

**Town of North Salem
BOARD of APPEALS
Public Hearing
February 10, 2011
8 p.m., The Annex**

MEMBERS PRESENT: Richard O'Leary
Deidre Sokol
William Monti

MEMBER ABSENT: Brian Ivanhoe, Chairman

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

Acting Chairman William Monti called the February 10, 2011 Town of North Salem Zoning Board of Appeals meeting to order.

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

The minutes of the January 13, 2011 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.

PUBLIC HEARINGS

BA11-07 Brenda and Theodore Strauss (54 Sunset Drive) – Area Variance – To allow parking of a personal recreational vehicle within the side yard setback, per Article VI Section 250-20 and Article VIII Section 250-34 (because this type of vehicle must be screened from view).

Theodore Strauss was present. He told the Board he thought his application explained everything, but he offered to answer any questions.

Mr. Monti asked if the recreational vehicle could be parked at the left rear part of the property, but Mr. Strauss said he would have to drive over the septic field to get it there.

Mr. Monti asked if Mr. Strauss felt the existing location was the best one, and Mr. Strauss replied that he did. He explained that he would not be able to move the RV farther back because of the way his property slopes.

Noting there were no other questions or comments, Mr. Monti closed the public hearing. He said he wanted the area variance to be specific to the Strausses and not run with the land as is customary, because it addresses a need specific to them.

Mr. Reilly read a draft resolution including the condition that the area variance does not run with the land and will expire upon sale of the subject property.

Motion by: **Deidre Sokol**
Seconded by: **Richard O'Leary**

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

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

BA11-08 Kathleen and Robert Tompkins (261 Hardscrabble Road) – **Special Permit** – For the keeping of up to 20 horses and maintenance of a commercial boarding operation per Article XIII Section 250-72.

Robert Tompkins addressed the Board, stating that the application is for an existing operation that he wishes to continue for another 10 year period, that being the time span covered by a special permit. He said he was granted a special permit in 2001, but he did not realize he needed the special permit renewed when he appeared before the Board in January with an application for an area variance.

Richard O’Leary asked the Building Inspector if he had any issues with the application.

Mr. Thompson replied that Mr. Tompkins must have a fire alarm system in the barn because the horse-boarding operation is commercial.

Mr. Tompkins stated that he has an alarm system, but it has been turned off because of the number of false alarms it was registering. He said the alarm is being fixed and will be kept on.

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

Mr. Reilly read a draft resolution.

Motion by: **Deidre Sokol**
Seconded by: **Richard O’Leary**

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

Special permit granted, as requested.

BA11-09 Cynthia Page and Gilbert Samberg (189 Vail Lane) – **Area Variance** – For construction of an accessory structure (art studio) within the side yard setback in an R-4 zoning district per Article V Section 250-15. A variance of 60 ft. is requested (75 ft. required; 15 ft. proposed).

Kenneth Siegel, architect, and Gilbert Sambert were present. Mr. Siegel said he was proposing to construct an art studio as an accessory structure/detached from the main house. He indicated the submitted drawing illustrating the building’s appearance and noted that he also submitted a site plan. He stated that Ms. Page, an artist, needs a work

space outside of the house because her pieces are overwhelming the house physically and also with the odors of paint and turpentine.

Mr. Siegel described the subject property as a long, narrow lot with a pond at the rear. He stated that 54.5% of the lot is wetlands or wetland buffer space. Adding the required setbacks and the existing house to the wetlands areas, only 19% of the 7+ acre lot remains that may be used as of right. He explained that the only "legal" location for the art studio would be just to one side of the existing front driveway, where it would be very visible/near the street and very far from the applicants' house. He added that to pull the studio directly back (inward) from where he proposes to build it would cause it to block the house, which would look peculiar. Mr. Siegel stated that he needs to push the studio to the side of the property, and he was requesting relief from the side yard setback requirement. He said that if the proposed site were near anyone's house it would be a problem, but it is not. He pointed to an aerial photograph, showing the studio site at a distance of at least 450 to 750 ft. from any neighboring houses. He commented that setback requirements are to keep structures a minimum distance from neighbors, but the neighboring lots have no buildings near the proposed building site. Mr. Siegel stated that the studio needs to be near enough to the house to be connected to the existing septic system, and he added that engineers have been hired to plan erosion control, storm water runoff prevention, etc.

Mr. O'Leary stated that he drove out to the subject property that day, noting an open field with a "T" formed by the existing driveway and the proposed drive to the studio. He commented that the studio will have a lot of windows that could impact the 2 adjacent properties, and he suggested it be moved back out of the setback area.

Mr. Siegel responded that the studio would look odd enough standing right in front of the house to have a negative impact on the property value. He said the site chosen for the studio is in a very low area, topographically, that is also heavily wooded. He stated that the view from neighboring houses would be over the top of the studio. He added that there are so many trees that the tapes strung to indicate the outline of the studio cannot even be seen from the driveway. Mr. Siegel said that in the one area where there are no trees, there are no buildings either; there are pastures. He explained that there are many windows on the south side of the studio to provide natural light.

Mr. O'Leary commented that the applicants don't want to look at the studio in front of their house, but the setback requirements are to protect neighboring property-owners.

Ms. Sokol noted that the owner of the adjoining pastureland could decide to put up a building near the setback.

Mr. Siegel stated that the neighboring property-owner is invested in the commercial farm nature of the property and would not want to break up the parcel. He said the studio will be a pretty building and not seen by others for 8 months of the year; additionally, it is downhill from neighboring properties and will be in the trees.

Al DeLeo of 153 Vail Lane stated that his house is depicted as being 550 ft. from the site, and he asked why a 2-story building is proposed. He added that a larger but lower

building could be constructed instead. Mr. DeLeo said he had no issue with the setback variance but was concerned about the height of the building.

Mr. Siegel stated that Ms. Page desires an upper level so she can view the surrounding landscape for inspiration.

Mr. Monti said it had not been explained why it is necessary to build the studio in the setback, commenting that the situation is a self-created hardship. He said no compelling reason had been given not to build outside the setbacks.

Mr. Siegel pointed out that the lot has a lot of wetlands and wetland buffer areas as well as the setbacks to consider. He stated that the front of the property is an open field; the studio would look like another primary residence sited there and would also be directly across from a neighboring house. He said an accessory structure should be unobtrusive, but the useable area gets very narrow. Mr. Siegel reiterated his belief that the studio would look bad/wrong constructed on the land that is available outside the setbacks.

Mr. Monti said it appeared to him that the studio could be moved back outside of the setback.

Mr. Siegel asked if Mr. Monti had visited the site.

Mr. Monti replied that he would not drive his car on the icy driveway.

Mr. Reilly pointed out to Mr. Siegel that in order to get the variance approved, all 3 Board members present would have to vote affirmatively. He stated that the Board is required to question if the variance is substantial, if it is self-created, whether there is a feasible alternative, and if it will have a negative impact on the environment or the neighbors. Mr. Reilly said Mr. Siegel's responses so far have just indicated that the proposed site would be best for his client, but the State requires the ZBA to address all of the 5 points he described. He said the application could be held over to March when more Board members will be present.

Gilbert Samberg addressed the Board, stating that his wife is an artist and their house has become full of her work. He said it is good to encourage artists in the community. He added that the building is intended to look rural, and it will not be large or intrusive. Mr. Samberg said the topography of his property is such that he doesn't see an adjacent house from the studio site even in winter, and he thought that was the point of setbacks.

Mr. Samberg stated that areas on his existing driveway are inappropriate because the studio would be right across from a neighbor's house, and it would not look right there. He said he had looked for a site that would not be intrusive for the neighbors and still fit into available space, and he thought the site chosen would be unobtrusive. He said the site is in the vicinity of a run-down wall that he will try to restore and in an area of scrub growth where he can minimize the number of trees to be cut for construction. He asked Mr. Reilly to repeat the factors he listed earlier.

Mr. Reilly said the first point is whether the variance being requested is substantial, and an 80% variance is substantial.

Mr. Samberg said it is, numerically, but not in context of the site because of the topography; the studio won't be seen.

Mr. Reilly said the next question is of self-created hardship which, although not a basis alone for denial of the variance, is given consideration.

Mr. Samberg stated that he has lived on the property for 17 years and this is the first time he has attempted to build anything.

Mr. Reilly said the issues of adverse impact on a neighbor or the community need to be addressed. So far, the Board knows that Mr. Samberg's wife wants a broad view. Mr. Reilly pointed out that some day the property will be sold, and area variances run with the land.

Mr. Samberg said his wife needs a 2-story building so there will be wall space enough for large art pieces.

Mr. Reilly said his point was that the variance will remain after Mr. Samberg has gone.

Mr. Samberg said the studio should be seen as a source of pride for the community, not as an eyesore. He added that the building is designed to be rural in appearance and fit in with the character of the community.

Mr. Reilly stated that there had been no challenge regarding environmental impact, although there was a comment about windows.

Mr. DeLeo agreed that he might not be able to see the studio, but he had not realized it was to be a 2-story structure. Just the same, he said he did not object to the variance, having heard the reasoning behind it.

Mr. O'Leary asked Mr. Reilly to go over the issues again.

Mr. Reilly stated that the variance is substantial; the applicant stated that the proposed site is the most out-of-the way place. In response to discussion of alternate sites, the applicant said other sites would be visible to him and would not benefit anyone else. Mr. Reilly said the hardship is definitely self-created, but this is not reason alone to deny the variance. No one has said it will change the character of the neighborhood. Mr. Reilly said that if the Board is satisfied that alternate locations would not be feasible nor would they benefit anyone and that the substantiality of the variance is really just one of arithmetic/doesn't impact any neighbors, there is still the matter of a letter from a neighbor not present at the meeting (Kenneth Markel, 175 Vail Lane). Mr. Reilly commented that when someone says they cannot attend the hearing and dashes off a hand-written letter, the Board is not obligated to hold the matter over. He stated that a person with an objection can hire someone to attend the meeting for him. Mr. Reilly made it known that the applicant could poll the Board.

Mr. Samberg said that in considering the topography, the paradox is that the farther one backs the studio away from the old wall, the more visible it will be from the Markel property. He said he would like to poll the Board.

Mr. Reilly asked if Mr. Samberg discussed the project with his neighbors.

Mr. Siegel said he knows Mr. Markel personally. He was not able to e-mail him, but he left text and voice messages on his cell phone, offering to provide any information about the project that he wanted, but Mr. Markel did not call him. Mr. Siegel said Mr. Markel is not in Town and his house is for sale.

Mr. Monti stated that if the Board were to vote, all 3 members present would have to approve the variance for it to be granted; in March, there should be 4 or possibly 5 members in attendance. He also said Mr. Samberg could move the structure out of the setback entirely.

Mr. Siegel asked if they could consider moving it somewhat but not all the way out of the setback, adding that this might require the removal of a few more trees.

Mr. Monti said the subject property is depicted in isolation from the neighboring properties, and the aerial photo is difficult to glean much from; if the applicant wanted to argue that topography was a factor, not enough information was provided to support him.

Mr. Reilly suggested that Mr. Siegel confer with his client to discuss possible changes. He added that getting Mr. Markel to approve of Mr. Samberg's plan would be helpful.

Mr. Samberg stated that Mr. Markel does not live in the house at 175 Vail Lane/he is never there, so he has been unable to talk to him. Mr. Samberg said he would like to take time to talk with Mr. Siegel.

Mr. Monti said the application would be held in abeyance/the Board would go on to another application.

BA11-10 Rosa and Zachary Schulman (577 Grant Road) – Area Variance – For construction of an addition to a non-conforming single-family dwelling and creation of a new driveway with parking area per Article V Section 250-15 and Article VI Section 250-20 (because parking is not permitted in a required yard). A side yard setback variance of 16 ft is requested (75 ft. required; 62.34 ft. existing; 59.5 ft. proposed).

Michael Berta, architect, and the Schulmans were present. Mr. Berta described the 10-acre subject property on a steep hill that currently has a ranch house on it. He said the existing driveway offers no definition of where the front of the house is; he wants to construct a garage addition and new front entrance (*and second floor*) as well as a parking area for a new circular drive in front of the new garage. Mr. Berta explained that the existing house is non-conforming and on an angle, and the adjacent property on that side is a horse farm. He said the house is not in the line of sight from any other house, although it could possibly be seen from across Grant Road. He stated that he tried to make the best use of the property, and the variance request is for only 3 ft. more than the

existing setback of the house. He said the septic system is at the rear of the property/will not be affected, and an engineer will work to minimize run-off during construction. Mr. Berta stated that the house is currently nondescript, so he is trying to create visual interest and make the style of the house more like others in the neighborhood.

Mr. O'Leary asked if the adjacent property-owners had any comments.

Mr. Berta responded that the Notice to Property Owners was received and signed for without comment at the adjacent horse property. He added that he originally sought to get the application on the January agenda, so all the neighbors actually received 2 Notices.

Mr. Monti asked if the Building Inspector had anything to add.

Mr. Thompson said he worked with Mr. Berta and the Schulmans, asking that a lot of detail be provided in the application/plans so everything would be clear. Mr. Thompson said he had no further comments.

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

Mr. Reilly read a draft resolution.

Motion by: **Deidre Sokol**
Seconded by: **Richard O'Leary**

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

Area variance granted as requested.

BA11-05 cont.

Mr. Monti stated that he would re-open the hearing.

Mr. Siegel said he would like to request an adjournment so that he might revise the submission and return to the Board in March.

At this time, Mr. Monti closed the meeting.

Respectfully submitted,


Janice Will, Recording Secretary