

**Town of North Salem
BOARD of APPEALS
Public Hearing
April 14, 2011
8 p.m., The Annex**

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

MEMBER ABSENT: Deidre Sokol

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

Chairman Brian Ivanhoe called the April 14, 2011 Town of North Salem Zoning Board of Appeals meeting to order.

The Chairman set the next meeting for Thursday, May 12, 2011.

The minutes of the March 10, 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.

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.

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.

Gerald Reilly recommended that the Board entertain a motion to authorize the secretary to request that the applicants for BA09-32, BA09-33 and BA09-34 withdraw their applications without prejudice. Given that these applications have been held over for nearly two years and concern about public notice/awareness of their status, Mr. Reilly informed the Board that it would be preferable for the applicants to re-apply in the future, which applications will include new Notices to Property Owners and new Public Hearing Notices in the newspaper.

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

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

Approved.

Before opening the public hearings the Chairman announced 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.

PUBLIC HEARINGS

The secretary noted that the first applicant, Debby Moore (BA11-11), was not present yet. Chairman Ivanhoe said the Board would proceed with BA11-12.

BA11-12 Shelley Grasinger (991 Peach Lake Road) – **Special Permit** – For the keeping of up to 2 horses for personal use in an R-4 zoning district, per Article XIII Section 250-72 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-2 bulk requirements).

Shelley Grasinger explained that she and her husband will not move into the house at 991 Peach Lake Road until June or July. She said there is an existing 3-stall barn on the property, and she wants to keep 2 horses. There was also pasture-fencing in the past which she would like to reinstate.

Chairman Ivanhoe asked the Building Inspector if he has seen the property.

Mr. Thompson said he has not been there, but he met with the applicant and her contractor to discuss the fencing. Mr. Thompson said they explained very clearly what Ms. Grasinger wants to do; additionally, he is somewhat familiar with the property because he knows the adjoining property.

The Chairman commented that the proposed location of the 2-yard dumpster is fine with him, especially as it will not be too big. He said he discussed his concerns about paddocks on a busy street with Ms. Grasinger, and 4-board fencing will be employed, at least along Route 121.

William Monti asked how long it has been since horses were kept on the property.

Ms. Grasinger replied that she thinks the house has been vacant for about 10 years, but she also thinks the former owner/owner of the property next door may have been using the pastures while the fencing was still up, although the barn does not appear to have been used.

Mr. Monti commented that the dumpster will be somewhat prominent placed in front of the barn, but perhaps it will be easier to access in that location.

The Chairman pointed out that there is a big tree on the side of the barn that would prevent putting the dumpster there, and the 2-yard box will be fairly small.

Mr. Monti said he would not object to the dumpster site.

Richard O'Leary said the application was very clear, and he had no questions.

Noting there were no questions or comments from members of the public, the Chairman closed the public hearing. He suggested to Ms. Grasinger that even though she will only have 2 horses, the barn should have heat and smoke detectors with an outside alarm.

Mr. Reilly read a draft resolution, noting that the special permit is subject to the re-building of the fence, which is part of the record.

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

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

Special permit granted, as requested.

BA11-14 Mary Jane and David Kuehn (71 Keeler Lane) – **Area Variance** – To decrease the minimum setbacks for placement of a manure dumpster for a commercial horse-boarding operation, per Article V Section 250-15. A rear yard setback variance of 90 ft. (100 ft. required; 10 ft. proposed) and a side yard setback variance of 90 ft. (120 ft. required; 30 ft. proposed) are requested.

Janis Nagi and her father, David Kuehn, were present. Ms. Nagi said that when they applied to renew their special permit the previous November, she learned that she would have to keep the manure dumpster out of the required setbacks or return to the Board with an application for a variance. She explained that she wants the dumpster where it works best, and the “legal” area is not a good location, as it is right up by the barn and not far from the pool. In the summer, the dumpster would attract a lot of flies, and in the winter it was very difficult to plow a path to it. She said she had damaged pasture grass with the plow.

Ms. Nagi said that, as she has in the past, she wants to put the dumpster to the extreme rear of the property in the summer where it backs up on 37 acres of preserved open space/no neighbor. For use in winter, there is a gravel area at the end of the driveway where plowing would not be an issue. The next-door neighbor on that side of the subject property (Mark Thies, 77 Keeler) forwarded a letter to the Board stating that he has no objection to the dumpster's placement there. Ms. Nagi said the dumpster will be well concealed by a hedge in that location, and the summer location is better for all as it will keep flies and odor well away from people. She added that the proposed locations are also preferable to the legal location, because the area near the barn is flat/run-off from the dumpster is a problem. The preferred locations are on natural pitches and do not leak.

Chairman Ivanhoe said he could appreciate the hardship of managing the dumpster in the legal location this past winter.

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

Mr. Reilly read a draft resolution, including findings that due to special circumstances of topography, the 2 proposed dumpster locations are the most appropriate for the applicants and their neighbors, and the nearest neighbor supported the variance application. A condition will be that the applicants understand that the variance will not run with the land but will expire along with the special permit upon transfer of ownership of the subject property.

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

Mr. O’Leary: *Aye*
Mr. Monti: *Aye*
Chairman: *Aye*

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

BA11-15 APC Group, LLC (2 Hardscrabble Road) – **Area Variance** – To facilitate legalization of an existing building and parking area, per Article V Section 250-15 and Article VI Section 250-20 (because parking is not permitted in a required yard). A front yard setback variance of 15 ft. is requested (30 ft. required; 15.1 ft. existing).

Tim Allen of Bibbo Associates was present, and he displayed a site-plan of the subject property. He explained that his client has been working with the Planning Board to straighten out past site issues. He pointed to the existing house and parking lot, both of which are existing. He said it was previously thought that there was a pre-date letter for the house, but there was not, so his clients want to clear everything up including an addition to the building. Mr. Allen said they probably thought the house/addition met a previous setback requirement of 15 ft., but the front yard setback requirement is 30 ft.

Mr. Allen pointed to the parking area behind the house, noting that the area highlighted in orange is actually off the subject property and on a State right-of-way. This area will be removed. Mr. Allen stated that if the Board were to grant the variance, the Planning Board would then move forward.

Chairman Ivanhoe stated for the record that the Planning Board's referral supports granting of the variance for the house and the parking area. He noted that the Planning Board will require buffer planting, and he asked Mr. Reilly if this should be included in the Board of Appeals resolution also.

Mr. Reilly said the resolution may include a condition that buffering landscaping which meets the satisfaction of the Planning Board must be employed.

Mr. Monti said the application was straightforward.

Mr. O'Leary asked why there is no parking permitted within the front yard in the PO zoning district.

The Building Inspector replied that there is no parking permitted in a required yard in any zoning district.

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

Mr. Reilly read a draft resolution, including the finding that the Planning Board recommends approval of the variance; and conditions that the parking area must be moved out of the State right-of-way and a buffer area must be planted per the Planning Board requirement.

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

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

Area variance granted, as requested.

BA11-11 Debby Moore (3 Spur Street) – **Area Variance** – To decrease the minimum required front and side yard setbacks in an R-1/2 zoning district, per Article V Section 250-15 in order to permit front and side steps and bilco doors on an existing, non-conforming single-family dwelling to remain as constructed. A front yard setback variance of 4 ft. (9 ft. required; 5 ft. existing) and a combined side yard setback variance of 22 ft. (40 ft. required; 18 ft. existing) are requested.

Debby Moore addressed the Board, stating that 2 previous variances were granted for her property and nothing has changed, but Mr. Thompson said she needed another variance. She added that the house was renovated per approved plans.

Mr. Thompson stated that a previous variance was granted in part for the bilco door, which is now shown to be at a lesser setback on the as-built/official survey. He said the new front steps have one more step and riser than the old steps, so they jut a few more feet into the front yard setback. The Building Inspector said he wanted to be sure everything matched up with the as-built survey.

Mr. Reilly asked if greater variances were needed to comply with the approved plans.

Mr. Thompson said that was correct, so the variances will be in line with the as-built survey. He added that the situation was not due to any fault.

The Chairman commented that the new steps seem better/safer. He noted there were no questions and closed the public hearing.

Mr. Reilly read a draft resolution, including the finding that due to circumstances beyond the applicant's control, greater variances are needed according to the as-built survey.

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

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

Area variance granted, as requested.

BA11-16 Kevin J. Howard (403 Route 22) – **Area Variance** – To increase the maximum height of a fence in rear and side yards, per Article VI Section 250-22. A variance of 1 ft. is requested (5 ft. permitted; 6 ft. proposed).

Kevin Howard stated that he wishes to add fencing on the east and north sides of his property. He explained that there is already some 6 ft. fencing on the west and south sides, parts of which are to be repaired.

Chairman Ivanhoe asked if Mr. Howard intends to continue on with chain link fencing.

Mr. Howard said the fencing he wants has black plastic-coated links that don't show. He stated that he wants the fencing because he has a pond on his property and his next-door neighbor has small children.

Mr. Reilly asked the Building Inspector if he wants to meet with the fence contractor before they begin installing the fence to make sure there are no mistakes about the property line.

The Chairman noted that the fence does appear to be right on the property line.

Mr. Thompson said Mr. Howard will also be getting a Wetlands Activity Permit, and he asked the Board for some latitude regarding location of the fencing pending completion of a final survey with the wetlands boundaries noted. He said he will also be meeting with the fencing contractor.

Mr. Reilly said the condition could be that the fence will be subject to the approval of the Building Inspector.

Mr. Thompson said that will be in conjunction with the definition of wetlands boundaries.

Chairman Ivanhoe agreed to this request.

Mr. Monti asked if there will be any gates in the fence.

Mr. Howard pointed to 2 locations along the rear property line and one on the north side where he intends to have gates installed. He said there is an existing gate which is padlocked, and the new gates will be locked also. Mr. Howard said the gates are necessary to allow access to the property/so that it may not be deemed abandoned.

The Building Inspector pointed out that the gates will also facilitate maintenance of the fencing.

Mr. O'Leary asked if the property line is more than 10 ft. from the fence.

Mr. Howard said the fence will be installed as close as possible to the property line but leaving enough room so that it can be maintained/repared without going onto his neighbor's property.

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

Mr. Reilly read a draft resolution including a finding that the fence is for the protection of neighborhood children and a condition that the applicant and his fence contractor will meet with the Building Inspector and the Town wetlands consultant to determine appropriate placement of the fencing, and an as-built survey will be submitted.

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

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

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

BA11-18 Patricia Gallagher (629 Route 22) – **Area Variance** – To decrease the minimum required rear and side yard setbacks in an R-1/2 zoning district, per Article V Section 250-15, to facilitate legalization of 2 storage sheds on a non-conforming lot. A rear yard setback variance of 19 ft. (35 ft. required; 16 ft. existing) and a combined side yard setback variance of 13 ft. (40 ft. required; 27 ft. existing) are requested.

Patricia Gallagher addressed the Board, stating that she needs 2 sheds because her 7-year-old son has a lot of sports equipment and toys and she also needs room for lawn furniture, a lawn mower, etc. She said her property is small, but she tried to tuck the sheds behind her house so they will not be visible from the front.

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

Mr. Reilly read a draft resolution.

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

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

Area variance granted, as requested.

The Chairman closed the meeting at approximately 8:50 pm.

Respectfully submitted,


Janice Will, Recording Secretary