

BOARD of APPEALS
Public Hearing
January 12, 2012
8 p.m., The Annex

MEMBERS PRESENT: Richard O'Leary
Cynthia McKean
William Monti
James Murphy

MEMBERS ABSENT: Brian Ivanhoe

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

Acting Chairman William Monti called the January 12, 2012 Town of North Salem Zoning Board of Appeals meeting to order.

Mr. Monti set the next meeting for Thursday, February 9, 2012.

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

PUBLIC HEARINGS

BA12-01 Marvin Stamm (130 Titicus Road) – **Area Variance** – To decrease the minimum front and side yard setbacks for installation of a generator and an above-ground LP storage tank per Article V Section 250-15 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-1/2 bulk requirements). A front yard variance of 13 ft. (36 ft. existing/required; 23 ft. proposed) and a side yard variance of 14 ft. (20 ft. existing/required; 6 ft. proposed) are requested.

Marvin Stamm handed Mr. Monti a letter from his nearest neighbor stating that there was no objection to Mr. Stamm's application for variances to install a generator and LP storage tank. Mr. Stamm said he received all but one of the return postcards from his Certified mailing, and he spoke to that person. This neighbor has been in Florida and said he approves of the application and will send in the green postcard when he returns from Florida.

Mr. Stamm said the Building Inspector had been out to look at the proposed sites for the generator and tank and made a suggestion to change the generator site which Mr. Stamm plans to do.

Mr. Thompson said the front yard setback variance is necessitated by his suggestion, but it is a much better place for the generator.

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

Mr. Reilly read a draft resolution, noting that the generator location was proposed by Mr. Thompson and that no neighbors objected to the application.

Motion by: James Murphy
Seconded by: Cynthia McKean

Mr. O'Leary: Aye
Ms. McKean: Aye
Mr. Murphy: Aye
Mr. Monti: Aye

Area variance granted, as requested.

BA12-02 Kara Lynn Rossi (11 Locust Road) – **Area Variance** – To decrease the minimum combined side yard and rear yard setbacks for an as-built shed per Article V Section 250-15 and Article XIV Section 250-79 (A) (because the non-conforming lot is subject to R-1/2 bulk requirements). A combined side yard variance of 28 ft. (15 ft./40 ft. required; 4.22 ft./12.86 ft. proposed) and a rear yard variance of 27 ft. (30 ft. required; 3.5 ft. existing/proposed) are requested.

Don Rossi, attorney and father of the applicant, stated that his daughter was requesting an area variance to legalize an existing shed. He explained that there had been an older shed on her property; when a neighbor offered to give her a shed, she replaced the old one with it. Mr. Rossi said his daughter had the approval of the Vail's Grove co-op board to have the shed.

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

Mr. Reilly read a draft resolution, noting that there had been no objections to the application and the shed was approved by the co-op board.

Motion by: James Murphy
Seconded by: Richard O'Leary

Mr. O'Leary: Aye
Ms. McKean: Aye
Mr. Murphy: Aye
Mr. Monti: Aye

Area variance granted, as requested.

BA12-03 Stephen Shepard and Lynn Povich (27 Dingle Ridge Road) – **Area Variance** – To decrease the minimum front yard setback in an R-4 zoning district for installation of a generator and an underground LP storage tank per Article V Section 250-15. A front yard setback variance of 72 ft. is requested (75 ft. required; 11.51 ft. existing; 3 ft. proposed).

Robert McBride, property-manager, addressed the Board, stating that the existing single-family dwelling on the subject property is non-conforming, and the proposed locations of the generator and tank were chosen to facilitate connection to the electric line to the house.

The Building Inspector stated that he had gone over the plan with Mr. McBride, and he is satisfied with the proposed locations for the generator and tank.

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

Mr. Reilly read a draft resolution, noting that the non-conforming residence is 11 ft. from the front property line.

Motion by: *Cynthia McKean*
Seconded by: *James Murphy*

Mr. O'Leary: *Aye*
Ms. McKean: *Aye*
Mr. Murphy: *Aye*
Mr. Monti: *Aye*

Area variance granted, as requested.

BA12-04 Baxter Road LLC (141 Baxter Road) – **Special Permit** – To amend existing Special Permit BA08-39 (commercial boarding operation for up to 13 horses) to include boarding, breeding and personal use of up to 29 horses, construction of a 16-stall barn and a garage with employee living quarters, modification of an existing sand ring and additional paddocks/fencing, per Article XIII Section 250-72.

Tasos Kokoris, architect, was present along with Matt Edmonds, owner of the subject property. Mr. Kokoris said that David Sessions, engineer, would be arriving shortly with maps of the subject property. Mr. Kokoris said he had met with the Board members during their site inspection the previous weekend, and Mr. Edmonds would like to go over the history of the property and clarify what he wishes to do now.

Mr. Edmonds stated that he bought 141 Baxter Road (the former Rose property) in April of 2007 and soon after purchased the former Ross property at 107 Baxter Road. Neither of the properties was encumbered with a conservation easement in 2007. Mr. Edmonds said he engaged an equestrian design firm late in 2007 to develop a master plan for expansion of the horse farm, and they provided several concepts for his consideration.

In 2008, through Carol Goldberg, Mr. Edmonds became involved with the North Salem Open Land Foundation. Mr. Edmonds said he wanted to see if he could do something to

help preserve scenic Baxter Road, and he noted that there are also tax benefits to providing a conservation easement. He said the plan to expand the horse farm includes a conservation easement that includes a section along Baxter Road, preserving the scenic views, limiting development on the 52+ acres to 2 lots, and expressly preserving his right to develop the horse facility/build agricultural structures on the property.

Mr. Edmonds stated that as part of the plan to expand the operation, he had an application before the Planning Board for a lot-line change, which was recently approved. He said he is now applying to the Board of Appeals for a new barn and related garage with employee housing. Mr. Edmond added that he wanted to make sure the ZBA is comfortable with the conservation easement's preservation of his right to expand the agricultural operation.

When David Sessions arrived, Mr. Edmonds asked Mr. Monti if he wanted him to review the diagrams, and Mr. Monti said he did.

Mr. Edmonds displayed a drawing of the 52.2 acre-property in its original configuration of one 25.9-acre lot with a house, pool, barn with apartment, indoor arena, sheds, paddocks and a sand ring and a second 26.3-acre lot with a house and garage.

Mr. Edmonds said that he and his wife decided against an earlier, too-commercial concept for the farm operation. A later design with unique access separate from the residence, a smaller equipment garage with accommodations and the buildings closer together was more what they had in mind. Displaying another drawing, Mr. Edmonds said he retained Kellard Sessions to outline what might be possible if he were to grant a conservation easement to the NSOLF. Commenting that the 52 acres could have been divided into at least 4 separate lots, Mr. Edmonds stated that the conservation easement was drafted to eliminate the possibility of developing 2 of those lots. He explained that the areas shaded in green encompass the proposed conservation easement, and he said the conservation easement document (also signed and agreed to by the Westchester Land Trust) clearly states what is permitted/what is not, and agriculture activities and farming and related buildings are allowed. Mr. Edmonds explained that he would be meeting with Jeff Morris and Gloria Stein of the NSOLF to make sure they are comfortable with what he is planning.

Turning to another drawing, Mr. Edmonds said that the approved lot-line change results in a 37-acre lot for the farm property and a 15-acre residential lot. He said he basically wants to have the larger lot with his residence and some existing facilities and a new barn and garage with a new driveway and access from Baxter Road for the farm operation. The other lot will be for a separate residence. *(This lot retains the existing residence and detached garage but is reduced in size by the amount of acreage added to the "farm" plus residential property.)* He said he is still discussing the layout of the interiors of the 2 new structures. Mr. Edmonds explained that the catalyst for acceleration of the plan was finding out that an existing employee apartment does not in fact meet Code requirements. He stated that he is happy to address this situation and do things legally.

Ms. McKean asked if Mr. Edmonds was seeking approval of the agricultural structures as well as housing.

Mr. Edmonds replied that he is proposing a trainer's residence above the barn and accommodation for grooms above the equipment garage.

Mr. Reilly said the conservation easement seems to state that Mr. Edmonds may build as many structures as he wants to as long as they are agricultural buildings.

Mr. Edmonds said that would be subject to approval by the Town, but Mr. Reilly said the Town's approval will not be required; the only thing that protects the conservation easement will be the wording of the easement agreement to be enforced by the Land Trust. He said he read it as permitting unlimited construction, maintenance and use of anything in the conservation easement as long as it is related to agriculture.

Mr. Reilly said his problem with the document is that there are minimal limits on agricultural uses in North Salem because it is in an Agricultural District. He said he wondered if the Land Trust is aware that it is unlimited.

Mr. Sessions said there are limitations with respect to the number of horses that may be kept on the property and on the number of employee dwellings on the land also. He said that to litter the property with structures his client would still have to treat for storm water and septic, so its use is also limited by the Health Department.

Mr. Reilly remarked that Mr. Edmonds wants to protect the scenic views, but a future owner could come in and put up numerous agricultural structures not requiring water and thus not requiring anyone's approval.

Mr. Edmonds said the limit on the number of horses and employee housing helps, adding that the onus would be on him to prove that his buildings are agricultural.

Mr. Monti said he thought Mr. Reilly's point was that a future owner's intentions might not be the same as Mr. Edmonds'.

Mr. Reilly said he was not saying whether the easement agreement is right or wrong. He suggested that in order to protect viewsheds, there could be certain parts of the easement where all building might be prohibited.

Mr. Edmonds said he saw the easement agreement as not providing him any more rights than he had before, and without the easement someone could put as many structures as they wish subject to the rules of the Town.

Mr. Reilly said that was correct, adding that he was not saying anything about Mr. Edmonds' plans except that he wanted to make sure people understand that Mr. Edmonds will be receiving a tax benefit, and the trust company holding the easement should not find out they've got a "pig in a poke".

Mr. Edmonds said the main value of the easement is that he will be giving up the right to develop the land by dividing it up into 4 separate lots.

Mr. Monti commented that this had been accomplished by the lot-line change, which Mr. Edmonds agreed was true.

Ms. McKean commented that the easement is intended to keep the land open/preserve views. She said the location of the farm expansion makes sense, but she is concerned that the agricultural endeavor will be "stretched" because the barn will be an agricultural building but dwellings are not. Ms. McKean also said that if the number of horses kept actually reaches 29, Mr. Edmonds may decide he needs more employees and housing. She asked why not legalize the existing apartment.

Mr. Kokoris said it was looked into, but the fire separation issues would be nearly impossible to deal with.

Mr. Edmonds said the living accommodations will all be accessory to the farm operation. He explained that he really needs the garage for equipment storage and a new barn. He said there is also a need for staff accommodation and a convenient/cost effective way to accomplish that is to finish the upper level of the new garage for housing and to create living space for the trainer in the barn.

Ms. McKean asked if the second driveway is permitted by the conservation easement.

Mr. Edmonds said there is a provision in the easement for carriage-ways to provide access. He stated that if there is concern about future development on Baxter Road he would welcome the Board's input/perhaps there are steps he could take to limit the ability to build on some of the land.

Mr. Reilly asked if Mr. Edmonds is meeting people from the Westchester Land Trust on January 19.

Mr. Edmonds replied that he will be meeting with Jeff Morris and the Land Trust on Monday (January 16). He said that the conservation easement agreement has been submitted, but he wants to hear that they accept and are comfortable with it as described.

Ms. McKean asked if Mr. Edmonds was saying that he is proposing not even agricultural development on the second lot.

Mr. Edmonds responded that he would be willing to discuss with his wife ways to do more to address the concerns raised. He said the scenic beauty of Baxter Road is important to all in the community, so perhaps he could reserve a strip of land for zero development. He added that he was not committed to this, but wanted to express his willingness to try and do something more.

Mr. Monti said he appreciated that. He remarked that he did not want to back Mr. Edmonds into a corner, adding that no one was saying anything different from what was discussed at the Saturday site inspection.

Mr. Reilly said Mr. Edmonds will need to return to the Board's next meeting because it has been discovered that he will require an area variance, so this will give the Board more time to consider the special permit application as well.

Mr. Thompson said he spoke at length to Mr. Sessions during the week about the plans. The latest revelation was a plan to construct an apartment on the upper level of the barn which was not included in the public hearing notice, so the notice will have to be run again. He said the advantage to coming to this ZBA meeting has been that the discussion has begun. Originally, the configuration above the garage was for living quarters for 3 grooms and a farm manager. He explained that the Zoning Ordinance considers employee living quarters to be housing for an employee of the property where there is a bathroom, bedroom and living space and access to a kitchen anywhere on the property.

The Building Inspector described past instances of multiple employee dwellings, and he said that essentially he counts each employee as a dwelling unit. People may share an apartment, but if there are 3 employees housed there, it is 3 dwelling units. He said the Zoning Ordinance limits the number of grooms permitted to 1 for every 5 horses and per 4 acres over an initial 10 acres, noting that Mr. Edmonds has the acreage for this. Mr. Thompson stated that 3 grooms, a farm manager and a trainer would constitute 5 employees to live on site.

Mr. Thompson went on to say that the Zoning Ordinance also only allows for a maximum of 3 employee dwelling units in a single structure; Mr. Edmonds' proposal is for 4, so it would require an area variance. The Building Inspector explained that other large farm operations have had to apply for area variances to allow them to have more than 3 employees housed in a single building. He stated that there are 2 reasons Mr. Edmonds needs to return to the ZBA: a new public hearing notice for the special permit application that includes the trainer's apartment over the barn; and an area variance to permit a fourth employee dwelling unit in the garage.

Mr. O'Leary asked if Mr. Thompson was saying that every bedroom equals an employee dwelling unit.

Mr. Reilly stated that per the definition in the Zoning Ordinance, each person constitutes a dwelling unit.

Mr. Sessions added that this applies to each person related to the operation as opposed to a child of an employee.

Ms. McKean reasoned that this would mean that either a family or a person is a dwelling unit.

Mr. O'Leary asked what if a husband and wife both worked and lived on the property, and Mr. Reilly answered that that would constitute 2 dwelling units.

Mr. Thomson said it looks as though the Zoning Ordinance tries to ensure that no farm has housing for 20 or 30 employees/becomes a boarding house. He noted that Old Salem

Farm received a use variance for a dormitory-like housing set-up, but the approval lapsed when no building permit was issued within 36 months of that approval.

Mr. O'Leary asked what will be specifically related to Mr. Edmonds and what will run with the land.

Mr. Reilly said the area variance would run with the land unless the Board includes a condition that it will lapse upon change of ownership; the special permit will expire in 10 years or upon transfer.

Mr. Thompson added that the special permit includes the number of horses and all improvements to the property related to the horse operation. He explained that that is why horse-farm owners return to the Board to amend special permits when they put up additional structures/make other changes. He pointed out that amendments do not change the expiration date of the special permit/they expire 10 years from the date of the original resolution.

Mr. Reilly reiterated that if the Board agrees to increase the number of employee dwelling units in the garage, that increased number will run with the land unless they choose to limit it. He asked if Mr. Edmonds understood this, and Mr. Edmonds replied that he did.

Mr. Reilly asked if Mr. O'Leary's question had been answered, and Mr. O'Leary said he understood.

Mr. Monti asked Mr. Reilly if he felt there was a reason the Board should not make the area variance permanent.

Mr. Reilly said that because the special permit will be specific to the applicant, if anything changes, the ZBA would be free to limit the number of employee dwelling units in the future. He added that otherwise, a future owner would retain the right to the employee dwelling units even if other aspects of the operation were to change. He suggested that the area variance be granted to run, time-wise, with the special permit/Mr. Edmonds.

Mr. Edmonds asked what harm would come to the Town if the area variance were to run with the land.

Mr. Reilly stated that a future operation may not necessitate so many employees and it could be felt that more people live on the property than are needed.

Mr. Edmonds said he understood but he was thinking that it would be attractive to a potential buyer of the property that they could have the employees.

Mr. Reilly explained that if a new owner were to re-apply for the same area variance for the same use, it would be granted; a denial would be overturned in court.

Mr. O'Leary asked if the 10 parking spaces required by the Zoning Ordinance for 5 employee dwellings are necessary/will be provided.

Mr. Kokoros said a parking area will be provided, although 10 spaces will probably not be needed. He said there is room enough for 10 spaces.

Mr. O'Leary suggested that perhaps the variance application could request permission to have fewer than 10 parking spaces.

Mr. Kokoris said there is room to provide as many parking spaces as required.

Mr. Reilly asked Mr. Sessions to indicate on a site-plan an area of 10 legal-size spaces in a parking area.

Mr. O'Leary noted that Baxter Road is a designated historic road and asked if this will have any impact on Mr. Edmonds' plans.

Mr. Thompson said he did not know but thought it should be looked into.

Mr. Sessions said the new driveway has been looked at in terms of sight-lines and curb-cut width for large vehicles.

Mr. Thompson urged Mr. Sessions to look into what may be called for regarding either the driveway or the conservation easement due to Baxter Road's historic designation.

Mr. Kokoris thought the Historic Preservation Commission might have some control over the appearance of walls, gates, etc.

Ms. McKean asked how the new barn with 12 ft. x 12 ft. stalls will accommodate the breeding aspect of the operation.

Mr. Kokoris explained that there is some extra room/some stalls could be made larger because the plans call for 16 ft. aisles. Additionally, removable stall-partitions can also be employed to provide more space when needed, and neither of these will necessitate alteration of the footprint of the barn.

Mr. Monti asked if Mr. Edmonds seeks permission to have 29 horses.

Mr. Edmonds answered that he does, although he does not expect to have 29 horses/ there should be spare capacity.

Ms. McKean asked if the number of horses includes foals, and Mr. Edmonds said it does.

Mr. Monti suggested the Board hold the application over subject to submission of a revised application and Mr. Edmonds' meeting with the Westchester Land Trust and the North Salem Open Land Foundation people. He reiterated The Building Inspector's request that Mr. Edmonds see what may be required due to the historic status of Baxter Road. Mr. Monti asked if Mr. Edmonds had any questions for the Board.

Mr. Edmonds said he did not.

Mr. Kokoris said they need to work on the barn and living quarters.

The Building Inspector said the plans need to be as firm as possible regarding the size of the living quarters, because approval is based on submitted plans. He said interior configurations may be changed, but the Board is charged with reviewing the total size of employee dwelling units. The Zoning Ordinance states that they may be no more than 500 sq. ft., but the ZBA may approve a lesser or greater size for good cause shown. Mr. Thompson said that a case of 3 employees sharing a 1500 sq. ft. space would work neatly. In the case of the farm manager who will have family with him, more space will be needed. The Building Inspector asked that the size of the farm manager's apartment be spelled out in the revised application.

Mr. Monti stated that the Board was in receipt of a letter from the Westchester County Planning Board stating that they have no objection to the application.

Ms. McKean said she appreciated the presentation and historical information.

Mr. Edmonds said he appreciated meeting with the Board members on the previous Saturday and also getting some feedback at this meeting.

Mr. Monti asked Mr. Edmonds to have information on fire suppression in the barn for the February meeting.

The meeting was adjourned at approximately 9:10 p.m.

Respectfully submitted,



Janice Will, Recording Secretary