

**Town of North Salem
BOARD of APPEALS
Public Hearing
June 9, 2011
8 p.m., The Annex**

MEMBERS PRESENT: William Monti
Richard O’Leary
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 June 9, 2011 Town of North Salem Zoning Board of Appeals meeting to order.

Chairman Ivanhoe 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.

The Chairman set the next meeting for Thursday, July 14, 2011.

The minutes of the May 12, 2011 meeting were unanimously accepted.

PUBLIC HEARINGS

BA11-24 Richard S. Swanson (11 Baxter Road) – **Area Variance** – To decrease the minimum front and side yard setbacks for a Use Group “A” structure in an R-4 zoning district per Article V Section 250-15. A front yard setback variance of 45 ft. (100 ft. required; 25 ft. existing; 55 ft. proposed) and a side yard setback variance of 23 ft. (75 ft. required; 50 ft. existing; 52 ft. proposed) are requested for construction of an addition to a non-conforming barn.

James Davis, architect, was present along with Mr. Swanson. He explained that when his client purchased the subject property in 1995, there were several barns present. Mr. Swanson undertook to repair and re-build the largest barn (top of hill on north side of property). While the barn was being re-built, a Stop Work Order was issued by the former Building Inspector, Dominick Gabbamonte. Mr. Gabbamonte later determined that as the barn is an agricultural building, no Building Permit was required, and Mr. Davis offered a copy of a letter from Mr. Gabbamonte to that effect.

Mr. Davis said Mr. Swanson dug out the foundation under the barn and replaced it; while doing so, he discovered an old foundation to the rear of the building. Mr. Swanson decided to re-build this foundation in order to construct a one-story addition to the barn, and he assumed he needed no Building Permit. Had Mr. Swanson applied for a Building Permit, he would have realized that the addition would constitute a zoning violation.

Gerald Reilly asked to see the letter from Mr. Gabbamonte, and he read it for the record. *(Letter available in application file.)* Mr. Reilly said Mr. Gabbamonte's letter is not a statement of the law and would not apply to a footprint-enlarging project. He further stated that a Building Permit is required whether a building is for an agricultural use or not.

Bruce Thompson agreed, saying it is required for zoning purposes.

Mr. Davis said it would be required for zoning only and not for Building Department or State Code.

Regarding the application, Mr. Davis said the front yard setback is not changed by the addition to the rear of the building as the entire building is within the setback, but the non-conformity is increased. The proposed side yard setback for the addition is 2 ft. farther from the property line than the existing building, but it is still within the required setback.

Mr. Davis also had a recent letter from Don Russell, the realtor who sold the property to Mr. Swanson, in which he states that there was a foundation behind the cow barn.

Mr. Reilly said that if the letter is to be mentioned/described as part of the application, a copy must be provided for the file.

Addressing Mr. Reilly, William Monti asked if the paperwork, deed, etc. accompanying the purchase of such a property wouldn't include a description of what is present on the property.

Mr. Reilly said that usually, when a bank is involved, a survey is provided. When the property is inspected by the bank, if structures on the property don't agree with what is represented on the survey, a new survey is required.

Mr. Davis explained that his client's property is part of a much larger lot that was subdivided.

Chairman Ivanhoe said he is familiar with the subject property, and he asked what agricultural activity occurs there.

Mr. Davis said there is an agricultural exemption for a haying operation, adding that the cow barn was full of hay when Mr. Swanson purchased the property. He offered to show the exemption to the Chairman.

Chairman Ivanhoe looked at the paper and asked if hay is stored in the barn now.

Mr. Davis said it is not; there is no floor in the barn now as it is under renovation. He added that his client also has tractors, etc. in the barn.

Mr. Reilly asked if there isn't a minimum income requirement for the agricultural exemption.

Chairman Ivanhoe explained that the subject property is under another Town resident's exemption, and he said he would like to see the full form RP-30. He stated that the income requirement is \$10,000 per year. He asked if the cow barn will be used for hay storage in the future. The Chairman said he knows the resident who does the haying, but he does not know if he would plan to store his hay there.

Mr. Davis replied that there is no plan to change from the current agricultural use, including tractor storage, etc. He stated that he does not know if hay will be stored in the barn in the future.

Mr. Swanson said there is a 30 ft. x 100 ft. storage area upstairs and apparatus for pulling hay up; at present, the hay is taken away once it is cut.

The Chairman asked about other buildings on the property, adding that the Board of Appeals reviews applications with consideration for public health and safety and impact on the neighborhood. He said the condition of the existing buildings has a negative impact on neighbors, and there may be safety issues as well.

Mr. Swanson said a derelict corn crib collapsed with last winter's snow load.

The Chairman asked about other buildings on the property.

Mr. Swanson replied that there are 3 on the road (*Meadow Lane*) that will remain. He said the one in the middle is very usable; it has a new roof and windows, and it is used to store tractors. Mr. Swanson stated that he will re-build the first one, which was a shop.

Chairman Ivanhoe commented that it looks as though work was begun on the cow barn a long time ago. He asked when Mr. Swanson intends to finish the work and put the property in good order.

Mr. Davis said his client intends to complete the work, and Mr. Swanson added that all the necessary materials are on-site.

The Chairman asked why work was stopped.

Mr. David answered that weather was part of the reason, and there were other, personal reasons as well.

Rick O'Leary said it seems some work was done without a Building Permit; now a Permit is needed for the work to continue, but Mr. Swanson can't get a Building Permit because the building doesn't conform with zoning requirements.

Mr. Davis asked if it is a Building Permit or zoning approval that is needed, and Mr. Reilly stated that a Building Permit is required.

Mr. Thompson added that the Building Permit is a document that recognizes that zoning requirements have been satisfied. He said that while no Certificate of Occupancy is issued for an ag building (non-residential farm building), a Certificate of Completion is issued, which states that the building was constructed as a non-residential farm building without benefit of the New York State Building Code. The CC documents how the building came into existence.

Mr. Davis asked, if there were not a zoning issue, would a Building Permit still be required.

The Building Inspector responded that a Building Permit would be required. He explained that it provides documentation of the building's existence and its exemption from NYS Building Code requirements, inasmuch as no stamped plans are required.

Mr. Davis reminded Mr. Thompson of the letter from the previous Building Inspector, stating that no Building Permit was necessary for an ag building.

Mr. Reilly said the letter is useless.

The Building Inspector said he understood the letter stated that the work was exempt from NYS Building Code; however, the Town must be able to demonstrate how the building came to be, and if it is a non-residential farm building that needs to be noted. Mr. Thompson stated that if someone in the future wants to convert the building to residential use in the future, there will be issues because it was constructed without benefit of the NYS Building Code.

Mr. Davis said an engineer or architect could address those issues, and Mr. Thompson said that was correct.

Chairman Ivanhoe asked if Mr. Swanson applied to the Town Board for a waiver of the Application Processing Restive Law (Chapter 37 of the Town Code).

Mr. Davis said he didn't know what the Chairman was talking about.

Mr. Thompson explained that when he looked over the variance application, he was unaware that the Assistant Building Inspector had issued a 2-count violation on the property: one for building without a Building Permit (Chapter 92) and one for violation of the litter law/accumulation of debris on the property (Chapter 137). Once a violation has been issued, in order for any application to be processed, an applicant must first apply to the Town Board for a waiver of the APRL. The APRL states that there may be no review of any application for the subject property until the violation has been cleared. Mr. Thompson explained that the variance application is part of the remedy for the violation, but Mr. Swanson must go to the Town Board and explain that he is applying for an area variance so that he will be able to get a Building Permit. They will listen to his plan to clear the violation and would usually grant the waiver for a specific period of time.

Mr. Reilly stated that the Town Board will address the matter of litter-clearing. He said that the variance application will help with the Building Permit aspect of the violation, but Mr. Swanson will need to present something to the Town Board about what he intends to do about clearing debris from his property; after which he may return to the Board of Appeals.

Noting that the members of the Board had questions about other buildings on the subject property, Mr. Reilly asked that each be labeled on the plan with its current status and what the intended use is, so the Board may approve the application for the intended uses. Then, once the litter aspect of the violation is cleared up, the applicant may return to the ZBA and proceed toward the issuance of a Building Permit.

Chairman Ivanhoe stated that technically the ZBA could not review the variance application for the reasons given by Mr. Thompson and Mr. Reilly. He said the subject property is a beautiful lot; the Board would like to find out what Mr. Swanson plans for all the buildings, try to give him the opportunity to do what he wants with them, and hopefully see the property become the benefit to the neighborhood that it can be.

The Chairman commented that Dominick Gabbamonte said in his 1999 letter that Mr. Davis had informed him that the work on the cow barn was to repair it. Chairman Ivanhoe said the barn appears to have been expanded.

Mr. Davis said the expansion came 4 to 5 years later.

The Chairman said he thought Mr. Gabbamonte said no Building Permit was necessary because the work was to repair the barn, but the current situation is different because an addition is being constructed.

Mr. Reilly stated that if a Building Permit addresses exactly what is being done, and is wrong, a municipality cannot be estopped from executing, affecting and enforcing the law as it should be. He said it was not unique to the ZBA that a past determination has been found to be erroneous.

Mr. O'Leary asked what was erroneous. He said Mr. Gabbamonte had said no Building Permit would be necessary for repairs, which are different from expansion.

Mr. Reilly said Mr. Swanson did expand the building and probably should have had a Building permit even just for repairs.

Mr. Davis said Mr. Swanson wanted to know how he had expanded the building when the foundation was present and he built on top of it.

Mr. Reilly stated that the building was one size, and then it was a larger size, so it has been expanded even if the foundation was already there.

Chairman Ivanhoe asked if the survey provided at the time the property was purchased indicated the foundation.

Mr. Davis replied that it did not; it was discovered during excavation for the barn. Mr. Reilly said it would be best for Mr. Swanson to provide a detailed survey to Mr. Thompson.

The Chairman said that in terms of work done and expansion over the existing foundation, he had no problem with construction of an addition to the barn. He stated that he had other concerns, and the application needs to be buttoned up and made more complete, and the Chapter 37 issues dealt with so the Board can review the application.

Mr. Monti asked if Mr. Davis prepared the application packet, and Mr. Davis replied that he did.

Mr. Monti said the site map offers no orientation (no "North" arrow), and he asked why the entire lot is not depicted.

Mr. Davis said the site map is of the whole lot.

Mr. Monti said it would be helpful to see neighboring properties depicted, but the enclosed Google map did not help. He said that without orientation, one cannot tell which way the cow barn faces, and the depiction of the addition on the survey is unprofessional and not helpful. Mr. Monti stated for the record that the application was not complete, saying better dimensions and direction are needed on the survey and there is not enough detail. Mr. Monti said it is better to have a complete record, and Mr. Davis/his client should understand clearly that the building is not built in accordance with Code for residential use. Mr., Monti said it cannot just be converted for residential use.

The Building Inspector said Mr. Davis had been correct in saying that an architect or engineer could do a study of the building to overcome its non-residential status, although the Building Department's plans will not be stamped.

Mr. Monti said his point was that someone could just decide to go ahead and live in the building. He said the drawing should clearly state that it is a non-residential building.

Mr. Davis said it is captioned "addition to hay barn" on the drawing.

Mr. Monti said everything needs to be made clear now; properties change hands and sometimes people do things innocently.

Mr. Reilly said the public hearing could not be opened; Chairman Ivanhoe should hold it over based upon the representation that Mr. Swanson will go to the Town Board forthwith. He stated that the ZBA will not require a new application, and the Building Inspector will not forward the violation to the court system, which is the usual practice if things aren't cleaned up within a certain number of days. Mr. Reilly added that the Board will assume that Mr. Swanson will go to the Town Board as soon as possible about the Chapter 37 situation and clear up the littering issue.

Mr. Davis asked how to contact the Town Board.

Mr. Thompson explained that he should write them a letter, requesting that his application for a waiver of Chapter 37 be placed on the next Town Board agenda.

Mr. Reilly said BA11-24 will appear on the ZBA July agenda, so Mr. Davis should contact the secretary and advise her of the status of Mr. Swanson's request of the Town Board.

Mr. Thompson stated that Mr. Swanson should have time to get on the agenda for the June 28 Town Board meeting, which is before the next ZBA hearing on July 14.

BA11-25 Hilary and Patrick Sweeney (1 Wheeler Road) – Area Variance – To decrease the minimum front yard setback in an R-2 zoning district per Article V Section 250-15. A front yard variance of 28 ft. is requested for legalization of an as-built shed and construction of a second shed (50 ft. required; 22 ft. existing/proposed).

Patrick Sweeney addressed the Board, stating that he wishes to put up a garden shed for storage of things that are currently out in the open or crowding his garage. He said there is an existing wood storage shed that was present on the property when he purchased it, although he moved it to the front yard. Mr. Sweeney said he wants to put the new shed where it will cause the least disturbance and still be convenient to access. Mr. Sweeney said he selected a post and beam shed to have siding like that on the existing shed and his house. He added that he has put in a new entrance to his property, and he wants to tidy up the area.

Chairman Ivanhoe said he had observed stakes at the front of the property.

Mr. Sweeney explained that he placed 2 stakes to indicate the location and width of the proposed shed. He noted that the flier included in his application illustrates the correct dimensions of the shed, but it is of a photo of a board-and-batten shed, whereas his will have cedar-stained siding. Mr. Sweeney said the face-on photo of his wood shed shows how he will trim the bottom of the new garden shed with stones and wood chips. Mr. Sweeney also provided letters from 2 neighbors in support of his application.

Indicating the survey, Mr. Reilly commented that the stone wall at the front of Mr. Sweeney's property appears to be in the Town's right-of-way.

Mr. Sweeney said the wall is a good way from the edge of the road.

The Chairman said the area from the stone wall to the property line is probably an old road-widening strip.

Mr. Sweeney said his property consists of a lot of exposed ledge, which limited his choice of locations for the sheds.

Chairman Ivanhoe said he had no problem with the location. There were no other questions or comments, and the Chairman closed the public hearing.

Mr. Reilly read a draft resolution including the finding that the size of the variance is mitigated by the sheds' distance from the road and the stone wall on the right-of-way.

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

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

Area variance granted, as requested.

BA11-26 28 June Road Ltd. – **Area Variance** – To increase the maximum height of a fence (pillars) in a front yard, per Article VI Section 250-22. A variance of 1 ft. is requested (4 ft. permitted; 4.5 ft. and 5 ft. proposed) for construction of 2 driveway entrance pillars.

Diane Dreier, landscape architect, was present on behalf of her clients. She explained that they would like to accent their driveway with 2 pillars and some small walls. She noted that the pillars will be on private property and the proposal is a commonly employed treatment that is part of a larger plan to realign the driveway and construct a trellis screen to create a courtyard effect. Ms. Dreier added that landscaping will be employed also.

Chairman Ivanhoe noted there will be no gate. He asked where the pasture fence and screen fencing will be.

Ms. Dreier said the pasture fence will be parallel to June Road and will make a quick turn although it won't continue all the way up the side. She indicated on the site map where the trellis (screen) fencing will be built near the house.

Mr. O'Leary noted a row of spruce trees on the south side of the property.

Ms. Dreier said they are 2 inches in caliper which is very small, and they are in poor condition.

The Chairman asked if creation of the new driveway will require removal of any trees, and Ms. Dreier responded that it will not.

Chairman Ivanhoe commented that the curved drive will be much nicer than the existing drive.

Mr. Monti asked if lighting is part of the proposal.

Ms. Dreier said no lights are planned, but she asked what would happen if her clients decide later on that they want lights.

Mr. Monti said if the lights were to be installed on top of the pillars they would add to their height. He said the Board would also have concerns about the affect of the lights on the neighborhood.

Ms. Dreier said she might have to apply for another variance in the future if her clients want light fixtures on the pillars. She stated that there is an “announcer” at the entrance which rings inside the house.

Mr. Thompson said he was glad the subject of lighting came up, because approvals are based on submitted plans. He asked if there will be a gate in the trellis fence, and Ms. Dreier said there will not.

Mr. Thompson said he asked because of the need for emergency personnel access. He also pointed out to Ms. Dreier that the “good” side of the pasture fence must face outward (boards across the front/face of the posts).

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

Mr. Reilly read a draft resolution, including the conditions that there be no lighting, no gates, and the pasture fence must be constructed good-side-out.

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 conditions per discussion and agreement.

BA11-27 Julie M. and Charles-Louis deVaulx (4 Lost Pond Lane) – **Area Variance** – To decrease the minimum front yard setback and increase the maximum height of a fence in a front yard in an R-4 zoning district per Article V Section 250-15 and Article VI Section 250-22. Additionally, per Article VI Section 250-23, the front yard line of a property on a non-public road shall be 25 ft. from the center line of the road. A front yard setback variance of 25 ft. (75 ft. required; 50 ft. proposed) is requested for installation of a generator, and a height variance of 4 ft. (4 ft. required; 8 ft. proposed) is requested for a fence.

Peter Muentener, contractor, addressed the Board, saying that his clients are proposing to have a generator pad constructed adjacent to their garage. He explained that the house is positioned sideways on the lot, and the location near the garage and electric panel makes the most sense.

Chairman Ivanhoe stated that when he met Mr. Muentener at the site, they discussed timing of the generator test-runs.

Mr. Muentener said the deVaulxs are away, but the Chairman recommended planning the 20-minute/once-a-week test-runs during rush hours/not in the middle of the day. He stated that the generator is propane-fueled, which is somewhat quieter than than one powered by oil. He said the deVaulx property is far from others, and they own the lot across the street.

The Chairman agreed, stating that noise impact on neighboring properties would be minimum. He added that if the generator is tested during a busy time of day, it should not bother any one.

Mr. Muentener said he was sure his clients would agree, as they wouldn't want the noise during quiet times either.

Mr. Monti noted that the generator is a fairly quiet machine.

Mr. Muentener said it is pretty quiet, and the screen fence to be built will further muffle sound.

Mr. Monti commented that the deVaulxs neighborhood is a gorgeous quiet area. He asked what the capacity of the generator is.

Mr. Muentener answered that it is 80 kilowatts.

Werner Muentener said that is more than the household needs, but a generator with less capacity was not desirable.

Peter Muentener said the dimensions of the generator are given on the submitted plan, and the fence will be approximately 6 in. taller.

Chairman Ivanhoe commented that the generator will not be visible above the fence, and he asked if the air-handler and compressor for the air-conditioning will be inside the enclosure also.

Mr. Muentener said they will.

The Chairman stated that the Board had received no correspondence from any neighbors. He noted the location of an existing septic tank and a proposed stone retaining wall on the plans, and asked if the enclosure will be behind the wall.

Mr. Muentener said it will, and the retaining wall will be landscaped.

The Chairman asked if there will be enough room between the septic tank and the proposed wall so construction of the wall won't disturb the set of the tank, and Mr. Muentener replied that there is enough room.

Chairman Ivanhoe asked if the wall will be built on a foundation, and Mr. Muentener said he thought so.

The Building Inspector said the retaining wall will need to be a floating wall, because a foundation may not be built so close to a septic tank.

Mr. Monti asked where the propane tank is.

Mr. Muentener explained that the new tank (not on the plan) was installed underground and about 20 ft. from the property line.

Mr. Monti asked what the rule is for buried tanks, and Mr. Thompson replied that they must be 10 ft. from the property line.

Mr. Monti asked what protection there is against corrosion and leakage.

Mr. Thompson explained that 2 anode bags were installed with the 1000-gal. tank to protect against corrosion per the tank-manufacturer's instructions.

Mr. Monti asked how long the anode bags last.

The Building Inspector said that as far as he knows they last indefinitely. He added that the location of the tank will be marked on an updated survey and the Fire Department will be notified of its location.

Noting there were no further questions, 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
Mr. Monti: Aye
Chairman: Aye

Area variance granted, as requested.

The Chairman closed the meeting at approximately 9:10 pm.

Respectfully submitted,



Janice Will, Recording Secretary