

**Town of North Salem
BOARD of APPEALS
Public Hearing
November 18, 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 November 18, 2010 Town of North Salem Zoning Board of Appeals meeting to order.

The Chairman set the next meeting date for December 9, 2010.

The minutes of the October meeting were unanimously approved.

Chairman Ivanhoe announced that the Board would take some of the evening's applications out of order; the Sargent applications would be heard first, and the Kuehn applications would be heard last.

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.

Zoning Ordinance changed to allow seasonal outdoor dining; application withdrawn..

PUBLIC HEARINGS

BA10-49 Elaine Sargent (6 Old Salem Center Road) – **Area Variance** – To decrease the minimum rear and side yard setbacks in an R-4 zoning district per Article V Section 250-15 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-2 bulk requirements). A rear yard setback variance of 31 ft. (50 ft. required; 19.8 ft. existing) and a side yard setback variance of 12 ft. (30 ft. required; 18.6 ft. existing) are requested for legalization of an existing shed.

Don Rossi, attorney for the applicant, addressed the Board, thanking them for accommodating his client by taking her applications first. He described the location of the property and stated that the shed was built around 1994. Mr. Rossi explained that the builder thought the shed was included in the Certificate of Occupancy for the renovations and additions to the house that were constructed at the same time. The shed was not included in the C/O, and it needs a variance to be legalized, as does Mrs. Sargent’s generator.

The Chairman stated for the record that he visited the sites of all the new applications.

Mr. Rossi stated that the shed is in a logical spot just off the driveway.

Patrick Browne commented that the ground drops off sharply there.

Mr. Rossi agreed, saying the property is on a ridge. He stated that the back of the shed was red, which did not match the rest of the shed or the house, but it has been painted to match now.

Chairman Ivanhoe explained that he noticed the unmatched paint when he went to listen to the generator.

Mr. Rossi stated that the shed is in good repair, and his client would appreciate the Board's granting of the variances.

Mr. Browne asked if any neighbors objected to the variance application, and Mr. Rossi replied that they did not.

Mr. Browne noted that the generator is not screened.

Mr. Browne asked if the applicant would consider screening it from view.

Chairman Ivanhoe said screening was discussed when he was at the property, but the generator would be considered after the Board was finished talking about the shed.

Mr. Rossi said his client would be agreeable to having evergreens planted to screen the generator.

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

Gerald Reilly read a draft resolution.

Mr. Rossi pointed out that the shed is 18.6 ft. from the property line and not 18 ft. away.

Mr. Reilly said that would simply mean that Mrs. Sargent's variance allows for approximately 6 in. more than necessary

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.

BA10-50 Elaine Sargent (6 Old Salem Center Road) – **Area Variance** – To decrease the minimum required rear yard setback in an R-4 zoning district per Article V Section 250-15 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-2 bulk requirements) for the legalization of an as-installed generator. A setback variance of 13 ft. is requested (50 ft. required; 37 ft. existing).

Displaying a site plan, Mr. Rossi pointed out the location of the generator which he said was chosen for its proximity to the utility room and electrical panels in the garage. At the site inspection which included a sound test, Mr. Rossi said it was noted that people were able to converse standing right near the generator; where the property drops off, there is even less noise. Mr. Rossi explained that the generator runs for 20 minutes once a week for maintenance purposes; otherwise, it is only for emergency use. He added that Mrs. Sargent only resides in North Salem on weekends. The maintenance run currently takes place at 8 am. on Tuesdays, but Mr. Rossi said this could be changed. He said there is a caretaker on the property who regularly checks the property and would check on the generator, and he reiterated that his client would have no problem with planting evergreens around the front of it at a distance to allow for proper air flow.

Chairman Ivanhoe stated that the generator is not visible from any neighboring property, given the 8 ft. drop in grade and an existing fence, so he did not see any reason to screen it.

Mr. Rossi commented that he thought the evergreens would muffle sound emanating from the generator.

Mr. Browne asked who owns the lot next door, and Mr. Rossi answered that Mrs. Sargent does.

Mr. Reilly commented that the separate tax lot could be sold.

Mr. Rossi said that if the Board would like the generator screened, it will be screened.

David Talbot of 718 Titicus Road was called on. He said he had concerns about noise from the generator; not from the 20-minute maintenance run, but if it were run for days during a power outage in the winter. For this reason, he would like the evergreens planted to muffle the sound.

Chairman Ivanhoe agreed that the generator can be heard/there would be no leaves on the trees to muffle the sound in the winter, and he suggested some kind of lattice-work be installed to deaden the sound.

Mr. Talbot said a stockade/solid type of fencing would be more effective.

Peder Scott, architect, said a short solid fence would be appropriate.

The Chairman said the Board would require a solid fence instead of shrubbery.

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

Mr. Reilly read a draft resolution, including a condition that a solid 4 ft.-high fence be installed to muffle noise from the generator.

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, with specific condition per discussion and agreement.

Chairman Ivanhoe asked Mr. Talbot if he would like the maintenance-run time changed, and Mr. Talbot said he would prefer that the generator be run in the early afternoon.

Mr. Rossi said the maintenance-run time will be changed to 2 pm on Tuesdays, to run for 20 minutes, and the Chairman said that was agreeable.

Mr. Reilly included this second condition in the draft resolution.

HEARINGS CARRIED OVER:

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.

David Feureisen, attorney for the applicant, addressed the Board, saying that Dr. Estabrook’s other attorney, John Marwell, would not be present.

Chairman Ivanhoe commented that a fair amount of additional material was received by the Board, including some received just that day. He added that the Board now has a copy of the site plan with the parking spaces and paddocks colored in.

Mr. Feureisen asked if the Board hadn’t asked that all submissions be turned in by November 8.

The Chairman said that was correct, and the Board had not had time to study that day’s submittal. He stated that the Board requested a long Environmental Assessment Form at the October meeting, but the applicant’s November 8 submission stated that no further materials would be submitted.

Mr. Feureisen stated that it had been unclear whether or not the Board wanted the long EAF, but he also felt it was not called for because what’s requested is a Type II action/does not require the long EAF. He said that if the Board states unequivocally that they want the long EAF, it will be addressed.

Chairman Ivanhoe said Mr. Reilly and Mr. Marwell discussed the EAF.

Mr. Feureisen said he recalled the conversation, but he did not think it was clear at the meeting that the Board would require the EAF.

William Harrington, Dr. Estabrook's husband, stated his belief that they are protected by Ag and Markets law, adding that Ag & Markets has clearly stated that the long EAF is not required.

Mr. Reilly stated that the variance application for lot-size has not been addressed and is not exempt under SEQRA. He further stated that he informed Mr. Marwell that he would advise the Board that SEQRA is necessary and they may require the long EAF, especially as the submitted site plan is so inadequate. He said he does not think Ag & Markets can say anything about this, and he did not see anything to that effect in their submittals regarding these applications or other materials he reviewed. Mr. Reilly said he would advise that SEQRA is involved and that because of the complexity of the application and the inadequacy of the site plan, the long EAF should be required at a minimum in order for the Board to make a determination. Once SEQRA is involved, the ZBA will determine whether to be the lead agency or not. They will declare their intention and refer the application to other agencies (Westchester County Department of Health, Planning Board for wetlands considerations, etc.) and see if they accept the ZBA being lead agency. Mr. Reilly said all this was discussed with Mr. Marwell.

Mr. Reilly said he would recommend that the Board adjourn the matter and comply with certain requests that he is making that will only be valid if the Board reiterates those requests. The applicant should submit a long form EAF and a site plan that is satisfactory to the Building Inspector so he may determine if any other boards are involved agencies as opposed to interested agencies, and make sure wetlands are not involved. There should also be a written indication of the actual front yard setback variance requirement (for a setback of 70.5 ft. or 80 ft.), as there has been some confusion on that point. Mr. Reilly said it was his opinion that if the applicant insists on going forward with the application as presented, given the questions posed by the Board, by himself to Mr. Marwell and some written requests from the attorney for the neighbors, the Board should direct the Town Attorney to prepare findings of fact and a resolution denying the applications as they presently exist.

Chairman Ivanhoe said a long EAF would give the Board a better opportunity to address some of the issues that have come to light, for example driveway safety. He noted that Mr. Marwell suggested some mediation. Chairman Ivanhoe said there is no persecution of and no bias against the applicant, but the way the application has been submitted has been on the fly and incomplete.

Alison Estabrook disagreed, saying there have been at least 4 professional people involved, including an architect, 2 attorneys and Alex Hamer. She stated that she has letters from numerous sources including Ag & Markets that back her up in saying that SEQRA and the long-form EAF are not necessary.

Chairman Ivanhoe said it has taken 3 meetings to get a copy of the site plan outlining the paddocks and parking.

Dr. Estabrook said the site plan was submitted on September 16.

The Chairman countered that there were no individual copies for Board members until recently. He said that given the variances being requested, the application should have been buttoned down with all the information in the first round.

Mr. Feureisen said his client's applications are protected by Ag & Markets law, under which only threats to health and safety are supposed to be addressed. He said he understood concerns about the driveway, but he had heard nothing else about health and safety.

Mr. Reilly said Ag & Markets does not say the Town cannot address the issue of SEQRA; they say, among other things, that the 5 acres in Wassaic may be counted toward the 10 acre requirement. This does not mean that the ZBA cannot consider (in an application for 16 horses) for purposes of SEQRA and purposes of an area variance, whether or not it is reasonable to include a parcel that is an hour away. Mr. Reilly suggested that if the permit application were for a tree farm and additional trees were to be brought down from Wassaic to be sold here, that would make sense. He said he believed that he also raised this point with Mr. Marwell.

Mr. Feureisen said an October 13 letter from Ag & Markets states that Dr. Estabrook's request qualifies as an agricultural operation, and asks the Town to show where there are issues of health and safety. He said the Town has not submitted any such thing.

The Chairman stated that the Town has until November 30 to respond to the letter from Ag & Markets. He said the Board has been skeptical from the beginning about the subject property's ability to support 16 horses, and there has been a lot of information to consider regarding what would be an appropriate/reasonable number of horses. He pointed out that there are no horses on the property at all now/the land is all grass, but horse farms don't end up with paddocks that look like lawns. The Chairman stated that he wants a long form EAF and a reconsideration of the number of horses asked for. He said the Board recognizes that Ag & Markets approves the use of the second plot in Wassaic, but he also pointed out that that information came to them just before the second meeting. He said he recognized that the applicant is doing things as she goes, as a contract vendee of the subject property, but the second property being in another town and with only a 3-year lease is an issue to the Board. Chairman Ivanhoe said they couldn't consider more than a 3-year special permit.

Mr. Feureisen said his client would accept a 3-year special permit, but he added that he does not think the ZBA has reviewed the Ag & Markets law, because it states that it is perfectly legitimate to have part of the operation in Wassaic and part of it in North Salem.

Chairman Ivanhoe said the Board wants the long EAF because of safety issues concerning the driveway, and the horse count because it is a potential threat to the watershed.

Dr. Estabrook said she would discuss those issues; she would like a vote at this meeting. She said she is a contract vendee of the property and needs to close on it soon, so she needs a decision on her applications. She went on to say that she has spent tens of

thousands of dollars already, the setback request is for 80 ft. not 70 ft., and she has leased land in Wassaic because she could not get any in North Salem. Dr. Estabrook said the issue was becoming a witch-hunt, and she does not need a long-form EAF because the operation is exempt.

Mr. Feureisen stated that under Ag & Markets law, the burden is not on the applicant to show the driveway is safe, and there is no credible evidence that it is not. He said the opinion of neighbors about the road or the driveway is not credible evidence, whereas an engineer's opinion would be.

William Harrington, Dr. Estabrook's husband, stated that the Town must show evidence of any hazard.

The Chairman said Mr. Marwell stated in his second submittal that the applicant clearly recognizes the hazard of the driveway and proposed mitigation, i.e. use of a flag-man and a sign.

Mr. Feureisen said that didn't change Ag & Markets law; and, with all due respect, he did not believe the Board was reviewing its obligations under that law.

Mr. Brown said he understood that the situation was painful for the applicant as a contract vendee, but he felt the Ag & Markets law was being used to prevent the ZBA from considering common-sense concerns about the use of the property. He said they couldn't just give themselves up to that, and they had a lot of questions about use of the land in Wassaic. Mr. Browne noted that the applicant stated that horses would be sent up to the property in Wassaic when owners are away on vacation, and he asked if that would be the only time horses were moved and how that could be planned. He stated that Ag & Markets law permits the use of multiple properties to satisfy the 10-acre minimum and includes commercial horse-boarding operations because they want to see agricultural uses promoted. Mr. Browne said that to permit separate properties to be used for all agricultural uses does not make sense. He commented that such a rotation could not be managed. He stated that the Board was being asked to turn a blind eye toward the common sense implications as well as the safety issues that he can see himself on Tititcus Road, and the applicant has not provided the information needed. He asked why it was up to the Board to prove issues of health and safety.

Mr. Feureisen said it was up to the Board to apply and uphold the laws of the State, including Ag & Markets law.

Mr. Browne commented that Mr. Feureisen seemed to be saying that Ag & Markets laws trumps all.

Mr. Reilly said his advice as counsel to the Board was that the Board must apply SEQRA law as well as the laws of the Town at the same time as they consider Ag & Markets law. He stated that until and unless there is a satisfactory analysis under SEQRA and the long-form EAF, which still will probably result in a negative declaration, the Board will have done their due diligence under all the laws and not just Ag & Markets law.

Mr. Feureisen said it was clear that the action is exempt, and he disagreed with Mr. Reilly, but the Board should decide what they want to do and be clear on the record about it so he and his client can decide what to do.

Chairman Ivanhoe said Dr. Estabrook has the option of agreeing to provide the long-form EAF or pressing for a vote at this meeting.

Mr. Reilly said he would suggest a motion; if Dr. Estabrook is wrong and the opposition brings an Article 78 proceeding, this will cost her more money.

Dr. Estabrook said the State will represent her.

The Chairman said that if pressed to vote, the Board would vote to deny the applications, but the Board won't have a draft resolution yet.

Dr. Harrington said the Board was stalling.

Mr. Reilly said he had asked Mr. Marwell who was representing Dr. Estabrook, and Mr. Marwell replied that both he and Mr. Feureisen were representing her. Mr. Reilly said he would recommend to the Board that they must consider all laws which apply to the applications as they exist.

Mr. Feureisen said Mr. Marwell wanted a vote and his client would also like a vote.

Mr. Reilly said he would not recommend a vote without receipt of findings of fact written by him and approved by the Board of Appeals. He added that nothing required a vote at this time.

Chairman Ivanhoe said pressure on the applicant as a contract vendee might be a reason to vote now.

Mr. Reilly explained that if the Board made a determination without the findings of fact, clearly related to the hearings and correspondence, they would be subject to an Article 78 proceeding, and it would not move things along any faster for the applicant. He said the Board should plan to vote on the findings of fact and a negative resolution at the December meeting, or the applicant could provide the long-form EAF for that meeting, adding that he had suggested this previously to Mr. Marwell.

The Chairman asked if Mr. Marwell is still representing Dr. Estabrook.

Dr. Estabrook said he is. She stated that she had received bad information about her variance application, i.e. that it was invalid, although it is in fact correct. Thinking it was invalid, she told Mr. Marwell that her application would need to be re-done. Dr. Estabrook said Mr. Marwell is still her attorney but committed to something else when she told him her application would not be on the November 18 agenda.

Chairman Ivanhoe asked Dr. Estabrook if she wanted to continue with her applications and eventually have the farm, or did she want a negative vote.

Dr. Estabrook said she would like to compromise and come to some kind of resolution.

Dr. Harrington said he agreed and would prefer not to spend a fortune in the process. He commented that the Levs (736 Titicus Road) have spent a great deal of money also.

The Chairman stated that one reason North Salem looks the way it does, is because when a farm is proposed on a property where it is not obvious that it belongs, it is looked at closely. He said he himself spent 2 years in front of the Planning Board and Zoning Boards. He said that if Dr. Estabrook really wants to proceed, he would suggest she submit the long form EAF, and the Board will consider granting a special permit with a reduced number of horses.

Mr. Feureisen said that would open up a new can of worms, and the issue would go on for a long time. He stated he was confident that the long form EAF is not appropriate, adding that Mr. Marwell's position on this was made clear in his letters. Mr. Feureisen said issues of health and safety can be addressed separately, not in an EAF.

Mr. Reilly began to suggest the Board could make a resolution to be lead agency, but he stopped himself, saying there is not enough time until the December meeting (fewer than 30 days). He said if the Board declared itself lead agency and another agency/permit is involved (Planning Board, Health Department), the time would have been wasted.

Mr. Reilly said he disagreed with Mr. Feureisen that the application is exempt, stating that it is an unlisted action because the property consists of less than 10 acres.

Dr. Harrington said it is not less than 10 acres, because the leased land in Wassaic is added in.

Mr. Feureisen said his client would be willing to compromise, and he asked for a sense of how the Board would feel if she agreed to a reduced horse-count and to the same restrictions that have always been on the property.

Dr. Harrington said he could not agree to fewer than 12 horses.

Chairman Ivanhoe said some Board members were inclined to permit only as many horses are permitted now (7); but, given the nature of the application and plans to manage the property, a few more horses could probably be agreed to. He noted that much time had lapsed and Mr. Rossi (attorney for the Levs) had not spoken yet.

Dr. Harrington wanted to know how many horses the Board might permit.

For the record, Mr. Feureisen said Mr. Rossi's environmental report was received that day. The Board had ordered that all submittals be turned in by November 8, for which reason he asked the Board to disregard the report.

The Chairman said no one had time to read the report fully. He called on Mr. Rossi.

Mr. Rossi said Mr. Marwell is with a preeminent land-use firm. He wrote to the Board that he would not submit a long-form EAF, yet now his clients say they did not know the Board wanted it.

Dr. Harrington said that what they said was that they do not have to submit the long-form EAF.

Chairman Ivanhoe concurred with Mr. Rossi that Mr. Marwell's letter stated there would be no further information submitted.

Mr. Rossi said Mr. Feureisen had stated that it was unclear that the Board wanted the EAF. He went on to say that it was unfair to the Board to submit an application devoid of any professional input. He stated that Ag & Markets law does not give an applicant carte blanche to ignore the zoning code; it provides that a Town should be free and clear of any unduly restrictive regulation of agriculture, but there is nothing in it that says the application is for a Type II action. Mr. Rossi said Mr. Marwell knows all of this.

Chairman Ivanhoe said the Board needed to decide whether to allow the applicant to return with the information requested and with a reduced horse-count, and it would only be fair to her if they could get a sense of how those in opposition would react to that.

Mr. Rossi said it was interesting that Dr. Estabrook was complaining about how long the process is taking, given that she was just now considering a reduced number of horses. He stated that the Levs were initially willing to discuss compromises, but they are not any longer. He said they are open only to what is permitted as of right under the zoning code/they are against the variance request.

Mr. Rossi said the report was submitted that day in desperation because the applicants refused to provide the long-form EAF. To ensure that the record was complete with regard to potential impact on public health and safety, his clients paid for the wetlands analysis, engineering and steep slope reports so that the Board would be able to see why Valentine Farm has only 2 small paddocks on one side and 2 steep paddocks on the other. Mr. Rossi stated that it was insulting to think that the Board should look at the site plan submitted, devoid of slopes and topographical information, septic information, etc., and make a decision. He said the report was submitted in a rush once it was clear that the long-form EAF would not be submitted by the applicants, so there would be a record of facts about conditions on the subject property.

Mr. Rossi said it was also insulting for the applicants to complain of a witch-hunt; the Board has given its time and was being accused of stalling. He said the Board had plenty of information on which to base a denial, but he would not take exception to Mr. Reilly's recommendation. Mr. Rossi suggested that if the applicants want a quick decision because they are under contract, the Board should get them to say they will waive any rights to bring an Article 78 proceeding and then vote to deny the application. He said the application is devoid of any basis for approval. He commented that there are definitely other involved agencies; the Health Department for one, although no septic plan has been provided/there is none of record. Mr. Rossi stated that the applicants are being advised by 2 attorneys; it would seem someone should have said it would be important to show where the septic is and that there is room to add to it. He commented that the first map submitted had pencil markings on it for a multi-million-dollar enterprise that the applicants are requesting extraordinary relief for.

Mr. Rossi said he took exception to the Board's attempts to accommodate the applicants, when the applicants have done nothing to address the issues. He added that Ag & Markets works in conjunction with local governments, and the Board has a right to ensure that things are done properly. Mr. Rossi stated that the ZBA does not unreasonably restrict agricultural matters, though they were being told they do. They were told they were being unreasonable while being given nothing on which to base a decision. He said reference by the applicants to a conversation with an engineer was not a suitable response to the Board's legitimate concerns about traffic.

Mr. Rossi said that from a legal perspective, the Board may deny the applications because information was reasonably requested but not provided. The letters from Ag & Markets do not state that a horse farm may be built in wetlands.

The Chairman mentioned horse farms with wetlands that did not go before the Planning Board.

Mr. Rossi said the point was that Ag & Markets consents to an appropriate amount of local regulation; the applicants say they are free from local regulation. Mr. Rossi said he agreed that the long-form EAF is necessary, and he noted the discussion of how many horses might be permitted.

Mr. Reilly said this would not preclude the Board from requesting the long-form EAF; due to the lot-size issue it is a Type II action, and the applications are not exempt.

The Chairman asked Mr. Rossi if he had anything new to add.

Mr. Rossi asked the Board to look at the wetlands analysis submitted and to allow comments once the EAF is submitted.

Mr. Reilly stated that his advice was unchanged; the Board should not vote without the written finding of facts, which is necessary because so many points are disputed. If the applicants want to adjourn the matter and provide the long-form EAF, they could do so. He pointed out to the Board that they may grant the variance without the approval of the neighboring property-owners. Mr. Reilly said it would be in the best interests of the applicants, the neighbors and the Board to take another month before making a decision.

Chairman Ivanhoe asked Mr. Feureisen if he would like to take time to speak to his client; the Board would move ahead with the other agenda items in the meantime, and then return to his client.

Mr. Feureisen said he would like to do that.

Applications on-hold while applicants meet with their attorney.

BA10-46 Joseph J. Pinto Trust (39 Hilltop Drive) – **Special Permit** – To renew Special Permit BA00-59 or the keeping of up to 5 horses for personal use per Article XIII Section 250-72.

Joseph Pinto addressed the Board, saying he wanted to renew his special permit for 5 horses. He said there have been no changes in 10 years, and the renewal application was based on the same premises as the previous special permit.

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

Mr. Reilly read a draft resolution.

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

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

Special permit renewal granted, as requested.

Hearing of BA10-37 and BA10-40 was resumed at this time.

Mr. Feureisen said he discussed Mr. Reilly's suggestions with his clients, and they would like to put off a vote for the time being. He stated that they would like to take a week or 2 to decide what they want to do, and they will inform the Board then.

Mr. Reilly pointed out that the next meeting was only 3 weeks away (December 9), so there would not be time enough to get referrals on the EAF.

Mr. Feureisen offered to notify the Board of his clients' decision on the Monday after Thanksgiving (November 29).

Mr. Reilly noted that would be about 10 days' notice, and he said he did not see any way the applications could not be carried over to January. He said he understood that the delay might be a further hardship for the applicants, but he could see no way to avoid it.

Mr. Feureisen said his clients could not agree at that moment to provide the long-form EAF. Mr. Reilly suggested they consult with Mr. Marwell as well, given his familiarity with the issues

The Chairman said the applicants would be given until Tuesday, November 30 to inform the Board of their decision. He agreed with Mr. Reilly that the applicants should speak to Mr. Marwell.

Mr. Reilly suggested that the Board vote to direct him to prepare findings of fact and a resolution denying the applications upon review of all materials provided. If the applicants elect to submit the EAF and continue the process, he will not continue with the findings of fact and the denial resolution.

Mr. Feureisen said that at present, his clients would not submit the EAF; if they change their minds, the Board will be notified by Tuesday.

The Chairman asked if the Board should have a motion.

Mr. Reilly said the Board may vote to direct him to do anything.

Chairman Ivanhoe said he would call for a motion for the Board to direct the Town Attorney to prepare a draft resolution of findings of fact and a denial of the applications for certain area variances and a special permit for a commercial horse-boarding operation on the grounds of, among other things: inadequate site plan upon which the Board would make appropriate findings and conclusions; lack of a long-form EAF. While these are not the sole basis for the denial, each issue has been addressed to the applicant, and the applicant has refused the Board's suggestion that they be addressed and filed with the ZBA and has instead sought the Board's determination on the basis of the existing applications.

Dr. Estabrook asked what the Board wants to see on a site plan.

Mr. Reilly said the question should be directed to the Building Inspector to ask what he considers satisfactory from a professional standpoint. Mr. Reilly said the setbacks must be clear and a zoning table provided.

Mr. Thompson suggested that an architect prepare a site plan and stamp/sign it. The site plan should represent that the zoning ordinance and building code requirements are met in all regards, including parking spaces and paddocks.

Chairman Ivanhoe stated that the proposed shed-row barn needs to be at least 10 ft. from the barn to meet fire code requirements; but for reasons of horse-safety, the Board wants it to be 12 ft. away.

Mr. Thompson said the Chairman should not need to itemize these things; a design professional will be conversant in what is required and his/her license is predicated on this knowledge.

Mr. Reilly said there is no prejudice against the applicant; a properly-executed site plan is customarily submitted to this and other Boards he represents in other towns.

The Chairman pointed out that the applicant is requesting significant variances, so a significant amount of information should be provided in the application. He read the following for the Board's consideration:

To direct Mr. Reilly to begin preparation of a draft resolution of findings of fact and a denial of the applications for certain area variances and a special permit for a commercial horse-boarding operation on the grounds, among other things: that the site plan is inadequate for the Board to make appropriate findings and conclusions; and that there is the lack of a long-form Environmental Assessment Form which the Town Attorney has discussed with counsel for the applicant, and which he believes is necessary due to extant environmental concerns. While these are not the sole reasons for the denial, each issue has been addressed to the applicant, and the applicant has refused the Town Attorney's and the Board's suggestion that they be addressed and filed with the Zoning Board and has instead sought the Board's determination on the basis of the applications as they presently exist.

Noting the Building Inspector's request that the professionally-prepared site plan include a table of building code information and zoning information about lot coverage, etc., Mr. O'Leary commented that such information is a basic requirement, for which reason he would consider that the application has been incomplete for the past 2 months.

Dr. Estabrook said she thought at least individual building coverage information had been provided.

Mr. Reilly said Mr. Marwell understands what Mr. Thompson was saying. He explained to Dr. Estabrook that the Building Inspector was requesting a box/table with all the zoning requirements and what she wants. He said this is how the Building Inspector determines if a variance is necessary and how great a variance.

Motion by: Patrick Browne
Seconded by: William Monti

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

Motion passed.

Mr. Rossi stated that since the Board determined that the long-form EAF is required, Mr. Reilly should consider whether the Board should adopt a declaration of their intent to be lead agency.

Mr. Reilly responded that if the long-form EAF is not submitted, that will be part of the reasoning for the denial of the applications. If it is submitted, a declaration will be considered then. He said he could not suggest any declaration at this time.

Applications BA10-37 and BA10-40 carried over to December.

The following 2 applications were heard/discussed together.

BA10-47 David Kuehn (71 Keeler Lane) – **Special Permit** – For the keeping of up to 6 horses and maintenance of a commercial boarding operation, per Article XIII Section 250-72. A previous special permit, BA70-10, was issued for the keeping of up to 5 horses for personal use.

BA10-48 David Kuehn (71 Keeler Lane) – **Area Variance** – To decrease the minimum parcel size for a horse-boarding stable from 10 acres required to 3.10 acres existing, per Article V Section 250-15.

Mr. Kuehn and his daughter, Janis Nagi, were present. Ms. Nagi said the circumstances are special because her family has kept 3 to 5 horses on the property for 40 years. The property has sustained that number of horses capably, and each stall has its own access to a paddock

so she can regulate the amount of grass eaten. Ms. Nagi stated that for the majority of the past 40 years the horses have been her family's personal horses; but when the number of family-owned horses decreased, she took in a few boarders. Ms. Nagi stated that she only learned that she would need a variance to board horses when she visited the Town offices to apply for the required special permit. She said she currently has one personal horse and 4 boarders, plus a very old Shetland pony (companion to one of the horses, sharing its stall). When the pony dies, there will be a maximum of 5 horses.

Ms. Nagi said she spoke to her neighbors about the lot-size variance and received no objections. She stated that the barn cannot be seen from neighboring houses, and there will be no trailering, no advertising, no employees and no training or lessons. She said she would simply like to continue to do what she has been doing.

Chairman Ivanhoe said he appreciated this situation as an example of "one size doesn't fit all". He said the horse-boarding is more like an accessory to the residential use, and the farm is immaculate. He added that he noticed 2 dumpster sites on the property, and asked Ms. Nagi to describe where it is usually kept.

Ms. Nagi stated that 2 locations are used: a site against the back fence is used in the summer; the dumpster is moved nearer to the barn during the winter, because it would be very difficult to get to it up at the back fence when there is snow.

Mr. Monti asked if the boarders are all neighbors' horses.

Ms. Nagi said some of them are and one is from Connecticut. She added that 3 are in their twenties and semi-retired.

The Chairman said he had noted that there were no trailers on the property.

Mr. Browne said normally the Board would like to see the dumpster in a specific location on a concrete pad, but he understood the reason why Ms. Nagi wants to move it as far away as possible from her pool and her neighbor in the summer. He asked the other Board members if anyone was concerned about the seasonal change of the dumpster location.

Mr. Thompson commented that the zoning ordinance requires a setback of 110 ft. from the side yard line and 100 ft. from the rear line. He said he explained to Ms. Nagi that she must try to get the dumpster to a location that is 110 ft. from the side yard line; if she cannot do that, she must return to the Board for an additional variance for the decreased setback.

Mr. Browne commented that he did not see how Ms. Nagi could meet the setback requirements with the dumpster placed in the preferred summer location.

Mr. Thompson stated that one could not predict when the dumpster will need to be emptied or what the weather will be. If it is kept near the barn, the setback requirement will be met. He suggested the dumpster be moved to the site close to the barn now, since the summer location does not meet the setback requirement. If Ms. Nagi chooses to use that dumpster site again next summer, she will need to return and apply for an additional variance.

Mr. Reilly said that would be a condition of both the variance and the special permit. When the Building Inspector goes to check the site, he will inform Ms. Nagi that she must apply for a variance if she wants to have the dumpster against the back fence.

Mr. Reilly informed the Board that the variance application is for an unlisted action, because the lot is smaller than what is required, and the applicant submitted a short-form EAF. He said he considered this appropriate because the Board has visited the site, and the operation is much smaller than that proposed by Dr. Estabrook. He stated that there was no indication that any other agencies would be involved, so the Board may declare itself the lead agency and make a negative declaration that there is no significant adverse environmental impact as a result of granting the applications. Mr. Reilly recommended the Board approve a motion to declare lead agency.

Mr. Browne asked if it made sense to go forward, knowing that a variance will be needed for the summer dumpster location.

Mr. Reilly said Mr. Kuehn might rather put the dumpster somewhere else than apply for another variance. Mr. Reilly told Ms. Nagi that the Board could hold the applications over for a month while she checks to see for certain whether or not she will need the additional variance.

Mr. Browne said that way, the Board could vote on all 3 applications in December.

Mr. Reilly said the motion regarding lead agency could still be made at this meeting

Chairman Ivanhoe suggested the Board vote on the current applications and include a condition about the dumpster setback.

Ms. Nagi said she would prefer to do that.

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

To declare the Board the lead agency for an unlisted action for which the applicant has submitted a short Environmental Assessment Form:

Motion by: William Monti
Seconded by: Deidre Sokol

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

Motion passed.

Based on the information provided by the applicant and on the Building Inspector's acquiescence that there are no adverse environmental concerns emanating from the application, to make a negative declaration for SEQRA purposes:

Motion by: Patrick Browne
Seconded by: William Monti

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

Mr. Reilly read a draft resolution of special permit BA10-47.

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, with specific condition per discussion and agreement.

Mr. Reilly read a draft resolution of area variance BA10-48 including the following findings and conditions:

- The Board considers the circumstances special because horses have been kept on the property since 1970, and there have never been any complaints.
- The family resides on the subject property and there is no groom or trainer.
- There are no parking issues caused by trailers and/or employee vehicles.
- When the pony is gone, a maximum of 5 horses may be kept in the 5 stalls.
- A variance will be applied for in the event that the manure dumpster cannot be located outside the required setbacks.

Motion by: William Monti
Seconded by: Patrick Browne

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

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

BA10-51 Steven Berzin (303 Mills Road) – **Area Variance** – To decrease the minimum required front yard setback in an R-4 zoning district per Article V Section 250-15 for installation of a generator. A setback variance of 67 ft. is requested (75 ft. required; 8 ft. proposed).

Douglas Rothacker, the applicant’s agent, addressed the Board, stating that the subject property is at the corner of Mills and Cat Ridge Road, so front setback requirements apply to both property lines; in addition, all existing conditions on the property are non-conforming. He said Mr. Berzin wants to have a stand-by generator, and the best place to install it is near the meter and adjacent to the pool equipment. Mr. Rothacker said he tried to find a conforming site for the generator, but it couldn’t easily be done. The requested site is no closer to the road than the house, and the model chosen is the quietest generator available. He said the generator will be closest to Chase Meadow Farm, and the owners of the farm sent a letter saying they do not object to it.

Chairman Ivanhoe said he knows the area, and he asked how visible the generator will be.

Mr. Rothacker replied that it will be right near an existing stone wall that will conceal it from view.

Mr. Monti asked if a propane tank will be installed to fuel the generator, and Mr. Rothacker answered that it will run from an existing tank.

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

Mr. Reilly read a draft resolution including the findings that the neighbors have stated they do not object to the generator and that it will be concealed behind a wall.

The Chairman asked Mr. Rothacker to consult with the owners of Chase Meadow Farm about the timing of the maintenance run of the generator, and Mr. Rothacker said he will do that.

Mr. Monti asked if a NYSEG permit will be required, and Mr. Rothacker replied that he will make that application next.

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.

BA10-52 Petra and Peter Wiederhorn (146 Vail Lane) – **Special Permit** – To amend Special Permit BA09-04 (for the keeping of up to 14 horses and maintenance of a commercial boarding operation) for the addition of up to 2 horses and construction of 2 single-stall structures, per Article XIV Section 250-72.

Mr. Reilly said he spoke to Mr. Wiederhorn earlier, telling him that when the current special permit was granted, the need for an area variance for a setback reduction was overlooked. Mr. Wiederhorn must now apply for the variance and the application must be Noticed, so he would recommend that the Board adjourn the hearing of the special permit application until December when Mr. Wiederhorn's area variance application can be heard also.

The Chairman noted that the error was that the special permit was originally granted as an accessory use to the residential use; when it became a commercial boarding operation, the bulk requirements would have changed, necessitating the area variance

The Chairman asked Mr. Wiederhorn if he was agreeable to Mr. Reilly's proposal.

Mr. Wiederhorn said he was not, but it seemed he had no choice. He asked if there would be time for him to submit an application in time for the December meeting.

Mr. Reilly said that as the Town was trying to correct its own mistake, it should accommodate Mr. Wiederhorn in order to get his application on the agenda for December.

Mr. Wiederhorn said he would like the application fee waived.

The Building Inspector said that would require an application to the Town Board and would take longer.

Mr. Reilly suggested that Mr. Wiederhorn apply to the Town Board to have the fee returned to him after the December Board of Appeals hearing.

Chairman Ivanhoe said the application would be carried over to December.

Michael Sirignano, attorney, said he was present at the meeting in order to comment on the Wiederhorn application.

Mr. Reilly said he should wait until December when the Board will hear both applications.

To adjourn the hearing of special permit application BA10-52 until December and to waive the time limit for the submittal of the appropriate area variance application so it may be heard in 3 weeks (December meeting):

Motion by: Deidre Sokol
Seconded by: William Monti

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

Motion passed.

BA10-53 Nora and Todd Amus (27 June Road) - For the granting of the balance of an extension of Building Permit #5508 to July 14, 2011. Per Resolution BA10-32, the applicants were directed to return to the Board of Appeals in the event that exterior construction on their residence will not be completed by November 14, 2010.

Judith Reardon, attorney, and Milton Gregory Grew, architect, rose to address the Board. Mr. Grew handed out copies of a construction sequence report, stating that checked items were done and dots indicate work in progress. Mr. Grew stated that of 25 items on the report, 7 tasks have been completed; 2 require cooperation of the County; and 3 are in progress.

Mr. Grew said the site has been cleaned up, and there have been 2 successful inspections regarding wetlands plantings and the silt fence (he handed in an inspection report). Mr. Grew told the Board he had planned to request fewer plantings, but he went ahead and put all of them in. Regarding the silt fencing, the front and a large portion of the rear yard are well established, and the Building Inspector approved removal of much of the silt fencing. Silt fencing remains near the pond and in the southwest corner.

Regarding the old driveway cut, Mr. Grew said he spoke to the County and was told not to block the right of way. He said he has put reflectors at the end of the pavement; the County will take out the crossing themselves when they do the planned work on June Road.

Chairman Ivanhoe said he had not noticed the reflectors, and Mr. Grew showed him a photograph.

The Chairman said he thought the Board had asked the applicants to remove posts on the driveway (as well as orange cones) to improve the appearance of the area. He commented that the posts are still there and reflectors have been added.

Mr. Grew said he did not recall a specific request to remove the posts, but he can have the posts removed.

Chairman Ivanhoe asked what the reflectors are for, saying rocks in the old driveway will do more to prevent people from driving in than reflectors will.

Mr. Grew said the reflectors will be removed.

Mr. O'Leary asked if the Building Inspector is satisfied with the amount of progress on the job and if he thought anything in particular needed to be presented.

Mr. Thompson said the applicants were before the Board because he could not keep extending their Building Permit. He stated that significant progress has been made now. Noting that the construction sequence was weighted toward getting exterior work done, he asked if the Board was satisfied with the progress.

The Chairman noted there is still construction material (stone) being stored outdoors, and there is a blue truck.

Mr. Grew explained that items that were in the now-removed storage containers had to be moved to the garage, but he thought a bay could be opened up for the truck.

Mr. Browne asked if Mr. Grew thinks it will take until July to finish, and Mr. Grew said he does.

Mr. Monti asked if the deadline of July 11, 2011 will leave enough time, and Mr. Grew replied that it will.

The Chairman called on Manuel DeVengoechea of 15 June Road.

Mr. DeVengoechea said there is still some material being stored near the garage, and there is also a portable toilet on the property.

Chairman Ivanhoe asked if the plumbing in the house is finished yet, and Mr. Grew said it is not.

Mr. DeVengoechea asked to have the portable toilet moved to the rear of the house.

The Chairman asked if it can be moved to where it won't be seen, but Mr. Grew said it must be accessible for the service truck to pump it out.

Chairman Ivanhoe commented that the truck uses a hose and pump/doesn't need to reach the portable toilet itself, and Ms. Reardon said she will speak to the provider company about moving it.

Mr. Grew said they could try to have the portable toilet somewhere to the rear of the property.

The Chairman answered that as long as it can be reached for servicing, that is what the Board wants.

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

Mr. Reilly read a draft resolution, including a condition that the portable toilet is to be moved to the rear of the property.

Todd Amus commented that the DeVengoecheas cannot see the portable toilet because they have a very high fence. He complained that the yard has been graded and seeded and he does not want a truck driving over it.

Ms. Reardon said it was suggested that the portable toilet be moved, to the extent possible, to the rear of the property as long as the truck hose can reach it; the truck will not have to drive in the rear yard.

Mr. Reilly asked about the reflectors and posts in the old driveway, and the Chairman responded that they must be removed.

Mr. Reilly asked if the Board also wanted a condition to deal with the materials being stored outdoors.

Mr. Grew showed the Board a photograph of the stones on the property.

The Chairman asked what is in the garage, and Mr. Grew responded that there are kitchen cabinets, fixtures and tile.

Chairman Ivanhoe asked that as those materials are placed in the house, the materials stored outdoors be moved into the garage to the extent possible.

Motion by: William Monti
Seconded by: Deidre Sokol

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

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

BA10-54 Nora and Todd Amus (27 June Road) **Area Variance** – To increase the maximum height of a fence (pillars with light fixtures on top) in a front yard, per Article VI Section 250-22. A previous Variance, BA08-37, was granted for up to 7 ft. (4 ft. permitted) for existing pillars, with the condition that any light fixtures must be recessed into the pillar faces/not installed on top. A variance of 4 ft. is requested (4 ft. permitted; 5 ft. 10 in. existing; 7 ft. 4 in. proposed) for installation of light fixtures on top of 2 as-built pillars.

Mr. Grew said his clients were requesting the variance for aesthetic and practical reasons. He stated that in 2008 it was noted that the existing pillars were 6 ft. 2 in. high; he has checked and they are actually 5 ft. 7 in. high, due in part to grading changes. He said his clients originally wanted a 33 in.-tall lantern-type light, but the one they want now is only 23 in. high. Mr. Grew said the Board expressed concern for neighborhood character at the 2008 hearing, but there are no neighbors across the street. He said the Amuses want something that will look architecturally appropriate, and the light they have chosen has very low wattage (18 watts) and is a dark sky-compliant fixture (panels prevent up-lighting).

Chairman Ivanhoe asked what kind of glass the fixture has, and Mr. Grew said it is frosted white.

Mr. Grew stated that last time his clients were asking for more illumination and a fixture that was not dark sky-compliant. He went on to say that a light on the front of the pillar would not be architecturally-appropriate to the design of the house, nor would it provide much security. Mr. Grew said there is a plethora of deer in the area, and one cannot see them now/the lights will provide a little helpful illumination.

Mr. O'Leary said that based on the photos submitted he had no questions or comments.

Mr. Browne said he believed the neighborhood character-issue in 2008 had to do with the degree of illumination and keeping the lighting as non-descript as possible. He said he understood the Amuses desire to have something elegant, but the Board tries to avoid lighting. He noted that lots of properties in Town have no lights at their entrances.

The Chairman said he understood the applicants' desire to have the driveway illuminated.

Ms. Sokol asked what the holes on the fronts of the pillars are for.

Mr. Grew said they are for a tile bearing the address number of the house. He explained that the pillars would have to be taken apart and re-wired for front-mounted lights.

Mr. Monti commented that the issue was one of taste: the house is very large; the pillars are tall; and the applicants want small lights on top of them. He said this would be disproportionate/something mounted on the front of the pillars would look better.

The Chairman agreed that the scale is off.

Manuel DeVengoechea stated that Peter Kamenstein chaired the 2008 Board of Appeals hearing. He said the area of June Road where the subject property is located has no lights, including his own house and he has no trouble with deer. He added that the Amus house is massive, and the lights will highlight it more. He said North Salem is a small-town, rural area, and he thought this was why the Chairman wanted the lights front-mounted and not top-mounted.

Norah Amus said Mr. Kamenstein specifically said she could not have lights on top of the pillars because there is a house across the street. She told him there is no house across the street, and he replied that he knew what was there. Mrs. Amus said she thought it better not to argue then. She hoped to see this exchange included in the meeting minutes so she could point it out to the Board and show them a photograph of the forested area across the street from her house; however, this exchange was not in the meeting minutes and she did not pursue the issue.

Mrs. Amus stated that she checks the property every night, and she has nearly hit a deer 3 times because she can't see them. She said having a little light on the driveway will help. She said she had photographs of many homes within 5 minutes of her property that all have lights on pillars at their entrances, but she was advised that the Board would not want to see them all.

The Chairman said he was aware of lighted pillars.

Mrs. Amus stated that she was asking for smaller lights with lower wattage than what she originally wanted, and the pillars are 5 ft. 7 in. tall/not 6 ft. 2 in.

Chairman Ivanhoe asked what kind of finish the light fixtures have, and Mr. Amus replied that it is oil-rubbed bronze.

The Chairman asked whether it has a lacquered or dull finish, and Mr. Amus answered that he thinks it is dull.

The Chairman said he would prefer a living (dull) finish so it will age and acquire a patina, and Mr. Grew said that would be fine.

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

Mr. Reilly read a draft resolution including a condition that the maximum height of the pillars with lights must be no more than 7 ft. 5 in. and the light fixtures must have a maximum of 18 watts with dark-sky compliant panels and be made of oil-rubbed bronze with a living finish.

Mr. Grew offered the Board copies of up-to-date as-built surveys of the property, but the Chairman said they should be given to the Building Inspector.

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, with specific conditions per discussion and agreement.

At the conclusion of the vote, the Chairman closed the meeting.

Respectfully submitted,

Janice Will, Recording Secretary