

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

MEMBERS PRESENT: Cynthia McKean
William Monti
Brian Ivanhoe, Chairman

MEMBERS ABSENT: Richard O'Leary
James Murphy

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

Chairman Brian Ivanhoe called the October 13, 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 also noted that Gerald Reilly, counsel to the Board, was not present, although the Chairman did not anticipate any difficulty in the preparation of resolutions since they are drafted by the secretary.

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

The minutes of the September 8, 2011 meeting were unanimously accepted.

PUBLIC HEARINGS

BA11-39 Nina Eisenman (224 Vail Lane) – **Area Variance** – To decrease the minimum front yard setback in an R-4 zoning district per Article V Section 250-15. A setback variance of 15 ft. is requested for installation of a generator (75 ft. required; 60 ft. proposed).

Nina Eisenman and Philip O'Brien, contractor, were present. Ms. Eisenman explained that she wishes to have an emergency generator installed in an area behind a stone wall next to her driveway where it will be blocked from view and have convenient access to the electrical system in her house. She stated that if the generator were to be installed outside the setback, it would have to be right in front of her garage door.

Chairman Ivanhoe asked if the generator will run from an above-ground fuel tank.

Mr. O'Brien replied that a 250-gallon above-ground tank will be installed by Heritage Fuel. He explained that the low, horizontal tank will not be visible from the road, whereas an upright tank would be.

The Chairman asked how long 250 gallons of propane will last.

Mr. O'Brien stated that his client only uses the house on weekends and is really just concerned about having heat, so the 20-kilowatt generator will only use about 1.25 gallons per hour. He further explained that a device can be installed on the tank that will call the propane company when the supply is running low.

Chairman Ivanhoe said there are also alarm systems that will call the property-owner when there is a power outage, and Ms. Eisenman said she would like to have some thing like that.

William Monti said there are also alarms that will call when the temperature in the house falls.

Cynthia McKean asked if the proposed site for the generator is far enough away from the house.

Mr. O'Brien said it must be at least 5 ft. away from the house, and he will install it so that the exhaust is turned away from the house.

Ms. McKean explained that she was concerned because there were emergency carbon monoxide exposure calls during the recent prolonged power outage.

Mr. O'Brien explained that that occurs when a generator is improperly installed. He stated that he is a licensed Generac representative. Their specifications are that this unit must be installed at least 5 feet away from any openings with the exhaust aimed in the opposite direction, and he will do the job properly. Mr. O'Brien stated that some towns require a greater separation distance than the manufacturer.

Chairman Ivanhoe said he thinks the calls were about larger units, one having been about 100 kilowatts.

Mr. O'Brien commented that another problem with larger units is that their exhausts are usually on top/go straight up.

Mr. Monti asked if the generator has an automatic test cycle.

Mr. O'Brien said the unit is set to run for 12 minutes once a week. He explained that the unit is computerized, and the weekly run may be scheduled for whatever day/time and length of run is desired.

The Chairman asked at what time the generator will be scheduled to run, pointing out that the Board tries to minimize disturbance to neighbors.

Mr. O'Brien said the generator runs at ¼ speed (exercise mode), which is very quiet, and the stone wall will also muffle the sound.

Ms. Eisenman asked what time of day the Board would like the test-run scheduled for, and the Chairman said mid-day is a good time.

Mr. O'Brien said he would like to schedule the generator to run at noon on Saturdays when Ms. Eisenman is there, so she will hear that it is working.

Mr. Monti said he assumed there will be no load carried during the test.

Mr. O'Brien replied that Mr. Monti was correct; the test run is to exercise the generator and heat it up to eliminate condensation that has built up inside the crank case because the generator is outdoors. He said load-carrying can be tested by shutting off the main circuit breaker and letting the generator transfer power for a half hour or so every couple of months.

Mr. Monti asked if the proposed set-up meets all requirements for spacing between the house, generator and propane tank, etc.

The Building Inspector stated that spacing would be according to the manufacturer's requirements.

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

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

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

Area variance granted, as requested.

BA11-40 Chinh Chu/ZHW1 Realty LLC (218 Titicus Road) – **Special Permit** – For the construction and maintenance of an accessory apartment in an existing accessory building (garage) per Article XIII Section 250-68.

Emilio Salandra, contractor, and Yutaka Takiura, architect, were present for the property-owner. Mr. Salandra stated that the two-story garage was already present when his client purchased the property; he merely wants to finish the upstairs and part of the garage area now. Mr. Salandra also mentioned that when one of the Board members came out to see the property/garage, he took him inside to show him.

Bruce Thompson said the accessory apartment was approved by the ZBA years ago for the previous owner, who then decided not to build the apartment. Mr. Thompson explained that he told Mr. Chu he should come to the ZBA for a new special permit because the plans for construction of the garage were amended to exclude the apartment and there is no Certificate of Occupancy for an apartment, although the apartment was framed out.

Chairman Ivanhoe asked if the proposed apartment is different from the one approved in the past, and the Building Inspector replied that the new plans may call for a different interior.

Mr. Salandra said there is no change from the original apartment plans. He added that a separate septic system for the apartment is already being installed.

Mr. Thompson stated that once the Department of Health issues a permit for a septic system and a building permit is subsequently issued within one year of the DOH approval, that approval remains in effect.

Chairman Ivanhoe noted that the application states that the apartment will be for house guests or workers, and he assumed it will not be used as grooms' quarters.

The Building Inspector said the Chairman was correct. He added that the finished space will be considered an apartment/not merely guest quarters because it will have a kitchen.

The Chairman noted that there will be sufficient parking. He said he assumed the septic would be for 2 bedrooms.

Mr. Thompson said that was right. He reminded the Board that a special permit for an accessory apartment requires the property-owner to reside on the property, either in the main dwelling or in the apartment.

Mr. Monti asked if a carbon monoxide detector will be required.

Mr. Thompson said a carbon monoxide detector, smoke detectors and a fire separation between the garage and the apartment will all be required.

Mr. Monti asked if there is any special requirement because the apartment is over a garage, and Mr. Thompson said no, except for the fire separation.

Chairman Ivanhoe stated that the Town encourages accessory apartments as a means of providing alternative types of housing.

Mr. Monti asked if there is intent to rent the apartment, but Mr. Takiura said it will only be for personal use/not rented.

The Chairman asked Mr. Thompson if there is any maximum occupancy for an accessory apartment.

Mr. Thompson said there is not, although the approved septic is limited to 2 bedrooms. He said the square footage of the apartment as a percentage of the total square footage of the house should be noted. He explained that although the Zoning Code states that accessory apartments may have maximum square footage of 750 sq. ft. or 20% of the square footage of the main house, whichever is less, it also states that the Board has the authority to permit a larger size apartment, which they have done in the past when the main house is very large.

It was noted that the main house consists of nearly 15,000 square feet, and the apartment will have approximately 1600 sq. ft. (less than 20% of the size of the house).

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

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

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

Special permit granted, as requested.

Discussion: Consistency in Notification Requirements for Board of Appeals Applications, per Town Code Appendix A261.4 (Special Permits) and A261.5 (Variances).

Mr. Thompson said he wished to discuss the notice requirements for special permits and area variances. Recently, a Town resident came into the Building Department with an issue about a variance that was granted to a neighbor in Bloomerside. The resident had not received official notice of the application. Handing out copies of a page from the tax map, the Building Inspector explained that applicants are responsible for notification of neighboring property-owners within 200 ft. of the subject property's borders, although the distance is 50 ft. in the Peach Lake co-ops. Applicants go to the Assessor's Office to work up a list of people to be notified. It recently came out that as there are no individual lot-lines for houses in the co-ops on the tax map, the Assessor has been advising applicants to measure 50 ft. from the house. *(This was how the resident mentioned above was missed by the Notice.)*

When this issue arose, the Code was examined further. It appeared at first as though applicants for variances needed only to provide a list of neighbors within 500 ft. but not to send notices. On reading further, the variance section of the Code actually refers the reader back to the notification requirements for special permits. Mr. Thompson said he felt it appropriate to discuss these points so the Board will know what constitutes public notice. The attorney for the Board, Gerald Reilly, told him that the Board of Appeals has the authority to make their own rules and regulations, so this subject may be discussed and changes considered.

The Chairman asked if the Building Inspector meant changes to the Code.

Ms. McKean asked if the Building Inspector meant that applicants are responsible for notification and what proof of notification they provide.

Applicants are responsible for notification. The secretary said they provide Post Office receipts with their applications and as many green return post cards as they receive are turned in at the hearing.

Mr. Thompson said he thought it was important that the Board is clear about applicants' responsibility, so they are never taken by surprise. He asked them to take some time to think and also to continue the discussion with Mr. Reilly present. Mr. Thompson said he and the secretary feel this area contains some confusion and needs clarification. He went on to say that the Town is moving closer to requiring surveys of all the co-op proprietary lease lots, and Vails Grove has accomplished this task.

Patti Butler, an owner of property in Bloomerside, said she does not think that co-op is getting surveys yet.

Mr. Thompson said there is an overall survey of Bloomerside which at least provides a take-off point. He said the co-op farthest behind is Pietsch Gardens. He pointed out that the Zoning Ordinance recognizes the proprietary lease lots as fee-simple/they are given status equivalent to property lines. The notification process becomes complicated because the lines are not on the tax map, which is why the Assessor has instructed people to measure from the houses.

The Chairman asked if Mr. Thompson had said that special permits require notices but area variances do not.

The secretary explained that the Code section on variances refers the reader back to the section on special permits for notification requirements. She said a real point of confusion is that, although the Code says notices must be sent to owners of property within 500 ft. of the subject property, the Board has required notification of properties within 200 ft. since the early 1990's.

The secretary further explained that, upon examination of past applications, it appears that the requirement went from a 500 ft. notification area for applications to a change in the form letter provided by the ZBA, wherein there was a choice of 500 ft. or abutting properties. She said it looks as though 500 ft. was for special permit notices and just abutting properties were used for area variances. Around 1991, applicants were crossing out 500 ft. and hand-writing 200 ft. or 50 ft. in the co-ops. The secretary assumed applicants would have been instructed to do this and not taken it upon themselves.

Chairman Ivanhoe wondered why reduce the notification field from 500 ft. to 200 ft. for properties not in the co-ops.

The Building Inspector said the Code should be specific/spelled out in both the special permit and area variance sections, especially if it is decided that they should have different notification areas.

Mr. Monti agreed with the Building Inspector that the Code should be specific in the area variance section. He asked if perhaps the notification area (excepting the co-ops) should be 500 ft.

The secretary commented that the Planning Board requires notification within 500 ft. of the subject properties, but she feels their applicants are seeking things more likely to have a wide-reaching effect on other properties.

The Building Inspector thought the Board only needed to ask where there has been a problem with notification within 200 ft.

The secretary pointed out that it now costs over \$5 to mail a letter Certified/Return Receipt Requested; enlarging the area to be notified could be quite an expense for applicants.

Ms. McKean said she thought a use variance could have a big impact on other properties and might merit a 500 ft. notification area.

Mr. Thompson said the Board could require 500 ft. notification for use variances and 200 ft. for area variances.

Chairman Ivanhoe agreed that use variances would often have more neighborhood impact than area variances, and he supported the idea of a wider notification area.

Mr. Monti said he would like to see surveys required that show the surrounding properties within 200 ft. so the proposed action can be viewed in terms of other properties.

The secretary suggested that including the appropriate page of the tax map would be helpful, and the tax lots even have outlines of buildings on each lot.

The Chairman commented that it would be expensive for people to have to provide surveys with all the neighboring properties included/labeled. He also noted that sometimes people provide only partial surveys.

The Building Inspector stated that the tax map is to-scale; small but accurate, and could be employed to show neighboring properties. He went on to say that a field inspection is the best way to see something.

Mr. Monti countered that it is good to have something on paper for the record/future reference, but he does not want to cause people undue expense, so he said he would be glad to see the tax map section included in applications.

The Chairman noted that the special permit section of the Code states that the Chairman or his designee reviews the applications for completeness. He said he was not aware that that had ever been practiced.

The secretary said she believes she/her predecessors have been acting as the Chairman's designees for a very long time.

Mr. Thompson said an effort is made to convey to people the need to make clear what they want to do by providing enough and useful information.

The group discussed some particularly good/complete applications they have received, as well as some that have been confusing.

The Chairman noted that the Board tries not to hold people up/deals with applications in one hearing whenever possible, but sometimes when an application has not really been complete, the hearing has gone on longer. He asked if the ZBA should consider warning applicants that if their submissions are deemed incomplete, they may be sent home to complete them.

The Building Inspector and the secretary both said they always try to encourage applicants to provide sufficient and clear information, but some people are hard to move.

Mr. Thompson said that, hopefully, word would begin to spread that incomplete/insufficient applications will be returned. He added that he has been asked by applicants if they should have their applications handled for them. His response has been that they need to be comfortable with their own decision. He said that if the ZBA requires changes to a submission, the applicant should go back and make the changes, and return to the Board at their next meeting. Mr. Thompson said this would be preferable to trying to work out a lot of new details at the meeting/get it all written down.

Chairman Ivanhoe commented that more complicated applications have mostly been well put together, or the applicant has been sent back to address shortcomings. Such an applicant would then return with more specific information to make the application actionable.

Mr. Monti asked if the Town Board would have to vote to make changes to the Town Code.

The secretary said she thought Mr. Reilly's point was that the ZBA may make procedural changes without asking to have the Code changed.

The discussion wound down with the intent that it should be continued and decisions reached to make notification practices clear and consistent, and the meeting was adjourned.

Respectfully submitted,



Janice Will, Recording Secretary