

**Town of North Salem
BOARD of APPEALS
Public Hearing
August 11, 2011
8 p.m., The Annex**

MEMBERS PRESENT: Cynthia McKean
William Monti
James Murphy
Brian Ivanhoe, Chairman

MEMBER ABSENT: Richard O'Leary

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

Chairman Brian Ivanhoe called the August 11, 2011 Town of North Salem Zoning Board of Appeals meeting to order.

The Chairman set the next meeting for Thursday, September 8, 2011.

Chairman Ivanhoe stated that Mr. Thompson wanted to go over some things from the July 14, 2001 meeting minutes before the Board approved them.

Noting that he had not been present at the July meeting, Mr. Thompson said he had 2 comments to make. Regarding BA11-30 (Amus), the Building Inspector said it was represented that he had told the applicants it would be okay to put hay bales along the fence line, which is not accurate. Mr. Thompson said he advised the Amuses to employ hay bales to support the silt fence in front of the property, but he would not have authorized them to put the bales where they would interfere with natural water flow.

Regarding BA11-24 (Swanson), Mr. Thompson said that he met with James Davis and Richard Swanson last month per the ZBA's July approval of the area variance application. The Building Inspector said Messrs. Davis and Swanson were present now at the August meeting, because he called to explain to them that when he met with them at the subject property, he had not known what had transpired at the July ZBA hearing beyond what they told him.

Noting that he met with them in the office and at the site, Mr. Thompson said that at their site meeting, Mr. Davis and Mr. Swanson said the violation cited only the Litter Ordinance. Mr. Thompson was speaking of the condition of the buildings on the subject property, but the litter ordinance does not address that. He stated that he looked at the debris/rubble around the main barn, but there are 2 more barns near the road and 3 other buildings on the property. The understanding of Messrs. Davis and Swanson was that the ZBA was

concerned only with the conditions around the main barn/not the other buildings. Mr. Thompson said it was not clear to him at the time whether the Board was only considering conditions around the main barn, and also whether they were concerned only with litter or the condition of the buildings. Upon reading the meeting minutes, Mr. Thompson got the impression that the Board was concerned about the condition of all the buildings.

The Building Inspector said he did not know how to address the situation, because the Litter Ordinance does not address the building-condition issue. He stated that New York State Building Code exempts farm buildings from adherence; however, the Property and Maintenance Code applies to the condition of agricultural buildings as well as all others. Wanting to confirm this Mr. Thompson called the Department of State, and was informed that the Property and Maintenance Code does apply to ag buildings. Mr. Thompson said he called Mr. Davis to explain the conclusions he had come to, and he wanted to describe now what has transpired since the July meeting, adding that he told Mr. Davis that he and his client could attend the meeting if they wanted to hear what he says. Mr. Thompson said he wanted clarification too; as he understood it from the draft minutes, Mr. Swanson was given the choice of having the Board's decision put off until the September meeting with the understanding that they would clean up the premises, or get a conditional approval that left it for the Building Inspector to say he was satisfied with the clean up before a building permit would be issued. The applicant chose the second option. The Building Inspector said he was unsure what he should do, and he asked the Board for clarification.

Chairman Ivanhoe said he understood the Building Inspector's question. He said he would give a sense of where he thought the Board ended up. He stated that there are 2 major areas of concern which the ZBA must address, one of which is public health and safety. The Chairman said that the conditions of the old buildings raised some concerns, to the extent that they are not adequately closed up, and could be a danger for neighborhood children (although they would be trespassing). He noted that Mr. Swanson put tarps on the main barn, and he asked the Building Inspector if he thought that was sufficient.

Chairman Ivanhoe went on to say that the Board would not like to see the property heavily posted or fenced to keep people out. He said he felt that the issue of public health and safety re free access to the buildings was addressed, at least for the main barn. He said there may be an issue with the other buildings, but the Board had wanted to see the violation satisfied. The Chairman stated that the Board had not realized that the violation dealt only with litter/the condition of the buildings would fall under the Property and Maintenance Code, but if they continue to have concerns about public health and safety due to the condition of the buildings, it is within their purview to seek a remedy.

The Chairman said that in addition to public health and safety, the Board must consider neighborhood impact, which they felt had been minimally addressed so far. It was noted by the previous Chairman as well by Chairman Ivanhoe himself that it is not outside the purview of the Board when they see an opportunity to right a situation, for them to try and have a positive impact in terms of improving the condition of the property when an applicant is before them for a variance. Chairman Ivanhoe said he thought the Board had felt when granting the conditional variance that these things would be addressed on the subject property under the auspices of litter and public health and safety, but they now

know that the Litter Ordinance does not apply to the condition of buildings. He said the Board would still want to see some improvement in the areas around the main building, noting that the Building Department would deal with the litter.

Chairman Ivanhoe asked if Mr. Thompson was seeking the Board's opinion about enforcing the Property and Maintenance Code in terms of the resolution.

Mr. Thompson asked if in granting the conditional approval, the Board expected the condition of the buildings on the subject property to be dealt with.

The Chairman stated that it was expected to the degree that they posed a threat to public health and safety, i.e. closing up any open buildings, taking care of any buildings that appeared to be in danger of collapsing, etc. He said the Board recognized that any further improvement to the barn couldn't happen without a building permit, which wouldn't be issued until any outstanding violations were satisfied and the variance granted.

Mr. Thompson said the main barn requires a building permit and an area variance because it is to be added on to. Because the other buildings already exist, no building permit is needed to repair and improve them as long as they remain non-residential farm buildings. He added that there is also no zoning issue because the buildings already exist. The Building Inspector stated that this is not to say that Mr. Swanson is not required to maintain the buildings per the Property and Maintenance Code.

Chairman Ivanhoe asked how that code is to be enforced. He said the ZBA tries to fix wrongs or require improvements, but he is not sure they can go on to the condition of the other buildings not requiring the area variance/not included in the application.

Mr. Thompson stated that the only effect to be had would be if the Board made it part of the conditions in the resolution that those items be addressed. As far as applying the Code, usually he meets with a property-owner to outline expectations. He said if the property-owner agrees to what is asked it doesn't go any further. If the property-owner resists, the Building Department must pursue enforcement via the Property and Maintenance Code. Mr. Thompson stated that if only the main barn is being considered and the Board wants to keep to cleaning up of rubble/debris around the property as it pertains to the Litter Code that is fine.

The Chairman asked if the Building Inspector meant debris anywhere on the property, and Mr. Thompson said that was correct/it is how the violation was worded.

At this time William Monti suggested that the Board skip ahead to hear the one new agenda item, as the discussion of BA11-24 was taking quite some time.

Chairman Ivanhoe agreed and stated that the Board would table the discussion for the time being.

BA11-31 Fran Megerdichian (368 Mills Road) – **Area Variance** – To decrease the minimum rear yard setback in an R-4 zoning district, per Article V Section 250-15. A rear yard variance of 80 ft. is requested (100 ft. required; 20 ft. proposed) for installation of a storage shed.

Ms. Megerdichian addressed the Board, stating that she and her husband are currently renting the subject property from Tim Purdy. She said Mr. Purdy provided a letter authorizing her to make application to have a factory-built shed installed on the property. Ms. Megerdichian stated that there is only one neighbor/the property backs onto the Titicus Reservoir. She explained that the shed is only 8 ft. x 12 ft. and she doesn't think it will detract from the neighborhood scenery.

Chairman Ivanhoe noted that the shed will be red to match the house, and he asked why Ms. Megerdichian wants to have it installed so close to an existing post-and-rail fence. He added that he thought it could be moved out of the required setback altogether.

Ms. Megerdichian replied that she thought it would be less noticeable in the corner near the fence, and Mr. Purdy had suggested she have it put there.

Mr. Monti commented that the proposed location is a good choice. Noting that Ms. Megerdichian is renting the house, he asked if she intends to leave the shed on the property when she moves away.

Ms. Megerdichian stated that she has a good relationship with Mr. Purdy. She said she is willing to leave the shed, but she will take it away if Mr. Purdy doesn't want it on the property when she leaves.

Noting there were no further questions or comments, the Chairman closed the public hearing. He stated that as there were no special conditions to be imposed, the variance would be granted for the setback reduction as described in the application.

Motion by: *Cynthia McKean*
Seconded by: *William Monti*

Ms. McKean: *Aye*
Mr. Monti: *Aye*
Mr. Murphy: *Aye*
Chairman: *Aye*

Area variance granted, as requested.

The Chairman stated that the Board would return to the subject of the Swanson area variance.

Mr. Thompson noted that the discussion was suspended while he was trying to get a clearer picture of the Board's approval of the variance. Now that he knows what the Litter law applies to and that the only way he can pursue the condition of the buildings is via the Property and Maintenance law, he will do that. He said he needed to know if the Board

wanted to leave that as a separate issue and only include conditions regarding the litter/debris on the property.

Chairman Ivanhoe said North Salem is still an agricultural community including older farms, and there are still some haying operations. He stated that if the site is kept reasonably well-maintained and the buildings are not a threat to public health and safety, abandoned farm buildings in the landscape may not have a negative impact on the neighborhood; if a property is not cared for/becomes overgrown and buildings become hazardous, he feels differently. The Chairman stated that if Mr. Thompson feels the other buildings on the property require maintenance for safety reasons, the Board should be concerned also. He said simply not liking the look of old farm buildings is not something for the Board to get into.

Mr. Thompson said he just needed to know if the condition of the other buildings is part of the Board's conditional approval or not.

The Chairman said he did not make a close inspection of the entire property. He did want any health and safety issues addressed, and he added that impact on the neighborhood would seem to be covered by the Litter Ordinance.

The Building Inspector stated that from a Property and Maintenance Code perspective, all 5 other buildings (not including the main barn that is being worked on) require work. He noted that some buildings need more work than others, adding that the 3 buildings toward the interior of the property are in worse condition than the buildings near the road/all present issues under the Property and Maintenance Code.

Chairman Ivanhoe said the Board was most concerned about the buildings near the road.

Mr. Thompson said that if the applicant doesn't do anything about the condition of the buildings, he could post them as unsafe by going through the Town Board. He said that in addition to a hoped-for agreement by Mr. Swanson to address the condition of the buildings perhaps some of them should be razed, but each requires some attention.

Chairman Ivanhoe said he thought the spirit of what the Board agreed to in the conditional resolution was that those issues clearly evident and those raised by the Building Inspector would be addressed and some agreement about dealing with them would be reached. As the Building Inspector had not been at the meeting, the Board did not have the benefit of his opinion and advice. Reviewing the minutes, the Chairman said it was clear that Mr. Davis was to meet with the Building Inspector.

Mr. Davis said he recalled the choice offered at the July meeting. To deal with the violation, Mr. Davis had told the Board that he would meet with Maureen Eckman (Assistant Building Inspector) the following Monday to go over what she wanted and get it done before the August meeting. He said he had not known she was going on vacation, but he spoke to Mr. Thompson (about a week and a half later/Mr. Thompson was out with a back injury), and they met at the site (after a meeting at the Building Department). They discussed what would need to be done to clear the violation and not lose the area variance. Mr. Swanson would do whatever the Building Inspector wanted with regard to

littering and the violation, and Mr. Davis felt that had been done. It was Mr. Davis' opinion that the other buildings are a separate matter.

Chairman Ivanhoe said it does not appear that all the litter has been cleared.

Mr. Davis said he never received a list of what was required.

The Chairman said he thought a list could be provided by the Building Inspector.

Mr. Swanson said everything was done.

The Building Inspector said he went out to the subject property to see what was done. He told Mr. Swanson there are materials under a tarp at the south end of the barn that have been present for a while.

Mr. Swanson said the tarp is covering fence posts.

Mr. Thompson asked if the fence posts were there when Mr. Swanson was cleaning up his property.

Mr. Swanson said the fence posts are brand new and he will not get rid of them.

Mr. Thompson asked how long they have been there, and Mr. Swanson replied that it has been 3-4 years.

Mr. Thompson said the Litter Ordinance states that building materials not used within 6 months are considered abandoned/debris.

Mr. Davis said the fence posts are neatly stacked.

Mr. Thompson suggested the posts be put inside the barn if Mr. Swanson wants to keep them. He stated that there is some kind of wadded up fabric in the tall grass to the left of the barn. He further stated that there are a lot of unused sections of fencing leaning up against the fence.

Mr. Swanson asked where the fence sections are, and the Building Inspector responded that they are between the barn and where the fence runs parallel to the road.

Mr. Swanson said these are 4 gates, but Mr. Thompson said they have been there for years and are not being used so they are now considered litter.

The Building Inspector noted the presence of broken concrete slabs at the north end of the barn, now visible because Mr. Swanson was asked to cut back vegetation.

Mr. Davis said the broken concrete will be used to grade the area around the rear of the barn, so he does not want to have it taken away and then need to have it brought back.

Mr. Thompson said Mr. Davis should go ahead and grade the area.

Mr. Davis said that is the intent.

The Building Inspector said intent and actually doing something are 2 different things. He said the variance resolution directs him to issue a building permit conditioned upon specific things, and he wants to make the expectations clear.

Mr. Davis said his client was not before the Board for a building permit/they were there for a variance.

Mr. Swanson asked Mr. Thompson if he had mentioned these things at the site meeting. Answering his own question, he said "no", adding that he considered that the end of the discussion.

Mr. Thompson said he did not go over them then the way he was at this meeting. He looked the Litter Ordinance over very carefully, in part because Mr. Davis had said his client would comply with it.

Mr. Davis stated that the violation was written with something specific in mind, but it is being developed now/the "goal posts are being moved".

Mr. Swanson asked if the fence posts are litter because they are covered with a tarp.

The Building Inspector said they are litter because they have been abandoned/are not being used.

Mr. Davis said Mr. Thompson was describing something about the size of one of the rows of chairs in the courtroom.

Chairman Ivanhoe asked if the posts couldn't be moved inside the barn.

Mr. Swanson said this was never mentioned before.

The Chairman said he did not want it to seem as though the "goal posts were being moved", but the Board had not had the benefit of the Building Inspector's knowledge at the July meeting. He noted that the violation was written by the Assistant Building Inspector.

Mr. Thompson interjected that the violation was written on specific terms, i.e. the Litter Ordinance.

Mr. Davis said the violation notice defines what the violation is: an open building strewn with building material. He pointed out that the violation mentions one building.

Mr. Monti said that in June Mr. Swanson's variance application was stymied by the violation on the property. It was necessary to satisfy the conditions of the violation so that it will be removed and the variance granted.

Mr. Davis said that was not correct; a waiver granted to his client by the Town Board is good for 6 months.

Mr. Monti said the ZBA's granting of the variance was conditional/it is the applicant's obligation to satisfy the Building Inspector.

Mr. Davis said he understood that, but he did not know what he was being asked to do. He said the Building Inspector was now bringing the Property and Maintenance Code into the discussion.

Mr. Monti said Mr. Swanson still has the violation; when that has been satisfied, he can go forward. Now, under closer inspection, other issues have come up/other buildings may be in violation of the Property and Maintenance Code. This will have to be addressed.

Mr. Davis asked if it was up to the Board of Appeals to decide this.

Mr. Monti said it is for the Building Inspector to decide/it is not tied to the variance. He stated that the obligation is to satisfy the violation and deal with the conditions of the buildings. He went on to say that if the buildings on the property are an attractive nuisance to children and someone is hurt, Mr. Swanson is culpable for that. Mr. Monti said the Building Inspector faces culpability also if he has identified a problem and does not take action to get Mr. Swanson to correct it.

Mr. Davis said he understood that.

Mr. Monti said Mr. Swanson must satisfy the violation and any Code requirements.

Mr. Swanson stated that 2 other buildings are locked/no one can get into them and there is no litter around them.

Mr. Davis said his concern was that his client was given one month to comply and they had hoped they had done that. He said they were to meet with Ms. Eckman and within a month they were to deal with everything she talked about. She was not available and Mr. Thompson was out sick, so they lost about 10 days.

The Chairman said the Board could extend the time period.

Mr. Swanson asked if the problem is some covered up lumber and a canvas on the ground.

Chairman Ivanhoe asked why not put the things in the barn/it would take half a day.

Mr. Swanson said August 11 was the deadline.

The Chairman said he could have more time, but it was unreasonable of Mr. Swanson to say he doesn't want to move lumber that has been out on his property for 3 years.

Mr. Swanson asked why the Building Inspector had not told him about these things at the site meeting.

Mr. Davis asked if the Building Inspector would put in writing what he wants done.

Mr. Thompson said he would list the issues: first, the lumber under the tarp is rubble.

Mr. Swanson said there have been materials and equipment on the property next door for 6 years.

The Building Inspector stated that the difference is that the materials on Mr. Swanson's property are unused. He said the second item on the list would be the canvas or tarp on the ground.

Mr. Swanson said he was getting annoyed.

Mr. Thompson said specifics were requested and he was providing them. Third on the list was the concrete rubble behind the barn. He said Mr. Swanson could go ahead and grade it out/no building permit is necessary. Next were the gates.

Jim Murphy stated that the Building Inspector should put the items in writing to avoid further confusion. He added the discussion was becoming a "he said/she said" situation; a written list would be definitive.

Mr. Thompson agreed to put the list in writing.

Mr. Swanson began to complain about moving the broken concrete, but Mr. Davis reminded him that they have permission to grade it out.

The Building Inspector said that was correct, although any excess/unused concrete debris would have to be removed.

Ms. McKean expressed concern that the very long grass around the buildings could still be concealing debris.

Mr. Davis said the grass had all been mowed and asked Ms. McKean if she meant at the back of the building.

Ms. McKean asked if there is anything under that grass.

The Building Inspector said he would have no way of knowing.

Mr. Davis said that is where the concrete rubble is.

Ms. McKean asked if the grass couldn't be weed-whacked so someone could see what else might be there.

The Building Inspector said that in the winter when the grass dies back, all the rubble would be visible once again. He said he does not want to deal with the consequences then/it is why it should be dealt with now.

Mr. Davis said the area is going to be graded.

Chairman Ivanhoe asked how much time Mr. Swanson wants, adding that the list of things to be done could be provided the following day.

Mr. Swanson said that if his contractor couldn't get to the work right away, he thought he'd just have to board the building up. He said the contractor had done him a favor by bringing in helpers and mowing all the grass in 2 days. The grass at the back of the barn was left so no one would walk out into the rubble.

The Chairman asked again how much time he needs, but Mr. Swanson replied that he could not say because the rubble work is a big job and his contractor is very busy.

Mr. Davis said he thought they would need to ask for at least 4 weeks or maybe 2 ZBA meetings' worth of time.

Chairman Ivanhoe asked if the rubble work will require machinery larger than a tractor, and Mr. Davis said it will.

The Chairman asked if the other 3 things on the list could be accomplished, and Mr. Davis said he thought so.

The Chairman said he thought the Board's attorney would say they could proceed if at least the 3 smaller tasks were to be accomplished soon. He suggested 2 weeks for those jobs and maybe 4 weeks to get the contractor with a machine for the rubble work.

Mr. Swanson said he did not know/the contractor is busy with a job next door.

Mr. Davis said he does not think the buildings are dangerous and some people find them attractive.

Mr. Swanson stated that the collapsed corn crib has been completely grown over and can't be seen. He went on to say that he knew his neighbor had caused him all this trouble because he saw her letter. He said another neighbor, Mrs. Rosen, said his land looks nice.

The Chairman suggested that the contractor might be able to get someone else to help Mr. Swanson with the rubble quickly, but Mr. Swanson said he won't use anyone else.

Chairman Ivanhoe said he was sure the contractor (whom he knows) could get a machine fairly quickly if Mr. Swanson told him it was important, certainly within a month.

Mr. Swanson thought the Chairman was talking about some stones elsewhere on the property, but when it was pointed out that the discussion was of the rubble behind the barn, he said that would not be moved any where because it is to be used as fill.

Mr. Swanson said there is another big pile of stones in the north corner that the contractor will bring over to put under the grading at the rear of the barn, but he is not going to be able to do it now. He stated that it looked as though he would not get the variance.

The Chairman conferred with Deputy Chairman Monti and told Mr. Swanson that they want to stay within the purview of the Board of Appeals so that Mr. Swanson will get his variance. He said he thought a month would be sufficient to take care of the 3 lesser items on the list.

Mr. Davis asked if he could have the letter from the Building Inspector faxed or e-mailed to him, and Mr. Thompson said he would do that.

Chairman Ivanhoe said he would need to speak to the Board's attorney about extending the time if some but not all the work is accomplished in a month, adding that he thought Mr. Swanson wanted to get the work done.

Mr. Swanson said winter is coming, a busy time for him, so he wants to work now.

Chairman Ivanhoe asked if a month would be enough time.

Mr. Davis said he thought so. He commented that if they are working toward completion but not finished in a month, he hoped the ZBA would be reasonable.

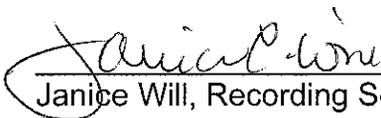
Mr. Swanson asked if the Building Inspector wants the lumber moved indoors, and the Chairman said that was right.

Chairman Ivanhoe asked for a motion to approve the July 14, 2001 meeting minutes.

Motion by: William Monti
All in favor.

At this time, the Chairman closed the meeting.

Respectfully submitted,



Janice Will, Recording Secretary