

**Town of North Salem
BOARD of APPEALS
Public Hearing
October 14, 2010
8 p.m., The Annex**

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

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

Chairman Ivanhoe called the October 14, 2010 Town of North Salem Zoning Board of Appeals meeting to order.

The Chairman announced that there were several applications held over from the September hearing; the Board would vote on most of those first.

The Chairman set the next meeting date for November 18, 2010.

The minutes of the September meeting were unanimously approved.

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

BA10-33 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).

Tim Allen of Bibbo Associates addressed the Board, stating that his client called the owner of the Salem Saddlery property to discuss the possibility of using the Saddlery's entrance for the subject property. In an e-mail, the Saddlery property-owner stated that he is not in agreement with the proposed shared entrance. Mr. Allen explained that the only remaining option is the entrance onto Route 121 opposite Bloomer Road that was approved by the New York State DOT.

Chairman Ivanhoe thanked Mr. Allen for pursuing the other option, adding that the ZBA would still be interested in seeing the existing site entrance used. He asked if Mr. Allen has submitted a letter from the DOT stating their requirement that the Route 121 entrance be used.

Mr. Allen said he could get the DOT-stamped approvals for the ZBA from the Planning Board.

The Chairman said he thought there was correspondence including the DOT's requirement re the entrance location, and Mr. Allen replied that there is/also filed with the Planning Board.

He explained that another proposed entrance was initially approved by the DOT, but a DOT district leader rejected it, saying the entrance must be directly opposite Bloomer Road. Despite Mr. Allen's appeals to the DOT, the Department would accept only this site entrance.

The Chairman asked if there was any way to appeal the second decision.

Mr. Allen explained that the original proposal was only verbally approved in the field; when the request was submitted in writing, the DOT decided against approving that site entrance.

William Monti asked if the DOT explained their position.

Mr. Allen replied that they prefer "T" intersections to offset ones. He stated that the traffic study done as part of the Planning Board review indicates that the entrance will be safe.

The Chairman asked if there will be turn-lanes at the site, saying he remembered only one lane each for entering and leaving the site.

Mr. Allen indicated on a site map how cars will maneuver around the proposed parking areas.

Mr. Monti asked that any lighting in the front lot not face Bloomer Road, and Mr. Allen said lighting issues have been worked out.

Upon a suggestion by Ms. Sokol, Chairman Ivanhoe commented that the front parking area will be at a higher grade than the road, and he asked if any planting is planned.

Mr. Allen responded that there will be extensive landscaping along the front. He said the Planning Board spent a lot of time on the need for landscaping, and it is included on the approved site plan.

Noting there were no further questions and that the public hearing had been closed at the September meeting, the Chairman asked Gerald Reilly to read a draft resolution.

Mr. Reilly read the draft, including the condition that the landscaping at the front of the subject property be performed per the site plan approved by the Planning Board.

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

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

Area variance granted, as requested.

BA10-35 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.

Mr. Reilly explained that for this application and all the others carried over from September for which the Board members provided a sense of their approval and require no additional conditions, the Board needed only to vote.

Mr. Reilly read a draft resolution.

Motion by: William Monti
Seconded by: Deidre Sokol

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

Area variance granted, as requested.

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).

Motion by: Patrick Browne
Seconded by; Deidre Sokol

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

Area Variance granted, as requested.

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).

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

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

Area Variance granted, as requested.

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.

Motion by: Patrick Browne
Seconded by: William Monti

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

Area Variance granted, as requested.

PUBLIC HEARINGS:

BA10-41 Theresa A. Rattigan-Davis (2 Alice Road) – **Area Variance** – To decrease the minimum front yard setback in an R-1/2 zoning district per Article V Section 250-15. A variance of 9 ft. is requested (30 ft. required; 21 ft. proposed) for construction of a front porch and steps.

Chairman Ivanhoe called on Ms. Davis, who explained that she just wants to have a covered front porch for the entrance to her house.

Patrick Browne commented that the porch will connect to a deck on the side of the house, and Ms. Davis said that was correct.

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

Mr. Reilly read a draft resolution.

Motion by: William Monti
Seconded by: Deidre Sokol

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

Area Variance granted, as requested.

BA10-42 Megan and Brett Taylor (461 Grant Road) – **Special Permit** – For the keeping of up to nine horses and maintenance of a commercial boarding operation, including modification of an existing 6-stall barn, per Article XIII Section 250-72.

Noelle Crisalli, attorney for the applicants, addressed the Board, stating that Ms. Taylor and Jackie McQuade (future farm manager) were also present. Ms. Crisalli stated that her clients were applying for a special permit for a boarding stable on the 85+ acre subject property, adding that 60 acres comprise a conservation easement. She said the Taylors will reside in the house and use the existing, barn, garage with apartment and paddocks. Ms. Crisalli said there is no expansion proposed, but the barn will be reconfigured from 6 stalls to 9. She stated that the Taylors have 2 horses, Ms. McQuade has one, and 6 others will be boarded. There will be 2 additional employees, one of whom will live in the grooms' apartment.

Chairman Ivanhoe asked if the applicants will reside on the property full-time or only on weekends.

Ms. Crisalli said the Taylors will split their time between New York City and North Salem.

Megan Taylor added that her husband will probably spend part of every week in Manhattan.

The Chairman asked if someone will always be there, and Ms. Taylor answered that one of the grooms will live there full-time.

Chairman Ivanhoe asked Ms. McQuade where she lives, and she replied that she lives at 589 Gant Road.

The Chairman noted the interior changes to the barn to make up 9 stalls.

Mr. Browne commented that the application was one of the best-prepared presentations for a very inconsequential request that he has seen, and the Chairman agreed that the application covered everything.

Mr. Monti asked if the fire alarm for the barn rings in the house.

Ms. Taylor explained that it is already set up to ring in both the grooms' apartment and the house.

Chairman Ivanhoe said that for a commercial boarding operation, it must also be a central station alarm.

Ms. Taylor said she will see to it if the alarm is not already of that type.

Mr. Browne commented that he will be glad to see people live on and care for the property.

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

Mr. Reilly read a draft resolution.

Motion by: William Monti
Seconded by: Deidre Sokol

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

Special Permit granted, as requested.

Bruce Thompson, Building Inspector, told Ms. Taylor that the property will also be subject to periodic fire inspections as a commercial boarding operation, and Ms. Taylor replied that that would be fine.

BA10-43 Cheryl Aiello (14 Memorial Drive) – **Area Variance** – To decrease the minimum front yard setback in an R-1 zoning district per Article V Section and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-1/2 bulk requirements). A variance of 6 ft. is requested (12 ft. required; 6 ft. existing) for construction of a roof over an existing deck/steps on an existing, non-conforming single-family residence.

Cheryl Aiello addressed the Board, stating that the deck was on the house when she bought the property, and she would like to add an overhang for protection on rainy days.

It was noted that Ms. Aiello's proposal was approved by the Pietsch Gardens Co-op.

The Chairman noted there were no questions and 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**
Mr. Browne: **Aye**
Chairman: **Aye**

Area Variance granted, as requested.

BA10-44 Estate of Dan Paul Wetuk (846 Peach Lake Road) – **Special Permit** – For the renewal of Special Permit #BA00-36 for the keeping of up to 3 horses for personal use per Article XIII Section 250-72.

Lorie Meg Karlin was present, and she explained that her request was merely for a renewal of an existing special permit for the keeping of 3 horses on 3.8 acres. She said no changes are proposed.

Mr. Reilly said that the previous special permit has reached its 10-year expiration and may be renewed unless the Building Inspector knows of any problems.

Mr. Thompson said there are no problems.

The Chairman closed the public hearing.

Mr. Reilly read a draft resolution, including the finding that the applicant was present only to renew the special permit for another 10 years, and the Building Inspector had no objection.

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

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

Special Permit renewal granted, as requested.

BA10-45 Theresa and John MacLeod (23 Yerkes) – **Area Variance** – To decrease the minimum front yard setback in an R-2 zoning district per Article V Section 250-15. A variance of 35 ft. is requested (50 ft. required; 45 ft. existing; 15 ft. proposed) to permit creation of a 2-car parking area.

The Chairman called on John MacLeod, who explained that site work is being finished on his property, following construction of a garage and alterations to his house. He said it will be safer to have the parking area in the front yard.

Mr. O'Leary asked why a variance was needed for a parking area, and the Building Inspector explained that the zoning ordinance does not permit parking in a front yard. Chairman Ivanhoe asked if any lighting is to be installed in the parking area, and Mr. MacLeod replied that there will be none.

The Chairman commented that the entrance will be canted instead of parallel to the street, and Mr. MacLeod explained that it will be more convenient to come out of the garage and swing around that way.

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

Mr. Reilly read a draft resolution.

Motion by: Patrick Browne
Seconded by: Richard O'Leary

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

Area Variance granted, as requested.

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 the public hearing of these 2 applications was left open at the September meeting. He said he appreciated the submission received from the applicant's attorney, John Marwell, although the Board was still reviewing it. For this reason, he said the Board would give Mr. Marwell 10 minutes for presentation; then another 10 minutes for Don Rossi, attorney for Prudence and Bruce Lev; and then the Board would hear from members of the public who did not speak at the September meeting.

The Chairman asked Mr. Marwell if he wished to formally present his written submission.

Mr. Marwell said he would like to go over some highlights from the document. He stated that the applications are for Valentine Farm, which currently has a special permit for up to 7 horses for personal use of the owners. His clients seek to increase the number of horses to 16 including the boarding of horses owned by others. Mr. Marwell said it is the

same use as currently permitted but for the addition of more animals and construction of 8 more stalls.

Mr. Marwell said that at the September meeting, a Watershed Agricultural Council recommendation in support of the proposed operation was submitted, and Alex Hamer gave a presentation of his farm management plan. On October 13, correspondence from the New York State Department of Ag and Markets was received, in which the Department reviewed the applications and determined that the property satisfies the requirements for a commercial horse-boarding operation under the Ag & Markets law. Mr. Marwell explained that when a property is determined to qualify, it benefits from certain legal protection, meaning that local land-use and environmental laws cannot be applied in such a way as to unduly restrict or burden the operation of an agricultural use on the property. Mr. Marwell stated that such a property is exempt from SEQRA environmental review and also from wetlands review under the local law.

Mr. Marwell stated that there are no new facts in his letter; they are merely presented in terms of legal principles. He reiterated that he feels the application is not for a change of use but just for more horses. He described a list (submitted at the September meeting) of other special permits granted by the ZBA to commercial and personal horse operations, setting out the number of horses and acreage of each. Mr. Marwell suggested that, particularly in light of the Ag & Markets determination, the Board may look favorably on the application. He said he wanted to correct the agenda description of the area variance for the size of the property, which states that a 4-acre variance is required. He pointed out that 10 acres is required and the subject property consists of 6.97 acres, so the variance would be 3+ acres. *(The Board of Appeals does not grant variances for fractions; as the subject property consists of less than 7 acres, the variance is described as being for 4 acres.)*

Mr. Marwell stated that the Westchester County Department of Planning, upon review of the application, stated that they do not oppose the application and pointed out that agricultural uses are to be supported.

Chairman Ivanhoe said that at the September meeting, he asked for more detail to be provided on a site plan with respect to turn-out and total turn-out acreage, and he did not see that this was included in Mr. Marwell's submission. He stated that the letter from Ag & Markets was significant in that it was new to the Board; and, coupled with Mr. Marwell's submission, it will take time to consider. The Chairman said he is familiar with Ag & Markets protection, but it is not carte blanche protection. The Board will want to see the more detailed farm plan and they will judge it on their Board-specific expertise and look at possible impacts on public safety and the public waterway running through the property.

The Chairman said he is also familiar with Ag & Markets' policy of allowing bundling of properties that are non-contiguous, but he would have preferred that the applicant's other property be in North Salem and not in Dutchess County. He commented that the Board will want to address this situation also.

Regarding the picture of the barn with the new stalls next to it, the Chairman said no distance between the 2 is given but it must be at least 10 to 12 ft.

Alison Estabrook stated that the proposed distance is 8 ft.

Chairman Ivanhoe said that would just create an aisle and would not be practical/10 to 12 ft. would be safer. He asked if the area variance request for the stalls is based on how they are shown in the picture or the way it was discussed at the site meeting/farther away and built into the hillside.

Alex Hamer (farm manager) said the variance was requested per the site plan with a distance between the new stalls and the barn of 8 ft.

The Chairman said he feels the proposed action is Type II under SEQRA, because (reading from a document), "... there will be agricultural farm and management practices including construction of farm buildings and structures and use changes consistent with generally-accepted principles of farming". Chairman Ivanhoe said this also needs to be discussed.

Mr. Reilly stated that the lot-size issue is not Type II, the requested number of horses merits review, and the letter from the County raises concerns about environmental impact. For these reasons, Mr. Reilly recommended that a long EAF be completed by the applicant so the Board can review the issues. He further stated that Mr. Marwell would try to convince the Board that the proposed action is Type II, but it is his opinion that the application is not exempt from SEQRA. He said it could not be determined at the meeting, and he has concerns about exempting this particular application for commercial horse-boarding from SEQRA.

Mr. Reilly said he didn't read the entire submission from Mr. Marwell, but he spoke to Mr. Marwell about its contents. He added that he didn't think anyone had done a complete review of the submission.

Mr. O'Leary noted that Alex Hamer stated at the September meeting that riding lessons would cease at 6 pm, but Mr. Marwell's submission states that the operation will close by 9 pm, so he would like the point clarified.

The Chairman agreed that a closing time of 6 pm was given in September.

Mr. Marwell answered that he thought the Board was agreeable to using the indoor ring until 9 pm as long as no lights are showing through the windows, but he was willing to discuss it.

Chairman Ivanhoe said he thought it would be more practical to close at 6 pm and avoid the expense of shading the windows in the indoor ring, but it could be discussed further.

The Chairman noted that Mr. Marwell's submission, citing a legal case, states that there is no reason to apply different criteria for commercial horse-boarding than for the keeping of horses for private use. Chairman Ivanhoe said the Board is concerned with intensity of use, and that intensity will be greater with the proposed commercial operation/increased number of horses than what exists on the subject property now.

The Chairman stated that other small parcels in Town with large numbers of horses are proven entities, so the Board will want to discuss a shorter time period for this special permit so that the applicants can demonstrate their ability to manage the operation to the standards that the Board expects. In response to a statement in Mr. Marwell's submission that the Board has never limited a special permit for commercial horse-boarding or the keeping of horses for personal use, Chairman Ivanhoe said Old Salem Farm is an example of a farm that was granted a special permit for a shorter-than-normal time period. He added that it has not yet been proven that the proposed horses-to-acreage ratio for the subject property will succeed.

With regard to Ag & Markets' protection of the use of a second property, the Chairman noted that the applicants' other parcel is 20 miles away. He said the Board will have questions about how that parcel is to be used for the operation.

Mr. Marwell handed in a copy of a survey of the subject property with paddocks delineated. He asked the Board to bear in mind that his client will be making a significant investment in the farm and so deserves to be granted a special permit for a reasonable period of time, in part so that any problems that may arise can be dealt with. He said he was not suggesting that the farm will be exempt from all local laws, but it is his understanding that, under Ag & Markets protection, local laws may not be applied in such a way as to create an unreasonable burden on an agricultural use.

Mr. Reilly said a 5-year special permit will be renewed if the Building Inspector determines there are no changes or failures to follow conditions, so it is nearly a rubber-stamp/does not affect the investment. As long as the operation continues to be run as required by the special permit, it will continue to be renewed.

Mr. O'Leary asked Mr. Marwell what kinds of problems could occur on the farm.

Mr. Marwell replied that his client would need time to address and remedy any problems that might arise, but none are anticipated. He said he does not think a special permit for one or 2 years is reasonable, but 5 years would be acceptable. He stated that if there is a remedy, that is an enforcement issue. If the terms of the special permit are being violated, the Building Inspector will look into it; if there is an infraction, it will be addressed. Mr. Marwell said the Board should be considering whether there are any adverse incremental impacts as a result of increasing the number of horses from 7 to 16. He added that the current owner may invite as many friends, guests and visitors as she likes and have the horses out in the paddocks 24 hours a day, whereas his client has a management plan for the property which limits the amount of time the paddocks will be used in order to maintain grass in them. Mr. Marwell stated that he would be happy to address questions about how the property in Wassaic will be used as part of the farm operation.

Mr. Browne said he stated at the September meeting that he felt a 2-year special permit would not be fair to the applicant. He said his point was that the Board should not shirk its duty to fully analyze the application before approving the special permit.

Referring to Mr. Marwell's statement about increasing the number of horses from 7 to 16, Chairman Ivanhoe stated that although the current special permit is for 7 horses, the

owner has only ever kept 2 to 3 horses on the property; its ability to support 7 horses has not been tested. For this reason, there is a great question before the Board as to whether or not the land can support even a small increase in the number of horses kept.

Mr. Marwell said he would like to know what specific impacts the Board has concerns about.

The Chairman stated that he will be looking to see what can be provided in the way of alternative (dry/sand) paddocks, so all the horses may be turned out at times when all the grass paddocks are closed.

Mr. Marwell pointed out that the indoor riding arena can be used for this purpose, and he asked if the Board would like Mr. Hamer to address the issue.

Chairman Ivanhoe said he would like to see a plan, and then he invited Don Rossi to address the Board.

Mr. Rossi said he appreciated the Board's request for a long form EAF, but he feels the applicant must also provide a plan done by a licensed engineer or architect. He said the proposed farm will include the addition of 14 parking spaces in a controlled wetlands, and Mr. Marwell's suggestion that the farm will be exempt from local wetlands regulations is not consistent with the Town's practices. He added that the resultant compacting in the parking area might not be considered impervious by the DEP but such surfaces have been looked on that way by the Building Department in the past. Mr. Rossi stated that other variances are required which have not been requested, including a front yard setback variance for the new parking area. Additionally, he said that with boarding for 14 horses not owned by the applicant, the width of the driveway should be looked at and an opinion offered by the Building Department.

Mr. Rossi stated that overall investment issues are relevant to the duration of the special permit and also important to the board in consideration of granting the special permit and the area variances. In consideration of the factors in 267-B of the Town Code, investment in the property is of importance for the purposes of determining whether to grant the variances. He said the Board should not grant variances for the convenience of an applicant; but, rather, based on the uses of the property and inherent difficulties in complying with the zoning ordinance. Mr. Rossi said the variances should not be granted because someone wants to make money on an operation. He added that there are other factors for the Board to consider, and he read from the commentaries to 267-B that zoning deals with land. For this reason, when considering whether the criteria in 267-B have been satisfied, the inquiry must focus on the land itself and not the inconvenience caused to an applicant by the zoning ordinance. Case law prior to 267-B consistently rejected variances based on the applicant's convenience. The majority of area variance decisions have related to the unique characteristics of the land itself. Because the basis of a variance must relate to the land, prior case law should continue to apply. Mr. Rossi then read from a section on investment. The economic impact of compliance with the zoning ordinance is relevant when balancing the interests of the applicant and the community. An applicant who will suffer economic detriment should provide evidence of the detriment (dollars and cents proof). The fact that a property would be worth more or be more profitable with a

variance is not reason to grant relief from the zoning ordinance. Mr. Rossi stated his belief that the area variances are sought to accommodate the use of the property for profit, and the ZBA should request more financial information.

Regarding protection by Ag & Markets, Mr. Rossi said the Town may not unduly restrict agricultural activities if those restrictions are not necessary to protect the public health, safety and welfare. He said the Board needs to know about traffic and wetlands, adding that an engineering plan would be helpful in this regard. Mr. Rossi further stated that he has dealt with Dr. Somers at Ag & Markets before, and he is surprised that he would accept the use of a second property in Wassaic for hay and turn-out (with no barns or stables) for a farm in North Salem. Mr. Rossi said the Board needs to know if the Wassaic property is to be leased and, if so, for how long. They must also decide how to include the lot in the special permit. He went on to say that he had been concerned about the precedent of decreasing the 10-acre lot-size requirement, but now he is worried about the creation of a precedent wherein a 4-acre lot in North Salem may be joined with a 50-acre lot in the Adirondacks for the use of a common horse-boarding operation. Mr. Rossi commented that using a second lot across the street might be acceptable, but he cannot see how a court could uphold what is being proposed. He stated that typically, when an applicant seeks the assistance of Ag & Markets, the Town Attorney receives a copy of the letter, and oftentimes, the objectant's attorney also has a chance to see it and there is discourse. Mr. Rossi said the letter from Ag & Markets is not a formal statement that they feel North Salem's zoning ordinance unduly restricts agriculture. He stated that the applicants' convenience is not an economic hardship, and that is a stumbling block. He noted that the Board has received a number of letters of objection to the applications and submitted a petition against the Estabrook applications that was signed by approximately 19 people. In closing, Mr. Rossi suggested that Ed Burroughs of the County Planning Department would probably be very interested to see some of the letters of objection that the ZBA has received, and Mr. Burroughs should also be made aware that there is no engineered plan in the applications. Mr. Rossi said he will send the letters to Mr. Burroughs, and he suggested that a more thorough packet be sent by the Board (a 239-M referral).

Chairman Ivanhoe stated for the record that the Board received another letter of objection that day, from Sharon Gunthel of 5 Baxter Road.

The Chairman asked Mr. Marwell if he would like more time to speak, but Mr. Marwell replied that he would wait until after members of the public speak.

The Chairman asked if there were any new public comments to be heard.

Linda Pinto of 39 Hilltop Drive addressed the Board, saying that she used to live right across the street from Valentine Farm. She stated that she never saw more than 4 or 5 horses there; and an increase to 16 horses would make a big difference, especially because there will be so many different horse-owners. She said it was incorrect for the applicants to state that this kind of increase would not be a change of use. Ms. Pinto said she lives further up Hilltop Drive now, but in 1977 when her husband bought Salem Sunshine Farm (property across the street from the subject property), he was confident in his investment and felt he would enjoy living in Town, based on his observation of how

other farms in the neighborhood were being used and awareness of the rules and regulations that applied to those properties. She commented that if the local laws are not upheld it will destroy the confidence of potential property-buyers. Ms. Pinto stated that an area variance to allow 8 stalls to be constructed close to the road and permission for a commercial operation represent significant changes to the neighborhood, and she doesn't think it would be appropriate.

The Chairman thanked Ms. Pinto and pointed out that there are commercial farms in the neighborhood. He said the number of horses/intensification of use is an issue, and the commercial aspect is a lesser issue.

Jesse Goldberg of 22 Wallace Road stated that he has lived there for over 30 years. He said he was previously not so aware of road conditions in front of the subject property, but he has taken note recently how the road curves/the speed limit is lowered as the farm is approached from either direction. Mr. Goldberg stated that he could not see the driveway to Valentine Farm until he was right there/there is no way to know there is a driveway ahead. He said he imagined that with the increased intensity of use, all the people and horses would create a hazardous situation driving in and out of the farm. He added that he has heard no indication that the situation has been looked at by a traffic engineer or that any mitigation has been proposed, and he asked if anything will be proposed.

Mr. Reilly replied that the Board was not prepared to take action on the applications this evening, especially given the number of issues raised. He stated that it would be unfair to all parties to do anything but set the points down for response.

Chairman Ivanhoe added that in light of what has been submitted so far, the Board will probably be asking for more information.

Mr. Goldberg said it was proposed to mitigate the safety issue by suggesting that people not make left turns going out of the driveway, which he finds ludicrous.

Robert Gershon of 11 Wallace Road addressed the Board next, stating that the proposal will create a real change in character for the neighborhood. He asked how the farm will receive deliveries of hay and shavings for 16 horses if a large truck cannot get down the driveway.

The Chairman said it was discussed at the September meeting when the applicants stated that they will take in smaller loads.

Mr. Gershon suggested this would require deliveries every other day.

The Chairman thanked Mr. Gershon for his comments and said the Board recognizes the potential impact on the neighborhood, although there are other commercial horse farms in the neighborhood.

Petra Wiederhorn of 126 Vail Lane stated that she has a boarding farm for 14 horses on over 21 acres there. She commented that, given the application being discussed, it seems that she could ask to keep 66 horses on her property. She said she has devoted 20 years

of working hard to run her farm well. She expressed concern about the grade of the subject property and the amount of water that will be needed and asked if run-off into the stream won't be a problem. Ms. Wiederhorn said a fire suppression-system will be needed for the indoor ring, and asked where water would be stored for that. She said she loves horses but feels the subject property is not the right place for the operation being proposed.

Mr. Reilly said that a couple of Board members have suggested putting the matter over to November, so he would propose that people be given a deadline for submissions so the Board will have time to read and review them before the meeting. The meeting will be held on November 18, so Mr. Reilly asked if November 8 would be a reasonable deadline.

Mr. Rossi expressed concern about having time to respond to submissions; if a long-form EAF is submitted it will take time to review it.

Mr. Browne said that, in the same vein as his wish not to put the applicants to a lot of start-up expense for a special permit limited to 2 years, he also does not want to impose on them the huge expense of lengthy environmental review, traffic studies, etc. He said he is willing to review submitted documentation at meeting after meeting, but he feels (based on the information made available so far, as well as his own experience with this board and Planning Boards) that the proposal is patently not an appropriate use of the subject property. Mr. Browne said he would feel badly about encouraging the applicants or the neighbors to spend a lot of money in support of their opinions, because it will make no difference to him; if the Board were to vote now, he would vote no. He added that he does not think his opinion will change, despite submission of additional studies, etc. including what may be the belief of other Board members to the contrary.

Mr. O'Leary said it seemed to him that that the issue will go on for at least 2 more meetings, because if information is not received until the deadline and Mr. Rossi cannot prepare a response to that information until the meeting, it will have to be carried over again. He stated that people should take seriously Mr. Browne's comments about expense and practical outcome.

Camille Branca of Bedford asked what the Board would consider fair and reasonable for a boarding facility, basically for friends even though it would be considered commercial. Would they think 5 horses would be fair?

Mr. Browne said it is a site-specific issue and the Board does not set precedents.

The Chairman agreed, saying each application is considered independently.

Carol Goldberg of 22 Wallace Road stated that she had a commercial farm starting in 1972 for about 20 horses that worked well for 5 years and then even for 10, but by 15 years the land was beat up. She said she has 10 acres and it is both flat and dry. Ms. Goldberg said she has never spoken out against a horse-keeping permit, but she does not feel the land can support a commercial 16-horse operation. She added that she cannot see how use of the Wassaic property will work out.

Mr. Reilly asked that the Board entertain a motion to set a deadline of November 8 for submissions prior to the November 18 hearing.

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

Mr. Browne: *Aye*

The Chairman asked Mr. O'Leary for his vote, but Mr. O'Leary reiterated his concern that at least another meeting will be required for the 2 attorneys to respond to each others submissions.

Mr. Reilly said that is not necessarily the case, as the Chairman can close the public hearing.

Mr. O'Leary said he had a sense that if the Board has questions or comments about Mr. Marwell's submission, he will want time to respond.

Mr. Reilly responded that the November 8 deadline will provide time to respond before the meeting, and at the November 18 meeting the 2 attorneys can get up and there can be a colloquy, and maybe then the Board will decide to close the public hearing, but the 2 attorneys and the Board will have time at the meeting to ask and respond to questions.

Mr. O'Leary asked how the applicants can be prepared to answer questions that don't come up until the hearing.

The Chairman and Mr. Reilly both said they should have had time to be prepared by then.

Mr. Marwell stated that he had asked at the September meeting that if the Board had any questions they submit them in writing so he could prepare a written response for this meeting.

Chairman Ivanhoe said the Board would do that, and he asked the other members to prepare any further questions they have for submission to Mr. Marwell by November 8.

Mr. Reilly said the Board should not be limited to specific questions, and Mr. Marwell's request is more in keeping with preparation of a DEIS. The Board may submit questions in advance if they like, but they should not limit themselves, given the number of queries there have been already between the Board, the 2 attorneys and the public.

Mr. Marwell said he would still like to receive any specific, troublesome questions in advance so that he may provide specific answers. He asked if the Board would close the oral part of the public hearing, because people have had a chance to be heard, and just keep it open for written submissions by November 8.

Mr. Reilly asked if Mr. Marwell meant he does not want to speak at the November hearing.

Mr. Marwell replied that it would be appropriate for the applicant to continue to speak and so might Mr. Rossi if he wishes and the Board feels it is appropriate. He stated that the applicant is entitled to due process in presenting, pressing and advocating the application, so they should not be considered part of the public hearing.

The Chairman commented that Mr. Rossi would be part of the public hearing.

Mr. Rossi said members of the public might also have comments and questions about a long-form EAF.

Chairman Ivanhoe said the public hearing will be kept open, but he will restrict it in terms of time.

Mr. Marwell said he hopes the Board will vote at the November meeting.

Chairman Ivanhoe said he wants to see a more specific plan including dry paddocks and a clear visual aid representing how the farm plan will be implemented on the property.

Mr. O'Leary asked what they will do about the Wassaic property, and the Chairman agreed that it needs to be dealt with also.

Chairman Ivanhoe said he spoke to Dr. Somers at Ag & Markets in an effort to get some clarification, and he said the Board will want to see a map of the Wassaic property, the lease-hold, paddocks and fencing if there is any, and a more specific plan for use of the property. He reiterated that the Board respects the work of Ag & Markets, but they find this proposition a little far-fetched.

Mr. Marwell said he will demonstrate that it is practical and will work.

The Chairman said the Board would like to know the capability of the property versus the intent.

Mr. Marwell said he does not know if the Board has required the long EAF for other applications similar to this one; but if not, he would question the appropriateness of the request. He stated his opinion that it is a Type II action by statute.

Referring to Mr. Rossi's objection to exemption from local wetlands laws because the Town's practice is different, Mr. Marwell suggested that the law applies to all and wetlands review should not be a factor.

Mr. Marwell said that when he mentioned economic hardship/investment versus expectation, he was talking about the duration of the special permit. He said hardship/practical difficulties are old standards; the clear statutory standard now is the balancing test of benefit to the applicant versus potential demonstrated adverse impact on the community. Mr. Marwell said there is no adverse impact on the neighborhood in this case, because there is no change in land-use. He commented that it does not matter who owns the horses and the request is for a permitted use, the only difference being an increase in the number of horses. He stated that if there are concerns about maintenance

of the property, his clients would accept reasonable conditions in the special permit. He said the use of the Dutchess County property is permitted by statute and was accepted by Ag & Markets.

Mr. Browne asked how the property in Wassaic would be used for turn-out, and Mr. Marwell answered that some horses would be kept there long-term.

Mr. Browne wondered which of the applicants' clients would be happy to learn that for 3 weeks their horses would be in Wassaic and not in North Salem.

Chairman Ivanhoe asked Mr. Marwell to please submit something in writing along with visual aids about use of the Wassaic property.

Mr. Marwell asked if he could get a sense of the Board's intentions.

Chairman Ivanhoe stated that it is a fundamental and long-standing principle that zoning deals with land-use and not with who owns or occupies the land, but the Board of Appeals deals with special permits which (for the keeping of horses/running of horse-boarding operations) do not run with the land; they deal with the owner of the land.

Mr. Marwell respectfully suggested that the issue is land-use and not the user.

Mr. Reilly recommended to the Board that they not offer a consensus, because they have said they need more information.

The Chairman agreed, adding that some Board members need more time to review what's already been submitted, and he has asked for additional information also. He stated that the public hearing will be kept open with tighter restrictions on time. He reminded those present of the November 8 deadline for written submissions, and he said the Board would not submit written questions in advance, unless they have specific questions on the current submissions.

Mr. Reilly said that if Board members start submitting individual questions, it will get confusing. He explained that he and Roland Baroni have a practice in all Towns for all boards that any inquiry should be from the entire Board.

Chairman Ivanhoe said he was in agreement with this.

Mr. O'Leary reiterated his concern that the application hearings will go on for a long time.

The Chairman commented that Mr. Marwell's clients may reconsider the scope of their applications.

Mr. Rossi stated that he felt it was important to know whether or not the long-form EAF will be required.

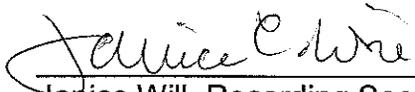
Mr. Reilly said he recommended it to the Board.

Mr. Rossi said he is concerned because the ZBA does not normally work with this document which requires numerous calculations/other agencies and it may be difficult for Mr. Marwell to complete before November 8. He noted that if he and Mr. Marwell get letters from each other on November 8, it will take time to respond to them. He said he did not want to face a procedural argument about whether or not the public hearing should be closed.

Mr. Reilly said the Board seems to be trying to give everyone a fair opportunity to explain points raised, but they do not seem satisfied yet from any perspective, and he did advise them to request a long EAF.

At this time, the Chairman adjourned the meeting.

Respectfully submitted,



Janice Will, Recording Secretary