

**Town of North Salem  
BOARD of APPEALS  
Public Hearing  
December 9, 2010  
8 p.m., The Annex**

**MEMBERS PRESENT:** William Monti  
Patrick Browne  
Brian Ivanhoe, Chairman

**MEMBERS ABSENT:** Richard O'Leary  
Deidre Sokol

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

***Chairman Ivanhoe called the December 9, 2010 Town of North Salem Zoning Board of Appeals meeting to order.***

Chairman Ivanhoe stated that as only 3 Members were present, a unanimous decision would be required for any application to be approved. Any parties who would rather have their applications heard by a full Board would have the right to postpone their appearance until the next Board meeting at no additional cost to them.

The Chairman announced that this would be the last Board of Appeals hearing for Patrick Browne, who will be leaving. The Chairman stated for the record that in the 2 short years during which he has been on the Board with Mr. Browne, he has served the Board with dedication and distinction. Chairman Ivanhoe said Mr. Browne's service was appreciated and he will be sorely missed.

Patrick Browne thanked the Chairman. He said it had been an honor and pleasure to serve with the members of the Board and to serve the people of North Salem.

Mr. Monti seconded the Chairman's comments.

The Chairman set the next meeting for Thursday, January 13, 2011.

The minutes of the November 18, 2010 meeting were unanimously accepted.

**HEARINGS CONTINUED**

**BA09-32** Joseph Bryson (2 Fields Lane) – **Use Variance** – To permit the use of an existing building for a sales and service business, per Article IV Section 250-11 and the Table of General Use Requirements for the R-1/2 zoning district.

*Carried over pending progress of Planning Board application.*

**BA09-32** 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.*

Chairman Ivanhoe read aloud a letter from the attorney for Alison Estabrook who had 2 applications before the Board (BA10-37 and BA10-40). David Feureisen stated that Dr. Estabrook's applications were being withdrawn without prejudice.

## PUBLIC HEARINGS

The Chairman stated that the following 2 applications would be heard together.

Gerald Reilly told the Chairman that the Board should hear the Area Variance application first.

**BA10-57** Petra and Peter Wiederhorn (146 Vail Lane) – **Area Variance** – To decrease the minimum front yard setback for a commercial horse-boarding operation per Article V Section 250-15. A setback variance of 21 ft. is requested (100 ft. required; 79.9 ft. existing) to permit 2 stables to remain as constructed.

Chairman Ivanhoe stated that he visited all the application sites and other Board members did also.

Peter Wiederhorn addressed the Board, saying that he had 2 shed-row structures installed a few years ago and a mistake was made regarding the setback requirements. He pointed out that the second shed-row is further from the property line than the one that is 79.9 ft. away. Mr. Wiederhorn further stated that the 2 new single-stall structures were sited by a surveyor and are not within any required setbacks.

Bruce Thompson explained that the setback requirements for commercial horse-boarding operations are different from the R-4 zoning district setbacks. He said the subject property has 2 primary uses; residential and the boarding operation.

The Chairman explained that the farm was originally used to keep horses for personal use; when that changed to commercial horse-boarding, different bulk requirements applied. The difference was missed at the time but has since been noted by the Building Inspector, so the situation is being corrected now.

The Chairman called on Gary Singer, attorney for Mitchell and Pamela Slater of 126 Vail Lane.

Mr. Singer said his clients had concerns about the number of horses to be kept at 146 Vail Lane, so it seemed he should hold his questions/comments until the Board discussed the Special Permit application.

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

Gerald Reilly read a draft resolution, including a finding that explains that the setback requirement was overlooked by the Board in the past and only came to light recently.

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

**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 XIII Section 250-72.

Mr. Wiederhorn stated that he has 21.9 acres including 13 grass paddocks, 9 to 10 walk-outs and adequate pasture. He said he wishes to keep 2 more horses, so 2 more stalls are needed. He further stated that 16 horses are within the Town's guideline of 1 horse per acre.

Petra Wiederhorn said she met with Mitchell Slater that day, although Mrs. Slater was not at home. Mrs. Wiederhorn said the Slaters never picked up the Certified Mail Notice to Property Owners that was sent to them regarding the Special Permit amendment.

The Chairman said Mrs. Wiederhorn's meeting with Mr. Slater would be discussed later on.

Chairman Ivanhoe explained that some previously-held concerns have been mitigated to the Board's satisfaction by the Wiederhorns. He said the parking area is now clearly designated/away from the side yard.

Mr. Wiederhorn said he met with his neighbor, Larry Fink, and agreed to plant some trees along a wall. Mr. Fink agreed that the Wiederhorns could keep their trailer where it is on an asphalt pad. Mr. Wiederhorn has removed another trailer and replaced some trash receptacles.

The Chairman said he didn't think the Board would be hearing from Mr. Fink's attorney, and Mr. Wiederhorn agreed.

Chairman Ivanhoe said he appreciated Mr. Wiederhorn's addressing his neighbor's concerns. He commented that the barnyard is not viewed from the Wiederhorn house, but from the Fink's house. He added that although these issues are not Code issues, it is within the Board's purview to right a wrong/maintain standards for horse farms.

Mr. Browne asked what the new stalls look like.

Mr. Wiederhorn answered that they are like the existing shed-rows.

Mrs. Wiederhorn said the stalls are attached to sand walk-outs so the horses may go in and out.

Mr. Wiederhorn said he thought he'd submitted drawings with his application (*It was agreed that he did.*) He explained that the stalls are not permanent structures; they have a stone base with a rubber mat and are held in place with hurricane hooks. He said one of the new structures will also have a storage room.

The Chairman asked where the new stalls are on the farm, and Mrs. Wiederhorn replied that one is adjacent to an existing pasture and the other is on a large sand walk-out that is to be divided by fencing so 2 horses may go out next to one another.

The Chairman asked if any grass paddocks are to be added, and Mr. Wiederhorn said there are not.

Mrs. Wiederhorn said the new horses will probably be turned out in the large pastures below the new stalls.

Mr. Monti asked what the average number of horses on the farm has been for the past year, and Mrs. Wiederhorn said there have been 11 to 14.

Mr. Monti asked when she will have 16 horses, and Mrs. Wiederhorn said she has a waiting list/expects to have 16 very soon.

Mr. Monti asked if the tie-downs for the sheds are used.

Mr. Wiederhorn replied that they are, although the structures are very heavy.

Mrs. Wiederhorn added that even a very strong windstorm had no effect on the sheds.

Chairman Ivanhoe noted that the Wiederhorns have 21.9 acres, and he asked how much of that area is fenced paddocks.

Mr. Wiederhorn answered that 8 to 10 acres make up fenced paddocks.

Mrs. Wiederhorn said 2 of the paddocks are 900 ft. long. She said they didn't split them into smaller paddocks so they can turn horses out together.

The Chairman asked how many individual paddocks there are.

Mr. Wiederhorn responded that there are 9 sand paddocks and 13 grass.

The Chairman noted that the total exceeds the number of horses/all the horses could be turned out at the same time.

Mrs. Wiederhorn said that 2 or 3 horses go out at night in the summer, and in the winter she rotates the paddocks.

Chairman Ivanhoe asked how many hours of turn-out the horses get each day.

Mrs. Wiederhorn replied that they get 3 to 4 hours, and some go out over night/she rotates the horses.

Mr. Wiederhorn added that the sand paddocks are available to the horses all the time/they may go out any time they like.

Mrs. Wiederhorn stated that only 4 stalls do not have access to a sand walk-out, and she rotates the horses so it isn't the same 4 all the time.

Gary Singer, attorney for Mitchell and Pamela Slater of 126 Vail Lane, addressed the Board, stating that his clients had just called him that evening. He explained that his clients have only recently learned of the Wiederhorns' applications, and they have questions about what the buildings will look at, environmental issues, parking, etc. He said he knew Mrs. Wiederhorn spoke to Mr. Slater, but Mrs. Slater was not home/has questions. Mr. Singer admitted he was not familiar with what sort of review the Board of Appeals conducts for these kinds of applications.

Noting that the Notice to Property Owners regarding the special permit amendment would have been mailed out in early November, Mr. Reilly asked the secretary if she had the Post Office receipts.

Mrs. Wiederhorn said she spoke to Mrs. Slater about 10 days ago and invited her to come over so she could show her around the property. Mrs. Wiederhorn added that she couldn't see how the farm could affect the Slaters.

The returned letter about the special permit amendment was produced, and Mr. Reilly pointed out that it was sent to the Slaters by Certified Mail and notices to pick it up were delivered 3 times before it was returned to the office. Mr. Reilly said that, technically, any objections may be waived.

The Chairman said that in the interest of peace, the Board would listen to Mr. Singer's questions.

Mr. Singer asked if the Board would decide on the applications at the meeting, and the Chairman replied that they would.

Mr. Singer said he did not have a specific list of questions from the Slaters. He said he thought the Wiederhorns would want to speak to the Slaters before the Board makes a decision.

Chairman Ivanhoe said he was not inclined to hold the applications over, given that the Slaters were notified.

Mr. Reilly said it seemed like the Wiederhorns would talk to the Slaters.

The Chairman pointed out that the barn is on the north side of the Wiederhorn property and the Slaters are on the south side; the Wiederhorn house is between the barn yard/buildings and the Slater property. He added that the previous owners of the Slater property planted a pine forest that is still fairly healthy and provides a good screen.

Mr. Singer said his clients are concerned about the number of horses/possible impact on water.

Mr. Ivanhoe said the Board cannot address the Slaters' questions unless they know just what they are. He pointed out that there are drawings of the new buildings.

Mr. Singer said he is the Slaters' personal attorney/his business is not land-use, but his clients are concerned about environmental issues, visual impact, etc.

The Chairman said he felt the issue of visual impact had been covered/the Slaters would not be impacted.

Mr. Browne asked what the Slaters asked Mr. Singer to do in their behalf.

Mr. Singer replied that they asked him to get their concerns addressed, but he was unaware of what stage of consideration the Board has reached.

The Chairman said they could not offer more time.

Looking again at the returned Notice, Mr. Reilly stated that it was mailed to the Slaters on October 26.

Mr. Singer noted that that was over a month ago.

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

Mr. Reilly read a draft resolution of the special permit amendment including the following findings:

- An area variance, BA10-57 was previously granted, having been determined to be necessary by the Building Inspector at the November 18 hearing.
- All the neighbors were properly notified.
- The applicants spoke to their neighbors to the North and resolved their concerns. They also spoke to one of the Slaters.
- The Slaters, neighbors to the south, received notice of the special permit amendment application as early as October 26, 2010 but never retrieved the letter from the Post Office.
- All Board of Appeals applications are filed and available to be viewed at the Building Department.

Mr. Browne asked if there was a way to state that the Wiederhorns have offered to speak to the Slaters about their concerns.

Mr. Reilly pointed out that they did speak to their neighbors in the past, so they may do so, but it should not be included in the resolution.

Mr. Monti pointed out to Mr. Singer that the special permit amendment application was held over from the November 18, 2010 meeting, so his clients had plenty of time to speak up.

Mr. Singer thanked the Board for hearing him, and he stated that he felt his clients did not object to the application but would have liked the hearing carried over to give them more time to have their questions addressed.

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

**Mr. Monti:** Aye  
**Mr. Browne:** Aye  
**Chairman:** Aye

**Special permit amendment granted, as requested.**

**BA10-55** John Rue (626 Route 22) – **Area Variance** – To decrease the minimum side yard setback in an R-1/2 zoning district per Article V Section 250-15. A side yard setback variance of 13 ft. is requested (15 ft. required; 2.8 ft. existing) to permit a patio and deck with steps to remain as constructed.

Charles Gardner, landscape architect, was present along with John Rue. Mr. Gardner stated that the subject property is in an older part of town and the house was built in the 1890's when there was no Zoning Ordinance. The non-conforming .415-acre property is now in an R-1/2 zoning district, and the house and deck (time of construction unknown) are within the side yard setback. Mr. Gardner said Mr. Rue needed a variance to legalize his deck, which is well-built of pressure-treated wood.

Mr. Monti commented that legalizing everything would make it easier to sell the property.

Mr. Gardner agreed, adding that it puts everything in order.

The Chairman asked if the deck is up to Code for the time when it was built, and Mr. Gardner replied that it is. He added that a building permit application has been submitted to the Building Department.

Mr. Thompson asked what precipitated Mr. Rue's variance application.

Mr. Gardner said Mr. Rue received a letter from the Town about legalizing things constructed without a building permit.

Mr. Reilly said it was possible that Mr. Rue would not need a variance for the pre-existing, non-conforming deck if he never increased its bulk from what it was when he purchased the property.

Mr. Thompson said the deck was built after 1961.

Mr. Rue said he purchased the property in 1998 or 1999.

Mr. Browne asked if Mr. Rue built the deck.

Mr. Gardner said part of the deck was already there; Mr. Rue renovated and added to it.

Mr. Reilly said that then the variance would be needed.

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

Mr. Reilly read a draft resolution.

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

**Mr. Monti:** *Aye*  
**Mr. Browne:** *Aye*  
**Chairman:** *Aye*

***Area variance granted, as requested.***

**BA10-56** The Auburn Group (301 Hardscrabble Road) – **Special Permit** – To amend existing Special Permit BA07-31, for the maintenance of a commercial horse-boarding operation for up to 50 horses, to include installation of 2 shed-row structures and the keeping of up to 30 alpacas, per Article XIII Section 250-72.

Michael Liguori, attorney, was present, along with Lynn Edens, the applicant. Mr. Liguori stated that his client sought an amendment of her existing special permit to add 2 sheds and for raising up to 30 alpacas. He said he would also ask that the Board to use its discretion to permit a setback reduction for one of the shed-rows on the side yard that abuts the Vergara property. The required setback is 150 ft. but the Board may reduce that setback to 75 ft.

Mr. Reilly explained that it is within the Board's discretion to relax a setback to the minimum for the use group.

Mr. Monti stated that the shed-rows can scarcely be seen from the road.

Chairman Ivanhoe commented that the Zoning Ordinance doesn't address alpacas. He asked Ms. Edens whether the fencing on the site plan is existing or proposed.

Ms. Edens replied that the fencing is in place, along with 12 alpacas.

Mr. Browne asked if Ms. Edens knows Al DelBello of Waccabuc, who also raises alpacas.

Ms. Edens said she did not/had not heard of many people in the area raising alpacas.

The Chairman said he doesn't know much about alpacas and asked what kind of turn-out they require.

Ms. Edens said they are ruminous, fibroid animals, weighing about 150 lbs., similar to sheep.

Mr. Browne asked about shearing, and Ms. Edens replied that it is done once a year.

Mr. Browne asked how much activity that creates.

Ms. Edens told him that a couple of men come to the farm and the shearing takes about 10 to 15 minutes per alpaca, so it is all done in one day.

Mr. Browne asked what effect the alpacas might have on the neighbors, for instance an odor.

Ms. Edens answered that the stalls are cleaned like those used by horses, droppings are removed from the field, and alpacas make no noise. She said the main impact is visual, which is a nice one.

Mr. Browne noted that there are 12 alpacas now, and the plan is to have up to 30.

Ms. Edens said she plans to breed and sell them, so there may be 30 eventually. She said she has 4 females of breeding age, 4 young, and 4 intact males. She explained that female

alpacas have just one pregnancy a year, because the gestation period is 11.5 months. Ms. Edens said she asked for 30 because the location and the buildings can accommodate that many.

Mr. Browne asked if she intends to limit the alpacas to the one fenced area.

Ms. Edens said it is not practical to move them around. She added that there are a number of small turn-out areas that can be accessed from the sheds and rotated, and the rest of the field will probably be used for grazing also.

Mr. Monti asked Ms. Edens if she is a member of the alpaca association, and she replied that she is and hopes to participate in Alpaca Days next year.

Mr. Browne offered to put Ms. Edens in touch with Mr. DeBello, and she thanked him.

Mr. Monti asked if Ms. Edens didn't do something with what he called the "Baer House" when she was first developing her property, and she said she essentially changed the lot-line to include the Baer House in the farm lot and separate it from the lot on which her house was built.

Mr. Monti commented that the property is well-kept. He said his grandchildren like the sheep and will probably like the alpacas, too.

Ms. Edens said she is very happy to be keeping horses on the property and considers it a privilege to be a part of the community.

The Chairman said the community at large is happy to have Ms. Edens' farm on the large property, especially as it was once being considered for sub-division. He added that it is also appreciated that Ms. Edens keeps her farm open/allows people to ride through.

The Chairman called on Tricia Schwartz of 44 Lakeview Road. Ms. Schwartz said she received a notice of the application which did not identify the subject property. She asked to be shown where it is in relation to her home.

When the 2 properties were pointed out to her on the map, Ms. Schwartz said she was confused. She commented about a lot of noise that she couldn't determine the source of.

Ms. Edens said alpacas don't make noise.

Ms. Schwartz said she was talking about loud music.

It seemed the noise was not coming from 301 Hardscrabble Road.

Ms. Schwartz also complained that the hunt passes so near to her property.

Linda Mead of 338 Hardscrabble spoke next. She said she had come to the meeting to see how the Auburn Group's application would be treated compared to the treatment of her application in the past. Ms. Mead said she thought she should have been able to keep 25

alpacas by right, but she was asked to apply for a special permit. A neighbor complained about odors, yet no one on the Board of Appeals came out to see her farm.

The Chairman said Ms. Mead's special permit was granted.

She said it was, but with a condition about cleaning twice a day, something she'd never heard required of horse-owners.

Mr. Browne said he thought he had looked at Ms. Mead's property, but she said he looked at it from the Friedman property next door.

Ms. Mead noted that the Chairman said all the Board members present at this meeting had visited all the subject properties, and he said that was correct.

Mr. Reilly stated that he has worked for the Board for 15 years, and they always make every effort to go to the subject properties, although they cannot always do so.

Ms. Mead said her property is in the Westchester Agricultural District, and her alpacas had no more impact on the environment than horses.

Mr. Browne said that when someone requests a permit, the Board considers any impacts. If a neighbor objects to a permit application, their concerns are also considered.

Ms. Mead said the issue raised by her neighbor was subjective and no Board members went to see. She continued to complain about the handling of her application.

Mr. Browne said he understood Ms. Mead's feelings, but the Board does what they think they must do.

There were no other members of the public waiting to speak, and the Chairman closed the public hearing.

Mr. Liguori asked if the special permit will run from 2010 to 2020.

Mr. Reilly asked Mr. Thompson if he looked at the entire farm/package or only at the alpacas.

Mr. Thompson said he only looked at the alpacas, adding that he would require time to look at the entire operation.

Mr. Reilly said that given the Building Inspector's response, the amended special permit will continue to run from 2007 to 2017.

Mr. Liguori asked that the application be held over to January to give Mr. Thompson time to look into things.

Mr. Reilly said it wouldn't be necessary/the Building Inspector will let Mr. Liguori know what he thinks.

Ms. Edens said she understood that the permit will expire in 2017 because it is an amendment of a special permit from 2007.

Mr. Reilly read a draft resolution, including the point that the Board agreed to decrease the side yard setback for one of the shed-rows from the required 150 ft. required to 88 ft., as they are permitted to do.

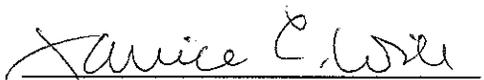
**Motion by:** *Patrick Browne*  
**Seconded by;** *William Monti*

**Mr. Monti:** *Aye*  
**Mr. Browne:** *Aye*  
**Chairman:** *Aye*

**Special permit amendment granted, as requested.**

There were no further agenda items, so the Chairman closed the meeting.

Respectfully submitted,

  
Janice Will, Recording Secretary