailers will be unloaded, adding that they will not fit down the driveway from Route 116.

Mr. Hamer said a smaller tractor-trailer might have to be employed. He added that there are 400 bales of hay at the farm now that had to get there some how.

The Chairman said he just wanted to be sure the trucks will not be parked on Wallace Road, and Mr. Hamer assured him they will not be.

Chairman Ivanhoe commented that turning the outdoor ring into dry paddock areas is good, because most of the activity on the farm will occur inside the indoor riding ring. He asked what the farm's hours of operation will be/if nighttime lessons will be given. He stated that he will want the farm to close fairly early; if the indoor arena is to be used after dark, blackout shades must be installed.

Mr. Hamer said he normally works until 6 pm.

The Chairman said 6 pm would be fine, but he still wants the blackout shades put in. Noting there were no further comments from the members of the Board, the Chairman opened the hearing up to members of the public. He asked that people speak up and give their names/addresses.

Don Rossi, attorney for Prudence and Bruce Lev of 736 Titicus Road, addressed the Board. He said he remembered when the O'Neils first built the farm years ago. Mr. Rossi stated that throughout their comments, no one intends in any way to belittle Mr. Hamer, Dr. Estabrook or Dr. Harrington. He said comments will all be geared to the Levs' experience of owning a horse farm and what all those present have experienced in North Salem over the years; at no time does anyone intend any disrespect. Mr. Rossi said he was certain the applicants are committed to the property, feel it is beautiful and would love to come to North Salem and operate a horse farm here.

Mr. Rossi said there are many things about the application that are not adding up, and he likened the situation to fitting a square peg into a round hole. He stated that Valentine Farm was created in 1988 after extensive and contentious wetlands review when the variances were granted for the original special permit. There was an old barn that was closer to the river which was removed. Variances were granted for a new barn and the manure dumpster site, and wetlands activity permits were issued for the indoor riding ring. Mr. Rossi stated that there is no question that those approvals were granted based on the fact that the O'Neils would live on the property and it was to be a private farm for 7 horses. Mr. Rossi said the variance was not granted for a commercial farm for 16 horses. He would need time to look over Mr. Hamer's pasture management plan, the WAC report and the list of precedential special permits compiled by Mr. Marwell.

Displaying a site map entitled Existing Conditions Plan from 2008, Mr. Rossi stated that what is shown are not paddocks, but rather a green line indicating the wetlands boundary and a yellow-outlined area covering the 100-ft. wetlands buffer area. He said a large area outside the green and yellow areas is steep slopes; so there is very little usable land and it is subject to a potential for erosion. Mr. Rossi said more detail is needed to explain how the paddocks will hold up to the use proposed. Regarding the WAC report, Mr. Rossi said it was done by an administrator, and he would venture to say that the DEP's regulatory affairs and engineering departments might feel very differently about the paddocks' ability to accommodate the increased use. He stated that it is within the Board's authority and consistent with their duty to find out if that is the case, because the Board of Appeals has unlimited discretion to request review by outside agencies. He said the existing conditions plan was prepared by Paul Jaehnig, a well-known local wetlands expert, who also did the original wetlands analysis for the O'Neils while employed by Charles H. Sells Engineering. Mr. Rossi suggested, given the sensitivity of the stream, that the ZBA have Mr. Jaehnig field-verify the wetlands, as the DEC does in cases where it has jurisdiction.

Mr. Rossi said the farm, as it exists, cannot accommodate a 16-horse commercial boarding operation, nor is the request a special permit renewal; it is a new use proposed for a piece of property that is 30% smaller than the standard size required for commercial farms. Additionally, Mr. Rossi suggested that all the small farms on Mr. Marwell's list predate the

zoning ordinance. He said the ZBA has the right to refer the matter to the Highway Superintendent, the NYS Department of Transportation, County Health Department and the Department of Environmental Conservation for review and input. Mr. Rossi stated his opinion that access to the farm is inadequate and that a wetlands permit will be needed for added parking and possibly from the DEC. He explained that there is no parking area on the side of the barn as shown on a site plan displayed earlier by the applicants.

Chairman Ivanhoe said there is a gravel area there.

Mr. Rossi stated that the Board needs to decide whether or not the property is adequate to support the increased use. He said that he believes the proposal is an Unlisted Action under SEQRA, calling for a full coordinated environmental impact review (if other agencies become involved) before the applications are approved. Mr. Rossi said the site is sensitive and approval of the proposal would be precedent-setting. He stated that while there are exemptions for farm management practices and for area variances for multi-family dwellings, there is no exemption to allow granting of a variance to reduce the size of the lot for this use.

Mr. Rossi said that even if the attorney for the Board (Mr. Reilly) opines that the proposal is a SEQRA Type II action, the Board is still obligated under the zoning ordinance to assess environmental issues before granting the special permit or the area variance. He remarked that all the questions posed by Chairman Ivanhoe are SEQRA issues for which the town engineer and wetlands inspectors should be consulted.

The Chairman stated that never in his recollection had the ZBA referred a special permit application to other agencies; they generally depend on available expertise. While the Board is always interested to hear additional information, it is not their practice to go to other agencies.

Mr. Rossi said he was aware of that, but in the past some horse farm projects came to the Board of Appeals from the Planning Board. He repeated that the Board may decide they want further review, and the current application is not a usual proposal. Regarding precedent, Mr. Rossi said approving these applications will establish a precedent that the Board will have difficulty going back on due to all the problems it presents. The property has access issues, environmental issues and limited land to use that is not in a controlled area. Mr. Rossi said he thought most of the farms on Mr. Marwell's list where the number of horses exceeds the number of acres are farms that were in existence long before anyone present was in Town. He stated that there were once numerous violations on the farm currently owned by Kate Levy LLC.

Chairman Ivanhoe pointed out that the farm has been vastly improved by the current owner and with conditions imposed by the Board of Appeals when granting the special permit.

Mr. Rossi said he is aware of the Board's conditions on special permits, but they are hard to enforce.

Continuing with Mr. Marwell's list, Mr. Rossi said Gadsden's farm was Crosby's years ago. The Ward farm goes back many years also and is now owned by Diana Walters. The Ivanhoe property was subdivided, and a 7-acre parcel received a special permit for 30

horses; the original farm was in existence for decades. The current 7-acre farm was referred to the ZBA by the Planning Board with a recommendation to grant the necessary variances because of the unique circumstances: presence of a conservation easement; 2 employee dwelling units to ensure there would be round-the-clock supervision of the horses; and no history ever of any kind of traffic problems. All these points were noted by the Planning Board. Mr. Rossi said Summit Farm on Bloomer Road (formerly Favicchia's) was in existence prior to 1979.

Chairman Ivanhoe said there are many farms in Town that may have 1 or 2 boarders that are not considered commercial. He asked what Mr. Rossi's position would be on the present application if it were for the keeping of 16 horses for private use.

Mr. Rossi said he still thinks it would over-intensify the use of the property. He stated that the approved current use is appropriate; any expansion of use triggers a need to expand systems, like the septic system.

The Chairman said the septic system is for the house, adding that he assumed that if bathrooms are added the DOH will become involved.

Mr. Rossi said it is number of people and not bedrooms that triggers DOH involvement. He further stated that with 16 horses owned by unrelated people, delivery people, 2 grooms and an occupied residence, the DOH should decide that a public septic system will be required – but where could it be put? He added that many of the farms on Mr. Marwell's list have fewer than 1 horse per acre.

Chairman Ivanhoe said in instances of farms with high horse-counts, the Board considers what those farms look like now and ensures how they will look in the future; for example, the 7-acre farm with 30 horses is visually unchanged since the lot size was reduced to 7 acres. He stated that for the Estabrook applications the ZBA will consider with seriousness the number of horses and the management plan. He called on Andy Sternlieb of 55 Finch Road.

Mr. Sternlieb stated that he has nothing against the applicants and is sure they have good intentions. He said that the Town granted a permit and variances for the subject property 22 years ago that were linked together by a decision that only 7 horses could be supported, and he asked why the ZBA would change that ruling now. Mr. Sternlieb said that as a horse farm-owner, he does not believe that putting out 16 horses for 3 hours day will enable maintenance of 3 inches of grass in the paddocks. He said that he has only 2 horses that he turns out for 2 hours a day, and it takes just 3 weeks for the grass to become reduced from 5 to 6 inches to less than 3. He remarked that Stony Creek Farm looks beautiful, but there are not 3 inches of grass in any of the paddocks. Mr. Sternlieb said he rotates his 2 horses among 6 paddocks in order to maintain 5 to 6 inches of grass; when he had 3 horses, it didn't work. He expressed concern that if the grass becomes less than 3 inches high, there will be increased run-off and environmental issues. Mr. Sternlieb asked the Board to uphold the 7 horse maximum; otherwise, Town residents will have no guarantees of their property values.

Chairman Ivanhoe said the Board has the right to decide issues case-by-case; they are not going to set precedents.

Mr. Sternlieb said the precedential-nature of the original decision is dispositive. He agreed with Mr. Rossi that most small farms with high numbers of horses are old establishments. He added that he feels the pasture-management plan presented cannot work.

The Chairman thanked Mr. Sternlieb for his input. He said he has seen the Sternlieb paddocks, but he also puts a lot of weight in the Cornell University Extension Service and the Watershed Agricultural Council which is financed by the DEP in order to protect the watershed.

Mr. Sternlieb said the subject property cannot be registered with the Ag District, because it is too small.

The Chairman said he was aware of this, and it would only prevent the property from being protected under Ag and Markets law/would still be a farm in the Ag District.

Prudence Lev of 736 Titicus Road asked if any of the other "grandfathered" farms are on the Titicus River.

The Chairman responded that Stony Creek Farm is on a tributary of the river, but he did not think any of the other farms are on the river although they are in the watershed.

Ms. Lev said the subject property is in a delicate area. Addressing Mr. Marwell, she asked how many acres comprise the large paddocks.

Mr. Marwell said he did not know, but he assumed the hearing will be continued and he would be happy to investigate and prepare responses to any specific questions the Board would like addressed.

Ms. Lev said the management plan must be based on acreage.

Chairman Ivanhoe said there is a fair amount of good thick grass paddock on the farm, although perhaps not enough for 16 horses.

Ms. Lev said she would like a specific answer. She said she believes 14 of the boarders will be in the hunt, so she didn't see how the horses could be moved with one trailer on hunt days.

Mr. Hamer said about 6 of the boarders will be in the hunt/do not go out every time.

Ms. Lev asked how large Mr. Hamer's trailer is.

Mr. Hamer answered that it is a 3-horse trailer, and he has driven it in and turned around at the subject property. He explained that a trailer may be driven all the way around the barn.

Ms. Lev said she did not think this would be possible if a number of cars are parked there. She asked how many boarders work during the day/will be riding at night.

Mr. Hamer said about 50% work during the day; all boarders will be able ride up until 6 pm and on weekends.

Ms. Lev asked if lessons will be given to people other than boarders.

Mr. Hamer said that will not be the purpose of the farm, nor will there be any pony club.

Carol Goldberg of 22 Wallace Road stated that she was surprised to learn that a course in pasture management was just taken a week ago.

Mr. Hamer explained that the course was supplementary.

Ms. Goldberg felt it was serious if Mr. Hamer needed to learn from a pasture management class about horse-turnout and grass-height.

Chairman Ivanhoe credited Mr. Hamer for consulting WAC and Cornell, adding that some farms in Town don't seek their advice.

Ms. Goldberg commented that the farm will need to make money, so she cannot believe they will not give lessons. She said the day will come when more than 6 boarders go to the hunt, and trailers will be brought in via Wallace Road. She said she didn't see how use of Wallace Road will be avoided. She does not want to see it used but fears it will be, also because a large vehicle would have to inch out onto Titicus Road from that driveway.

Chairman Ivanhoe said the Board is definitely concerned with public safety. They have seen the opening in the stone wall on Wallace Road and they have a heightened sense of keeping Wallace Road quiet as it is now. He asked Mr. Hamer to respond to Ms. Goldberg's comments.

Mr. Hamer stated that he will move the horses with his trailer in groups of three.

Philip Hymes of 75 Hilltop Drive stated that he lives 45 ft./directly across the street from the entrance to the farm, and he has seen accidents there. He said the owners before the O'Neils sold the property because of the traffic and because a child was nearly killed there. Mr. Hymes commented that traffic needs to be stopped to get a truck in or out of the property, as is currently the case.

The Chairman agreed that it is a difficult lot to get in and out of and is currently serving 7 horses. He added that the Board noted the sight lines when they were there.

Jill Murphy of 98 Wallace said she used to ride on the subject property in the 1970's when it was owned by the Von Kuhns, who had 3 to 4 horses. She stated that the O'Neils only had 2 to 4 horses, and the current owners have kept just 2 horses and 2 ponies there. She said that although variances were granted to allow a greater number of horses, there have never been 7 horses kept on the subject property. She added that to be commercially viable the farm will need to board 16 horses, and she is concerned about that.

Renee SanMarco of 6 Delancey Road was next to address the Board. She said she was concerned about the increased amount of wash stall water and urine leaching into the land and running downhill toward the river.

Joseph Pinto of 39 Hilltop Drive said he lived for 25 years across the street from the subject property. He said he has had 2 horse farms in Town that he believes have been operated successfully. He stated that, years ago, the former owners of the Lev property kept one horse, the Von Kuhns had 4 and he kept 5. Mr. Pinto commented that the Town has always welcomed horses and horse people, which he would like to see continued. He stated that he knows Alex Hamer/has nothing against him and thinks he has met Dr. Estabrook and has nothing against her either. He said the Town has always maintained a balance between welcoming horse people and keeping the bucolic atmosphere of the Town, but when the Board considers changing history they take a risk. Mr. Pinto said it will be seen 5 years from now whether permitting the requested special permit was a good decision or not. He commented that the zoning ordinance has a guideline of 1 horse per acre, but the application is for more than 50% more than that. He said that despite there being such farms in Town, this neighborhood has never seen a large operation on a small farm like what is being proposed. He said he supports the old farms in Town, but would be against creation of new intense-use boarding operations. He urged the Board to consider moderation in their approach to the applications and to bear the Town's history in mind.

Chairman Ivanhoe said he seemed to remember a large farm in the neighborhood and asked Carole Goldberg how many horses there used to be on Artemis Farm.

Ms. Goldberg said that back in the 1970's she kept 20 horses on over 10 acres/the farm had an excellent reputation.

Mr. Browne asked Ms. Goldberg if there are wetlands on her property, and Ms. Goldberg responded that there are none.

Bruce Lev of 736 Titicus Road stated that he does not know the applicants, but he believes their intentions are honest and he has no doubt that they have no desire to adversely impact the property, the neighbors or the community. He said the Board can only regulate to a certain degree; control hours of operation, outdoor lighting, etc. He suggested that it is physically impossible for Town officials to monitor everything that goes on in Town; the issue is that there will be no going back once the use of the subject property is expanded.

The Chairman disagreed, stating that special permits normally expire every 10 years. If this special permit is granted, it will be for only 2 years initially.

Mr. Lev said there are many factors in everyday life. The applicants could be traveling overseas and their farm manager could be sick at the same time. Mr. Hamer states his intention to shuttle horses in groups of 3, but how will the Board control that? All the individual horse-owners can show up on hunt day with their own trailers and the Board may not stop them. Mr. Lev said the Board must assume the worst case and not the best before they grant the applications. He said good points have been made about the Town's regulations. People rely on the regulatory, statutory and structural framework of the Town. The Board is being asked to vary that framework, which they have the discretion to do, and

tell the applicants that they have the right to do what they want to do. This in turn would tell other people that they don't have the right to rely on existing standards, and they will lose confidence in the regulatory structure in Town.

Peter Wiederhorn of 146 Vail Lane stated that he runs a 14-horse commercial boarding operation on his property. He said he found some of the figures from the WAC report to be vague and he asked who will monitor the number of horses per paddocks/number of hours in the paddocks. Mr. Wiederhorn said he has 10 acres of paddocks, and he cannot keep grass in them. He commented that if, as they say, the applicants have 5.9 acres for paddocks as well as .5 acres of wetlands and .5 acres of woods, that leaves nothing at all for the house, septic fields, barn, indoor ring, etc.

Regarding parking, Mr. Wiederhorn asked if there is really room to park 15 cars. He added that he has only 8 borders but is always running out of parking spaces because people bring friends, the farrier comes, deliveries are made, the vet is called. He stated that for 16 horses, 30 parking spaces would be needed. Mr. Wiederhorn said he wanted to give an example of pasture-management on a farm with too many horses, and he cited Summit Farm on Bloomer Road, where he said there is absolutely no grass at all. He pointed out that there will be no one to see that the applicants' horses are taken out of the paddocks after 3 hours.

Barbara Matarazzo of Bedford Hills spoke next, saying she rides in the hunt here and has been on several boards with Mr. Hamer. She said the ZBA has the discretion to do what they think is in the best interests of North Salem. She stated that Mr. Hamer, Dr. Estabrook and Dr. Harrington will be valuable members of the North Salem community. She said Mr. Hamer is on the Board of the Bedford Riding Lanes and the John Jay Homestead where he is chairing a big event. She said the applicants are not people who will come in to Town to run a commercial operation and use the Town; they want to be a part of the community and will be as concerned as those present with water quality, green paddocks and keeping the land beautiful. Ms. Matarazzo said she has boarded with Mr. Hamer in the past, adding that the proposed farm will not be a show barn with a lot of traffic. She further stated that the applicants will open the trails and permit the hunt to go through the subject property which the current owners do not.

Steve Mulligan of 126 Dingle Ridge Road said Mr. Hamer has a number of clients involved with the Goldens Bridge Hounds and has brought about 15 new members to the North Salem Bridle Trails Association. Mr. Mulligan said the applicants have stated that they will put a bridle trail in; this is the eastern-most access across Route 116 and the existing conditions are very dangerous. He said he wanted to point out some positive things about the applicants and their farm manager.

The Chairman said he was glad to hear some positive comments.

Jill Murphy said even the negative comments were not about Drs. Estabrook and Harrington or Mr. Hamer, adding that she is sure they will be great additions to the Town. She stated that people are just concerned about the property.

Andy Sternlieb said the issue is the use of the property, which has nothing to do with the character of the applicants.

Mr. Browne commented that special permits for the keeping of horses run for 10 years for a reason, and he thought it unfair for the Board to let the applicants go to the expense of setting up their operation if they are at risk of losing the special permit in 2 years. He said the Board can be careful enough with conditions to grant the permit for 10 years.

Chairman Ivanhoe said there is a precedent for shorter-term special permits, and he gave Old Salem Farm as an example.

Laura Hollister commented that the subject property has never been tested/has scarcely been used.

Dawn DiDomenico of 1 Wallace Road said she would be delighted to have Drs. Estasbrook and Harrington come to live in North Salem, but they need a larger property to board 16 horses.

Carol Goldberg asked if the Board of Appeals has ever terminated or failed to renew a special permit.

The Chairman said he did not know, but whether they have or not does not mean it couldn't happen.

Ms. Goldberg said the proposed operation would bring a dramatic change to the character of the neighborhood.

The Chairman commented that her farm was a precedent in that it was a 20-horse commercial operation on Wallace Road

Ms. Goldberg said her farm was entered by way of Titicus Road, she had over 10 acres, and she started out with a "grandfathered" situation in 1972.

Mr. Hamer reiterated that the entrance to the subject property would be on Titicus Road, not Wallace Road.

Prudence Lev said of the "grandfathered" properties being referred to, that it seems the Board takes the view that once these things are approved, a new "grandfathered" situation is created. Ms. Lev asked when any other small private farm has ever had the number of horses kept on it doubled.

Chairman Ivanhoe said he did not know, but granting this special permit would not create a free-for-all.

Ms. Lev asked if it wouldn't be precedent-setting.

The Chairman said that if the special permit is granted, it would not be precedent-setting; the Board reviews each application individually.

Bruce Lev said he believes that if the Board grants this special permit, they could not deny him a special permit for a commercial operation for 16 horses to be kept on his property. He suggested that if the Board could find a way to do so, they would be taken to court. He stated that there is no precedent, but the conclusion cannot be avoided that the very same set of facts applies to the properties on either side of the subject property.

The Chairman said the comparison has not been established in terms of acreage of turnout on either the subject property or the Lev property.

Prudence Lev asked how the WAC report can be accepted if the turn-out acreage is not known.

Chairman Ivanhoe said he does not know what the WAC report was based on, but they normally base their plans on acreage. He stated that the applicants will be asked to provide the paddock acreage.

Mr. Browne said the Board of Appeals doesn't operate on precedent; neither do they make up different rules or principles.

Mr. Lev said the Board is about to consider changing a rule.

Mr. Browne said it is not a rule; it is a matter of how they interpret the rules when asked to grant a variance from the zoning ordinance. If variances could not be granted, there would be no need for a Board of Appeals. He said setting a precedent would be changing the rules, which the Board does not do.

The Chairman called on David Palaia of 1 Wallace Road. Mr. Palaia said the subject property was evaluated by the Town in the 1980's when it was decided that 7 was the maximum number of horses to have there.

The Chairman said Mr. Palaia was incorrect; 7 is the number of horses that was asked for at the time. The fact that a special permit was granted for 7 does not mean that the Board determined that 7 is the maximum number. Chairman Ivanhoe said the Board will review the current request for 16 horses, and they will not necessarily grant the permit for the number of horses requested.

Mr. Palaia said there are also few useable acres for grazing and the property is shaped like a bowl sloping down toward the river, which he is very concerned about.

Don Rossi stated that the Board would be obligated to follow the precedent unless there are distinguishing distinct factors involved. He also listed the following items:

- Gerald Reilly should be consulted about SEQRA.
- The Board needs to decide whether or not to request on-site verification of the wetlands boundaries.
- Mr. Reilly should also be consulted about outside agency referrals (Town wetlands inspector, Town engineer, etc.). Mr. Rossi said the Estabrook application states that an

existing wash-stall is to be turned into a boarding stall and 8 more stalls added, which is cause for concern.

- He stated that he has an engineering review with overlay pictures in draft form that he will submit to the Board to use as a blueprint for the type of questions that should be asked.
- Mr. Reilly should be consulted about factors of 267-B of the Town Code and self-created hardships.

The Chairman asked Mr. Rossi to submit something in writing, both to the Board and to Mr. Reilly.

Mr. Rossi said he will submit a memo with the engineering report, and he reiterated that the Board has resources at its disposal, including the Town engineer, Town wetlands inspector and code enforcement officer to review comments made.

Chairman Ivanhoe said he would not like to saddle the applicants with the expense of paying for outside agency consultation.

Mr. Rossi stated that the Board has a duty to have Town consultants verify what's being said. He pointed out that the Estabrook applications have not been through Planning Board review which, for example, Stony Creek Farm was.

John Marwell asked the Chairman if he would consider closing the public hearing/leaving it open for acceptance of written submissions for 2 weeks so that he may prepare responses to any written submissions. He said that if the Board has any specific questions, they be submitted in writing so that proper responses may be prepared. He noted that special permits for the keeping of horses are normally granted for 10 years; if a permit-holder violates the condition of the permit, there are enforcement mechanisms in place and the Board may remove the permit if it is deemed necessary. He said he thought that was a proper procedure going forward and fair to everyone.

Mr. Marwell stated that a number of Mr. Rossi's suggestions are more appropriate to establishment of a new farm, while his clients are just proposing to change the number of horses to be kept and installation of pre-fab stalls on an existing farm. He said there is no reason to re-examine the wetlands boundaries as there are no violations on the property, and it would unnecessarily complicate a basic and straightforward application. Again, Mr. Marwell asked that the public hearing be closed since everyone has had a chance to speak.

Chairman Ivanhoe said he would not close the public hearing, because the matter is a sensitive one and important points have been made. He commented that the pendulum can swing both ways.

The Chairman announced that the public hearing would be kept open. He stated that North Salem is what it is because of its horse farms. He said it concerns him that there has been such a strong response from the horse community against the proposed horse farm. He said he was not saying that what is proposed is what should be on the property, but the possibility that the next applicant for a private farm on 6 acres for 4 or 6 horses could face this same kind of opposition from neighbors who do not keep horses is cause for concern.

The Chairman stated that the Board will want to hear from Mr. Rossi, Mr. Reilly and the applicants.

Mr. Marwell asked if written responses could be requested to be submitted within 2 weeks so that he can respond.

Mr. Rossi said there is so much to digest that he could not say when he will have his memo ready/he would not commit to a time frame. He added that hearing from Mr. Reilly will be necessary to guide the 2 attorneys also.

Chairman Ivanhoe asked Mr. Rossi how long he would need to prepare something once he has heard from Mr. Reilly, and Mr. Rossi replied that he could not say how long he will need.

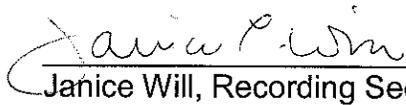
The Chairman said he hoped all the information would be submitted in time to make available to the applicants.

Mr. Rossi said it was incumbent on him to get things done as quickly as possible.

Mr. Marwell said that as soon as he receives any questions from the Board, he will get to work on a response right away.

At approximately 11:55 pm, the Chairman closed the meeting.

Respectfully submitted,

  
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Janice Will, Recording Secretary