

**Town of North Salem
BOARD of APPEALS
Public Hearing
January 13, 2011
8 p.m., The Annex**

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

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

Chairman Ivanhoe called the January 13, 2011 Town of North Salem Zoning Board of Appeals meeting to order.

The Chairman set the next meeting for Thursday, February 10, 2011.

The minutes of the December 9, 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.

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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.

PUBLIC HEARINGS

BA11-01 Harring Brook Farm LLC (732 Titicus Road) – **Special Permit** – For the keeping of up to 7 horses for personal use per Article XIII Section 250-72.

Alison Estabrook, applicant, and Alex Hamer, employee of Dr. Estabrook, were present. Mr. Hamer stated that Dr. Estabrook wished to renew the special permit of the current owners of the subject property, enabling her to keep 7 horses for personal use.

Gerald Reilly said the Building Inspector could opine about conditions, and then the application could be approved.

Bruce Thompson said he had nothing specific to add.

William Monti asked about use of a portion of the NYSEG property on the adjoining lot.

Dr. Estabrook stated that previous owners of the subject property going back to 1988 have used the land, and she intends to also.

Chairman Ivanhoe commented that no changes are proposed, and he asked who will reside in the house on the property.

Mr. Hamer replied that a groom will reside in the house, moving in as Dr. Estabrook's horses are moved to the property.

Mr. Thompson asked Mr. Hamer to clarify that the groom will be in residence when the horses begin arriving.

Mr. Hamer agreed, adding that the groom will also act as a caretaker, keeping an eye on the property.

Chairman Ivanhoe asked if the groom will reside in the house full-time, and Mr. Hamer answered that he will.

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

Mr. Reilly read a draft resolution.

Motion by: Mr. Monti
Seconded by: Ms. Sokol

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

Special permit granted, as requested.

BA11-02 Sharon Gunthel (5 Baxter Road) – Area Variance – To increase the maximum height of a fence in a front yard per Article VI Section 250-22. A variance of 3 ft. is requested (4 ft. permitted; 7 ft. existing) to permit a gate to remain as constructed.

Robert DeLorenzo, contractor, was present for Ms. Gunthel. He explained that his client hired a gate company several years ago, but learned more recently that they never even applied for a building permit. Numerous attempts were made to contact them, to no avail. Mr. DeLorenzo stated that the majority of the gate work is 3 to 3.5 ft. high but the support posts are more than 4 ft. tall, so a variance is needed to legalize them.

The Chairman commented that the gates are very nice.

Mr. Monti asked why, if the subject property is on a private road (Meadow Lane), a variance is necessary.

The Building Inspector said the zoning ordinance has been applied to private roads in the past.

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

Mr. Reilly read a draft resolution.

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

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

Area variance granted, as requested.

BA11-03 Mary Elizabeth Reeve (203 Hardscrabble Road) – **Area Variance** – To increase the maximum height of a fence in a side yard per Article VI Section 250-22. A variance of 3 ft. is requested (5 ft. permitted; 7.5 ft. proposed) for installation of mesh deer fencing.

Ms. Reeve stated that in order to enclose a specific portion of her yard, part of the fencing must run near her next-door neighbor's property. She explained that she spoke to the neighbor about her intentions, and the neighbor asked that part of the fencing plan be changed so that it is installed between a tree and a boulder to help hide it. Ms. Reeve said she is willing to do that, and her only other close neighbor had no objections to her application.

Mr. Reilly asked Ms. Reeve to indicate on the submitted site plan where the change in the fencing plan will be.

Ms. Reeve drew in the change, and Mr. Reilly asked her to initial it, which she did.

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

Mr. Reilly read a draft resolution.

Motion by: *Ms. Sokol*
Seconded by: *Mr. Monti*

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

Area variance granted, as requested.

BA11-04 Vito Errico (3 Vails Lake Shore Drive) – **Area Variance** – For construction of a single-family dwelling in an R-1 zoning district per Article V Section 250-15, Article VI Section 250-20 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-1/2 bulk requirements). The following variances are requested:

- Decrease the minimum combined side yard setbacks from 15 ft./40 ft. required to 6 ft. 3 in./12 ft. 7 in. proposed, a variance of 28 ft.
- Increase the maximum development coverage from 25% permitted to 26.8% proposed, a variance of 2%.
- Increase the maximum building coverage from 10% permitted to 25.3% proposed, a variance of 16%.
- Increase the maximum F.A.R. from .20 to .34, a variance of .14.
- Permit parking in a required yard.

Richard Vail, architect, addressed the Board. He stated that his client was granted a variance 2 years earlier for the subject property, for essentially the same design as the project being proposed now. Displaying a site plan, Mr. Vail pointed out minor differences, including relocation of a retaining wall and a deck pulled in closer to the house than what was previously planned. He said interior changes (development of a second floor/third bedroom)

are the result of the sewer system being installed in Peach Lake. Mr. Vail said the new plan is less non-conforming than the previous one/the lot coverage is less.

Mr. Reilly asked if the plan is conditioned on the sewer being installed, and Mr. Vail said it is.

Mr. Reilly asked the Building Inspector if he would issue a building permit before the sewer service is completed.

Mr. Thompson said he would, but no Certificate of Occupancy will be issued until the house is hooked up to the sewer system.

Mr. Monti asked when the system is estimated to be completed, and Mr. Thompson said hook-up should be between the end of 2011 and sometime in 2012.

Chairman Ivanhoe asked if the house will employ the old septic system until the sewer work is completed, but Mr. Thompson said that may not be done/there will be no Certificate of Occupancy for the house until it is hooked up to the sewer.

Mr. Vail said it will only be a weekend house for his client, so there will be no hardship.

Mr. Monti asked how long a building permit is good for.

The Building Inspector said a building permit is good for one year and one-year extensions may be granted depending on the amount of progress made.

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

Mr. Reilly read a draft resolution, including a condition that no Certificate of Occupancy will be issued until the property is hooked up to the new sewer system currently under construction.

Motion by: *Richard O'Leary*
Seconded by: *William Monti*

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

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

BA11-05 G. Nicholas Mestanas (3 June Road) – Area Variance – For construction of a pergola with retaining wall and guard rail, creation of a driveway and courtyard with parking, and installation of a fuel tank in an R-2 zoning district per Article V Section 250-15; Article VI Sections 250-20 and -22; and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-1 bulk requirements). The following variances are requested:

- Decrease the minimum combined side yard setbacks from 20 ft./50 ft. required to 5 ft./10 ft. proposed (11.47 ft./70.44 ft. existing;), a variance of 40 ft.
- Increase the maximum height of a fence in a side yard from 5 ft. permitted to 7 ft. proposed, a variance of 2 ft.
- Permit parking in a required yard.

Landscape architect, Diane Devore, was present for her clients. Displaying a site plan, she said it was very difficult to work within the setback requirements, given the subject property's long and narrow shape. She explained that an existing propane tank is to be replaced with a smaller one to be installed 5 ft. farther from the property line, leaving room to plant screening. Ms. Devore commented that she thought the Board got a very positive letter from the neighbor on that side.

Chairman Ivanhoe stated that the Board was in receipt of 2 letters pertaining to the application: one in support, and one objecting.

Ms. Devore said an existing wall of railroad ties is failing and is to be replaced with a stone wall. The plan is to put a guard rail on top of it for safety (as well as a pergola planted with vines), but it will require a variance. She explained that from the existing June Road-side parking area to the house, the grade change is 18 ft., and her clients want to abandon it altogether, although the gate could still be opened for emergency purposes. On the opposite side, accessed via an easement, the grade change from the existing parking area to the house is 12 ft. Ms. Devore said her clients have elderly parents for whom this access is really not convenient either, so it is proposed to relocate the driveway from the easement on the Grant Road side and create a courtyard for parking that is closer to the house. Ms. Devore stated that her clients' attorney checked the details of the easement and found no issues.

Chairman Ivanhoe asked how the easement reads. He said that typically, these kinds of easements allow access to a lot for the length of the easement.

Ms. Devore said she did not know what the exact wording is, but the attorney said there is nothing to prevent an additional driveway cut.

The Chairman said he had hoped to see the document. He further explained about the kind of private drive he is familiar with, wherein if the driveway is 100 ft. long to reach a third lot and the first 2 houses are only 25 ft. up the drive, those 2 houses have access to/may use the entire 100 ft. of the drive.

Regina O'Brien, also of Devore Associates, stated that the new driveway cut would be on the Mestanas' property. She explained that the Mestanas' are part owners of the private road.

Mr. Reilly said that then the Mestanas' would have the right to make the new cut. He added that the Board could condition the variance upon provision of the actual easement, but he pointed out that one can't own a road without the right to use it.

The private road/driveway is jointly owned by the owners of 1 June Road (Cilmi), 3 June Road (Mestanas) and 640 Grant Road (Garten).

Ms. Devore said she is aware that the neighbors to the rear (Gartens) have a drive running along the Mestanas' rear property line, so the plan includes evergreen hedge screening. She stated that if the neighbors are not satisfied with that idea, an opaque fence could be installed in addition. She said she had thought an evergreen hedge would be softer, but noise abatement could be added to a fence. Stating that a maximum of 3 cars will be parked on the subject property, they will be parked facing inward so no lights will be pointed at the neighbor's property. She pointed to an area along the property line that is to be planted with screening.

Ms. Devore said only minimal grading is to be done, but the plans do call for removal of some tall old trees along the road edge that are nearly dead. These will be replaced over time.

Chairman Ivanhoe asked what kind of evergreen plants are to be put in, and Ms. Devore replied that it will be a holly hedge, preferably a Japanese holly that grows tall and densely.

The Chairman commented that the holly would require some protection from deer in winter.

Ms. Devore agreed, saying American holly could be used, which deer are less inclined to eat. She said the Japanese holly is denser, so she might put metal mesh inside/let the holly grow through and around it so the deer could only eat the outer edges. Ms. Devore said the plan would actually reduce the lot coverage from what it is now.

Chairman Ivanhoe asked about the grading.

Ms. Devore showed him a grading plan, stating that the work is mostly tied in with existing grades.

The Chairman asked how much higher the neighboring property is from where the finished driveway grade will be on the subject property.

Ms. Devore said she had not made that calculation, but she agreed that the neighbor's property continues to rise upward. She added that the proposed evergreen hedging will decrease the neighbor's view of the subject property.

Chairman Ivanhoe inquired about drainage.

Ms. Devore answered that with so little grade change she does not see that there would be any problem, but more could be added if needed. She reiterated that she is trying to work with the extreme grade changes on the property.

Mr. Thompson asked if the Mestanas' plan to change their 911 address to Grant Road, and Ms. Devore replied that they do.

Mr. Thompson replied that removal of the June Road driveway is how the lot coverage will be reduced, adding that the gate is to be kept.

Ms. Devore said that was correct, adding that the driveway base will be covered with top soil and seeded, but it will always be possible to drive in from June Road.

The Chairman asked where the address sign will be on Grant Road, and Ms. O'Brien said she thinks the stone pillars on Grant Road are for address numbers.

The Chairman said he had not noticed whether the Cilmis (property in front of the subject property) have put a number on Grant Road since abandoning their June Road entrance, but it is important to have the house number out at Grant Road where emergency personnel can see it.

Mr. O'Leary noted that there is a low stockade fence visible in the photographs on the plan, but he had not seen such a fence, although he did see a chain link fence.

Ms. O'Brien said the stockade fence was removed because it was in disrepair; the low stone wall with hedge will go approximately where the stockade fence was.

Ms. Devore added that the chain link fence was already on the property, but her clients had it moved to the property line to help delineate it.

Chairman Ivanhoe commented that the chain link fence looks less than 5 ft. high, but the Building Inspector stated that it is 6 ft. high.

Ms. Devore said Garon Fence was hired to move the existing fence. She said she was aware that there were questions about perceived changes in the fence height, but it was simply moved.

Mr. Thompson commented that the fence was represented as being 5 ft. high, but it is 6 ft. high. He said the current owner stated that it is the same fence that was there when the property was purchased.

Ms. Devore said that was correct; the Mestanas' simply asked that the fence be moved, and there will be a gate put in the hedge when it is planted in order to complete the enclosure/ keep their dog within the property. She added that there will be additional planting along the property line.

Chairman Ivanhoe said he hopes plants that will grow through the chain link will be employed, as chain link fencing is not attractive.

Ms. Devore said vines may be added to contribute to the screening of the fence.

The Chairman pointed out that the fence must be "good side" to the neighboring property, and the Mestanas' may not plant on the neighbor's side of the fence as it is on the property line. He commented that the addition of vines would be helpful.

Ms. Devore said it would be up to the neighbors if they prefer a solid fence over an evergreen-screened chain link fence.

Mr. Monti said the proposed work is a significant rearrangement of the property, and he noted that it would have been helpful if the neighboring lots/houses were included in the plans so the Board could see the changes in relation to the other houses. He said he has seen more

complete plans for much smaller jobs, and he commented that he had struggled with the submitted plans/found them unhelpful and unsatisfactory.

The Chairman asked how far the edge of the relocated driveway will be from the property line, and Ms. Devore replied that it will be about 25 ft.

Mr. Monti asked Ms. Devore to indicate where Grant Road is.

Ms. Devore sketched in the rest of the private driveway down to Grant Road and pointed out the location of the Cilmi house and the stone pillars at the beginning of the driveway.

Mr. Monti asked who maintains the private driveway, and Ms. Devore said it is the responsibility of the 3 property owners.

Mr. Reilly stated that if there is no maintenance agreement, responsibility would be deemed by law to be shared by all 3 property owners.

Mr. Monti asked who is responsible for keeping the 911 access-way clear.

Mr. Reilly said the individual property-owners would be responsible for access to their lots; if they are going to be away, they should make arrangements for care-taking of the driveway or risk being sued.

Mr. Monti asked Ms. Devore to show where the Garten house is, and she indicated its location/described the driveway leading to the house and the circular drive.

The Chairman commented that there is another access to the Garten property further along Grant Road.

Referring to Mr. Monti's comments about the plans, Ms. Devore said the survey she worked from didn't include the other properties. She said she does have an aerial view that shows them, but she was unable to print it.

The Chairman recognized Leigh and James Garten of 640 Grant Road.

Mr. Garten said he has lived there since 2003 and is the only person who has ever maintained the private driveway/supplied Item 4, although the other property-owners have provided snow removal. Mr. Garten stated that the columns at the foot of the driveway are associated with his house. He said he, too, has another access via June Road because he owns a second tax lot.

Regarding snow removal, Mr. Garten expressed concern that the Mestanas' will have almost no place to push plowed snow to if the proposed plans are all carried out, meaning it would all end up on his property.

The Chairman noted that snow was plowed onto the Mestanas property after the recent snow storm, and he did not see any plowed onto the Garten property. He said the Board might include in the resolution, if the variance is granted, a condition that the Mestanas' find a way to have snow plowed onto their own property.

Mr. Garten said he is unhappy about the proposal to put the relocated driveway and parking courtyard all within the required setback on the Mestanas property/so close to the property line.

Chairman Ivanhoe said the Board would consider impact on Mr. Garten and his property.

Mr. Garten said it is nearly impossible to make the turn onto the easement between the 2 pillars if one is driving south on Grant Road, although the Chairman disagreed with him.

Mrs. Garten said it is difficult for large vehicles, causing garbage trucks, for example, to use her other driveway and then drive down the shared driveway to the other properties.

The Chairman said it looked to him as though the Gartens' primary entrance is the one further north on Grant Road/they use the shared drive as more of a service entrance. He noted that all 3 property-owners use the shared driveway.

Mr. Garten said it is used more since the Cilmis abandoned their June Road driveway, and now the Mestanas' intend to do the same.

Mrs. Garten said she didn't know where the Mestanas' could put their house number.

Chairman Ivanhoe asked what the Gartens' main concerns are.

Mr. Garten said his garden is near the property line, and he thinks noise and light pollution and increased foot traffic will spoil his enjoyment of it. He said he also believes the changes will negatively impact the value of his property. Mr. Garten said he thought the tall pines were in good health.

The Chairman said they are bare from the ground up for a good distance.

Mr. Garten expressed concern about an area of old-growth trees, but the Chairman said he thought just one large tree was to be removed, and it looks unhealthy.

Ms. Devore confirmed that the tree is dying/the inside of the trunk is rotted out.

Chairman Ivanhoe noted that the Gartens have a brick and stone wall around their garden, which is on about a 7 ft. rise from the proposed courtyard.

Mr. Garten said the wall is only 4 ft. high from the interior of the garden and one can easily look over the wall. He went on to say that the increased traffic to/from the Mestanas property will cause more lights to shine into his family room.

The Chairman asked if any new lighting is proposed on the Mestanas property, and Ms. Devore said there is not.

Mr. Garten said he is concerned about car headlights, and his wife added that their second floor porch looks down onto the area of the driveway and proposed courtyard.

Mr. Garten said their view now is nice, and he respectfully asked the Board not to approve the variance.

The Chairman explained that the Board's purpose is to grant relief from the zoning ordinance, while considering impact on neighboring properties and issues of public safety. He said the Board looks to mitigate neighbors' concerns, but he felt the Gartens' viewshed would be minimally impacted. He stated that the sightline from the Garten house would be almost to the roof of the Mestanas house. Chairman Ivanhoe asked if Mr. Garten had any suggestions to offer.

Mr. Garten said he did not/he is not an expert, but he had hoped the Mestanas' would keep the front parking instead of doubling up the rear parking. He said that when he moved to Town in 2003, he wanted a stone wall with fencing on top that would have required a variance. He spoke to his neighbors about it and they didn't want it, so he did not go ahead with his plans.

Chairman Ivanhoe stated that the applicants have no grade-level access to their house at present; the existing parking areas at June Road and from the shared driveway both have stairs to the house. He added that they seem very willing to mitigate the proposed changes with plantings, stone walls/fencing and noise abatement.

Mr. Garten said the applicants have also replaced a 5 ft. fence with a new 6 ft. fence and put it right on the property line.

Chairman Ivanhoe asked how Mr. Garten would feel about the fence if it were only 5 ft. high.

Mr. Garten said it would still be an ugly chain link fence, but it would be lower.

The Chairman said the plantings proposed by Ms. Devore would disguise the fence some and provide a more significant sound barrier.

Mr. Garten said that if the Mestanas' sell their property and move away, the fence will still be there. He added that new owners also might not take care of the holly bushes/let them die.

Mrs. Garten stated that the houses are very close together.

Mr. Reilly asked why the chain link fence was being discussed, as it was not part of the variance application.

Mr. Thompson said there was disagreement about how tall the fence was when the applicants bought the property. He said it would require a variance if it were being installed now, because it is 6 ft. high.

Mr. Reilly asked if the applicants can prove that the chain link fence was installed before 1987, because that is when the current zoning ordinance was approved. If that can be proved, nothing else need be done; otherwise, a 6 ft. fence inside the setback would require a variance/the applicants would have to re-Notice.

Mrs. Garten asked if anything is to be planted from the start of the new driveway.

The Chairman said it looked to him as though there will be planting all along the property line on that side.

Mrs. Garten said it appears that the hedges stop 20 to 30 ft. short of the end of the driveway.

The Chairman noted that the last, lower section of the wall shows planting to be done behind it/facing the Garten property.

Ms. Devore said the planting can be extended another 15 to 20 ft. beyond the proposed hedge although she would soften it with some trees.

Mr. Garten said he felt the Chairman was asking him to okay the hedges because the driveway will be approved.

The Chairman stated that he has only 1 vote, but the Board has found no issues of public health or safety.

Mr. Garten reiterated his fear that his property value would be affected.

Mr. Reilly said the Mestanas' have the right to use the driveway.

Mr. Garten agreed that they do, but he said it was an easement when he bought his property; he never thought it would become the primary entrance/didn't expect to see the parking doubled. He asked how people will get from the new courtyard to the house, noting that there are steps now.

Ms. Devore said the grade will be evened out just a little, but there will be no more steps. She added that the proposed retaining wall will facilitate a small but necessary cut in the existing grade.

Mr. Monti asked about the surface of the walkway from the driveway to the front door, and Ms. Devore said it will be blue stone.

The Chairman asked what the courtyard surface will be, and Ms. Devore answered that it will be gravel.

Chairman Ivanhoe asked if the Gartens had any more questions.

Mrs. Garten said she simply did not like the idea of all the changes being made right beside her property and close to her home.

The Chairman said it looked to him like the only way to get parking near enough to the house.

Mrs. Garten said the previous property-owner was planning to re-configure the back (June Road) parking.

Chairman Ivanhoe said it would probably have been a lot like what is proposed now, but Mrs. Garten said it would have been further away from her house.

Mr. Garten agreed, saying they would not have been bothered by changes at the June Road end of the subject property.

The Board members discussed the application among themselves.

Mrs. Garten said the applicants were aware of the layout of the property when they bought it.

Chairman Ivanhoe suggested they might always have thought to change it. He closed the public hearing and asked Mr. Reilly to include mitigation of the chain link fence on the property line if the Board reached a resolution.

Mr. Reilly pointed out that the applicants are only entitled to a 5 ft.-high fence on that side, so there should be a stipulation that no Certificate of Occupancy shall be issued until they establish the long pre-existence of the 6 ft. fence or apply for a variance for it. He said there were numerous versions of what had been done with/about the fence.

The Chairman asked Ms. Devore to ask her clients not to have a chain link fence at all, or make it 5 ft. high, move it back and plant to conceal it.

Ms. Devore said they may not want to move it back because they are concerned about future question about the property line, a problem they had in the past.

Mr. Reilly said the applicants have a survey and the neighbors have a survey, and the Chairman pointed out that the pins are noted on the survey.

Mr. Reilly said what Ms. Devore suggested was not a legitimate reason to keep the fence. He said that if the Board grants some of the requested variances, they may make conditions involving the fence.

Ms. Devore said she had not spoken to her clients about changing/moving the chain link fence, so Mr. Reilly suggested that the matter be carried over to allow time to get answers about the fence.

Chairman Ivanhoe said he would not like to carry the application over; he would prefer to include a condition concerning mitigation of the fence.

Mr. Reilly said the Board could do that, so the condition would be that the chain link fence be replaced; moved back to where it was before; be no more than 5 ft. tall; and have screening planted to conceal it.

Ms. Devore said she would suggest substitution of a cedar fence.

The Chairman noted that as long as the fence is 5 ft. high or less, the applicants may have it on the property line without conditions imposed.

Mr. Thompson pointed out that a fence must be installed "good side" out (facing the adjoining property), so Ms. Devore might want to consider something that is more or less equal on both sides.

Ms. Devore said stockade fencing would not look good, so she would recommend something more like farm fencing with mesh to keep the dog in.

The Chairman said some sort of decorative, appropriate fence would be fine, and he asked Ms. Devore to propose something.

Mr. Reilly asked if the Board wanted screening planted the entire length of the shared property line.

Chairman Ivanhoe said they do, including the addition of plantings from the front end of the retaining wall to the shared driveway which is not on the submitted plan. He asked Ms. Devore what would be planted at the front end of the wall.

Ms. Devore said she thought hemlock and holly.

The Building Inspector said he would like to have something specific, and Mr. Reilly said Ms. Devore will provide a plan for the additional plants that she must adhere to.

Chairman Ivanhoe stated that conditions in the resolution will read that the fence to replace the chain link one and the plantings from the front of the retaining wall must be implemented per plans to be submitted at a later date.

Mr. Reilly said that if the plans are not adhered to, no Certificate of Occupancy will be issued.

Mrs. Garten asked what will ensure that the plants are cared for.

Mr. Reilly stated that it can be a condition in the resolution that the plants must be maintained in good health/replaced if they die.

Mr. Garten asked if the courtyard could be moved another 5 ft. back from the shared property line (10 ft. total).

Ms. Devore said it would require another retaining wall, but it can be done. She added that this would facilitate planting the hedge on the outside (Garten side) of the wall and lining it up with the other sections of hedge.

Mr. O'Leary asked if the Board didn't need to be more specific about the replacement fence.

The Chairman said it should be similar to the 3-bar gate on June Road.

Mr. O'Leary noted that there is a stone wall on the June Road side of the property also.

Ms. Devore showed the Chairman a picture of the June Road gate, and he agreed that natural cedar fencing with mesh to match the gate would be appropriate for replacement of the chain link fence.

Mr. Thompson consulted with Ms. Devore on how to install the fence so the "good side" faces the Garten property.

The Board discussed different kinds of plants, and the Chairman commented that boxwood is not usually eaten by deer.

Ms. Devore said American holly is usually not, either. She said she would put the mesh cages around the plants/let the plants grow through them, adding that this has been done successfully in the past.

Mr. O'Leary said as the courtyard will be moved inward to please the neighbors, maybe the additional planting at the end of the wall could be omitted. He commented that it won't look good and the plants won't thrive there.

The Chairman agreed with Mr. O'Leary.

Mr. Monti stated that there may be no lighting.

Noting that none was proposed, the Chairman said that if there were any lighting it would have to be invisible at its source.

Ms. Devore said she didn't know what lighting exists on the property, but the Chairman said that was not at issue.

Mr. Reilly asked if the Building Inspector needed any other conditions specified. He noted that Mr. O'Leary suggested not extending the planting from the front end of the retaining wall.

Mr. O'Leary said the plants won't be protected/won't look good, and there is lawn there now.

Chairman Ivanhoe said the condition could be that the holly hedge be continued or any trees/other plants put in must be maintained.

Mr. Reilly asked if there is any issue of visibility, and the Chairman agreed that was a good point.

Mr. Thompson said it sounded as though the Board was moving away from requiring any plantings for the last 20 ft.

The Chairman said the issue of visibility was a good reason not to continue the planting.

Mr. Thompson asked how tall the hedge plants should be.

Ms. Devore said the plan calls for 6 ft.-high plants, so the Chairman said the condition will be that they be a minimum of 6 ft. in height when they are first planted.

Mr. O'Leary asked how high the plant-protecting wire cages will be, and Ms. Devore said a height of 5 ft. would be fine.

Mr. Reilly confirmed that the Board required no condition for acceptance of the variance for the guard rail on top of the stone wall; the courtyard is to be moved southward another 5 ft.; the hedge will be on the neighbor's side of the retaining wall.

Mr. Garten said it seemed that there will be 2 parking areas on the property, but the Chairman said the June Road drive will be planted with grass.

Mr. Garten asked if the County will be informed that it is no longer a driveway cut.

Mr. Thompson stated that the applicants are in discussion with the Assessor about changing the 911 address to Grant Road. He said it is important that emergency-responders are directed to the appropriate property entrance.

Mr. Monti asked that there be no Certificate of Occupancy issued until the 911 change has been made and the new address is posted plainly.

Mr. Reilly stated that the discussion/enumeration of the conditions constituted the draft resolution and said someone could make a motion.

Motion by: William Monti
Seconded by: Deidre Sokol

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

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

BA11-06 Kathleen and Robert Tompkins (261 Hardscrabble Road) – **Area Variance** – To decrease the minimum setback requirement for structures used to stable animals in an R-4 zoning district, per Article V Section 250-15. A front yard setback variance of 60 ft. (150 ft. required; 90 ft. existing) and a side yard setback variance of 150 ft. (150 ft. required; 0 ft. existing) are requested to allow 2 shed-row stables to remain as installed.

Robert Tompkins addressed the Board, stating that his family has farmed on Hardscrabble Road since the late 1870's. He explained that he accepted an opportunity to buy the shed-rows from a neighbor, and he put them on his property thinking the locations were all right because he had a variance for his barn. He said the shed-rows look appropriate where they are, (one near a barn and one near 2 silos/partly blocking the view of a barn that burned). Mr. Tompkins said he looked into Ag and Markets law; and, as the property is within the agricultural district, setback relief may be considered. He explained that he is leasing the outlined section of the adjoining property that one of the shed-rows goes onto, and he brought copies of all his leases as well as letters of support from all his neighbors. He stated that he would like to keep the shed-row where it is; if the opportunity to purchase the land comes up, the variance will no longer be needed.

Mr. Reilly stated that it is customary for a variance to run with the land but in this instance, a covenant will be included that the variance will last as long as the land lease.

Mr. Tompkins said that would be acceptable; he could move the shed-row, but he likes it where it is.

The Chairman agreed that the condition is a good solution. He added that if the lease is not renewed, the variance will expire.

Mr. Tompkins asked to have the resolution state that the variance will also be good if he buys the property/gets a lot-line adjustment.

Mr. Reilly noted that if the shed-row becomes compliant, the variance won't be needed.

Mr. Tompkins stated that the front shed-row has a front yard setback of 91 ft., as does the existing barn.

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

Mr. Reilly read a draft resolution, including a condition that the area variance will not run with the land but depend on the existence of a land lease; should the lease expire or not be renewed, the area variance will expire.

Mr. Tompkins asked the Board if he needs a special permit for commercial horse-boarding.

The Chairman said he thought one was approved in the past, and he added that Mr. Tompkins should have one.

Mr. Tompkins remembered applying for one, but he thought that although it was approved, the determination was that he didn't need one because his land has been used for farming since before the zoning ordinance.

The secretary added that no one had been able to find a copy of a resolution for such a special permit. She said there is a record of the application and its approval in the meeting minutes, but there is no resolution.

Mr. Tompkins said the special permit approved in 2001 would expire soon any way.

Chairman Ivanhoe said the keeping of horses would require a special permit even if the use is pre-existing.

Mr. Reilly said it would be better/beneficial for Mr. Tompkins to have a special permit.

Mr. Tompkins asked if he would need to re-apply and return to the Board for a special permit, and the Chairman said he should do so.

Mr. Reilly stated that he already read the draft resolution for the area variance.

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

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

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

The Chairman closed the meeting at approximately 10:10 pm.

Respectfully submitted,



Janice Will, Recording Secretary