

BOARD of APPEALS
Public Hearing
May 10, 2012
8 p.m., The Annex

MEMBERS PRESENT: Richard O'Leary
Cynthia McKean
William Monti
James Murphy
Brian Ivanhoe, Chairman

OTHERS PRESENT: Gerald Reilly, Counsel
Janice Will, Recording Secretary
Members of the Public

Chairman Brian Ivanhoe called the May 10, 2012 Town of North Salem Zoning Board of Appeals meeting to order.

Chairman Ivanhoe set the next meeting for Thursday, June 14, 2012.

The minutes of the April 12, 2012 meeting were unanimously accepted.

HEARING CONTINUED

BA12-09 Titicus Road Commons LLC (104 Titicus Road) – **Area Variance** – To allow continued use of an existing non-conforming driveway for a non-residential use (12 ft. required; 9 ft.-existing/proposed), per Article VIII Section 250-30A.

The Chairman announced that this application would be held over again.

PUBLIC HEARINGS

BA12-19 John Lombardo/John McKay (122 Dingle Ridge Road) – **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 62 ft. is requested (75 ft. required; 28 ft. existing; 13 ft. proposed) for installation of a generator with a line to an existing LP storage tank.

Messrs. Lombardo and McKay were present. Mr. McKay explained that they were requesting permission to have a 14 kilowatt generator installed that is a new model with a built-in sound reduction feature. He said they were proposing a site behind their garage with a line to an existing propane tank. Mr. McKay added that the main power source to the property connects to a circuit-breaker box in the garage.

Mr. McKay stated that to install the generator anywhere else on the property would require a lot of ledge-breaking/most of the property from the house to the garage is ledge. He said

he had the approval of 4 of his neighbors, 3 of whom also have generators. Mr. McKay said the generator would only be used in emergencies. He stated that neighbors who were contesting his variance application (Levinson, 113 Dingle Ridge) have an older model generator that is quite near their house and a cottage on their property, and he wondered why they did not move it or do something to abate the noise if they think generators are so loud. Mr. McKay said he had not actually measured the distance, but he thinks his generator will be about 180 ft. away from the neighbors' house, which should be more than far enough.

Chairman Ivanhoe said he is familiar with the property and the proposed generator site, and he noted the existence of ledge, but he was not clear about where the propane tank is located.

Mr. McKay said it is to the right of the proposed site for the generator when facing the road.

The Chairman asked if any other locations were considered.

Mr. McKay replied that he worked with Heritage Fuel and his electrician and both thought the proposed site was the best place for the generator, especially given the need to hook up to the power source.

William Monti asked about a location where the property drops off.

Mr. McKay said he had considered it, but the area floods and the generator would also be in a direct line with the house at Willow Farm (113 Dingle Ridge Road). For this reason, he tried to move the generator as far to the left as possible.

The Chairman said he assumed that a 14KW generator would not power the entire house, but Mr. McKay said it will.

Chairman Ivanhoe commented that larger units are normally required for whole-house power, but Mr. Lombardo said his house is small.

Richard Levinson of 113 Dingle Ridge Road addressed the Board, stating that his generator is 100 ft. from the property line, and all the other generators in the neighborhood comply with the 75 ft. setback requirements. He said the decibel level quoted by the manufacturer of the generator is for the engine but not for the exhaust which is louder. He said he and his wife are concerned about the noise of their generator, and he is getting an acoustic fence to cut down on the noise. Mr. Levinson said the proposed site for the Lombardo/McKay generator is up on a hill and even with his windows and his cottage, adding that he asked Messrs. Lombardo and McKay to put the generator on the side of the garage farthest from the property line. Mr. Levinson said he did not see why they could not find some way to move it, put in an acoustic fence or comply with the zoning ordinance like other neighbors have done.

Chairman Ivanhoe said he is familiar with both properties, but he wasn't sure where the Levinsons' generator is.

Mr. Levinson said his generator is at the far end of his house on a noise-reduction pad and more than 100 ft. from the front property line.

Gerald Reilly asked Mr. Levinson to indicate on the tax map page included in the McKay/Lombardo application where his generator is, and Mr. Levinson marked the location of his generator and the proposed site of the Lombardo/McKay generator.

The Chairman asked Mr. McKay if he had considered putting the generator on the side of the garage suggested by Mr. Levinson.

Mr. McKay said there is a large boulder that would have to be removed in order to accommodate the propane line. Mr. McKay said he would like to know how far the Levinson's generator is from their house and how long they have had it.

Mr. Levinson said he has had his generator for several years, and it is in compliance with the zoning ordinance.

Mr. Lombardo commented that when his generator is on, all the neighborhood generators will be running.

Mr. McKay said the manufacturer (Generac) quotes a 66-decibel level reading for the model generator he is getting. He added that some other, less expensive models have a higher decibel-level, and the Generac model was recommended to him. He said he recently visited neighbors who have 2 generators and all that one hears after they start up is a hum.

Mr. Levinson said 66 decibels is probably the sound of loud talking; anyone knows generators are louder than that. He reiterated his request that his neighbors comply with setback requirements.

Chairman Ivanhoe said there is no better location on the subject property for the generator, adding that only placing it downhill would really make a difference.

The resident of the Levinson cottage said his home is probably closest to the proposed generator site. He said he is a full-time resident, whereas Messrs. Lombardo and McKay are only in town on weekends. The gentleman said there are often power outages, and he would hear their generator directly across from his windows, so he would be appreciative if it could be moved.

The Chairman asked what options are available for sound attenuation/barriers.

Mr. McKay said he plans to put up a three-sided fence.

Mr. Levinson asked if the fence will be acoustic, and Mr. McKay said it will just be a regular fence.

Mr. Levinson said the acoustic material deadens noise, although he also noted that it is rather expensive.

Chairman Ivanhoe said the Board often asked that plantings be employed as a condition of granting area variances, and he asked what Mr. McKay plans to do about his generator.

Mr. McKay said he thought he would use either plants or a stockade fence.

The Chairman asked where the generator exhaust is and if it would be possible to put something over the top.

Cynthia McKean said the tops of generators may not be covered.

Richard O'Leary asked if the generator/exhaust can be turned in any way to aim away from the street.

The Chairman thought this was a good point, and he asked who will install the generator.

Mr. McKay said his electrician is Chris Wright, and Heritage Fuel will install the propane line.

Mr. Monti asked Mr. Levinson approximately how many hours a year his generator runs.

Mr. Levinson noted that power was out for 3 to 4 days in August. He added that summer is the worst time re noise because people have their windows open. He stated that he and his wife are full-time residents, whereas Messrs. Lombardo and McKay might be away during a power outage. He said the area variance requested was extreme (62 ft.), so there should be some obligation to protect the neighbors. Mr. Levinson said he didn't think plants would provide enough noise abatement, so he would like the generator moved and/or surrounded by an acoustic fence.

Mr. McKay stated that his land mostly consists of ledge on a hill.

Chairman Ivanhoe asked what it would cost either to put the generator somewhere else or have a sound-deadening fence installed.

Mr. McKay said he did not know where else the generator could be put.

The Chairman said that if the Board were to consider the proposed site, they would also have to consider sound attenuation.

Mr. Levinson said the quote he got for acoustic fencing was \$800 for material plus installation.

The Chairman advised Mr. McKay to do his own research, but this kind of fencing seemed like a reasonable compromise to him.

Chairman Ivanhoe closed the public hearing, noting that the resolution would include a condition that acoustic fencing similar to that described by Mr. Levinson must be installed to significantly reduce noise from the generator.

Mr. Reilly read a draft resolution including the finding that there is no other suitable location for the generator due to the presence of rock outcroppings and extreme topography.

The Chairman brought up the weekly self-test that generators run, but Mr. Levinson said he did not care what time the test runs.

Motion by: William Monti
Seconded by: Cynthia McKean

Mr. O’Leary: Aye
Ms. McKean: Aye
Mr. Monti: Aye
Mr. Murphy: Aye
Chairman: Aye

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

BA12-20 Charlotte Harris/John Roach (663 Titicus Road) – **Area Variance** – To increase the maximum height of a fence in a side yard per, Article VI Section 250-22. A variance of 3 ft. is requested (5 ft. permitted; 8 ft. proposed) for replacement/reconfiguration of a section of an existing fence.

Charlotte Harris and John Roach were present. Ms. Harris explained that there is an existing fence on the property, part of which will be altered and another section of which had to be removed for construction of a new detached garage. She wishes to re-build that section of fencing in a new configuration so it will meet one end of the garage. She said she needs an area variance to do this because the fence will be moved. Ms. Harris said the existing fence is a 7 ft.-high stockade fence with an approximately 1.5 ft.-high lattice top, and now it will consist of a 6 ft.-high stone wall with a maximum 2 ft.-high wooden top.

John Lombardo stated his support for the application.

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

Mr. Reilly read a draft resolution including the finding that there were no objections to the application from any neighboring property-owners.

Motion by: James Murphy
Seconded by: William Monti

Mr. O’Leary: Aye
Ms. McKean: Aye
Mr. Monti: Aye
Mr. Murphy: Aye
Chairman: Aye

Area variance granted, as requested.

BA12-21 Jacqueline McQuade (589 Grant Road) – **Special Permit** – For the keeping of up to 10 horses for personal use, per Article XIII Section 250-72.

Jacqueline McQuade addressed the Board, stating that there was previously a special permit for keeping of 10 horses that was in her father's name. She recently learned that the permit needed to be renewed. Ms. McQuade explained that she keeps her retired horses on the property and has show horses on a neighboring farm. She described the subject property as consisting of approximately 8.5 acres with 9 paddocks and a riding ring.

Ms. McKean asked if the number of paddocks has proven to be adequate for the number of horses on the property.

Ms. McQuade said the grass paddocks provide enough room, and she also uses an old sand ring as a medical paddock because it is flat.

Chairman Ivanhoe asked how often the dumpster is picked up, and Ms. McQuade replied that it is done every 2 weeks.

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

Mr. Reilly read a draft resolution, including the finding that the request is for a renewal and no changes are proposed except for the name on the special permit.

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

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

Special permit renewal granted, as requested.

BA12-22 Jody Rosen (17 Baxter Road) – **Special Permit** - To amend existing special permit BA08-44 (commercial boarding of up to 20 horses) to include 2 employee dwelling units in an existing barn, per Article XIII Section 250-72.

No one was present for this application. The Chairman opened the public hearing and said the Board would carry it over to the June meeting.

Mr. Reilly suggested that the applicant be informed that if no one comes to the June meeting, the application will be removed from the agenda and she will need to re-apply.

BA12-23 Amy Rosmarin (2 Great Oaks Lane) – **Area Variance** – To increase the maximum height of a fence in a side yard, per Article VI Section 250-22. A variance of 3 ft. is requested (5 ft. permitted; 8 ft. proposed) for installation of a stockade fence.

Amy Rosmarin addressed the Board, stating that a new house has recently been built on the lot next door to hers. She said the old house had been small and set forward on the lot, whereas the new house is large and set farther back. Ms. Rosmarin said she got married in her yard and it was always a special, private place, which she feels it is not any more. She said the new house sits higher and the new driveway is very close to the property line.

Ms. Rosmarin explained that she has 2 rows of trees along her side property line. The trees nearest the neighbor are about 2 ft. apart; approximately 18 ft. farther back onto her property, the other trees are spaced much farther apart (10 to 15 ft.). She explained that she would like to have a fence 10 ft. from the side yard line, between the 2 rows of trees. Ms. Rosmarin said she has a stone table in her yard where she used to like to sit and eat in the summer, but it does not feel private any more. She added that her neighbor (Louis Giannini, 320 Mills Road) seems not to object to the fence proposal, and it would be hard for her to restore her privacy with plantings due to the shade from the existing trees and plants would take up too much room in her modest yard.

The Chairman asked if the proposed fence will be sufficient, and Ms. Rosmarin replied that she can't very well put up a 30 ft. fence although she'd like to.

Ms. McKean commented that the trees did not look very healthy.

Ms. Rosmarin said her neighbor plans to plant trees on his side of the property line also, but trees grow slowly.

Chairman Ivanhoe stated that, planted in good soil and protected, trees can grow quickly into a thick screen.

Ms. McKean asked how long the fence will be, and Ms. Rosmarin responded that it will be 128 ft. long.

Ms. McKean asked if that will be long enough.

Ms. Rosmarin answered that it will, and she did not think it should go past the tree-line in length. She added that it will be a little bit ahead of the trees at the Mills Road end, but it will be tapered downward at that point and there are lots of big shrubs on the neighbors' side to screen it.

Mr. O'Leary asked if it will be a 2-sided fence.

Ms. Rosmarin said she did not know, but if there is only one good side it will be installed to face the neighbor's property.

Mr. O'Leary asked if the fence will be painted or left to darken naturally.

Ms. Rosmarin said she will let it darken unless her neighbor wants it painted on his side; then she will paint it.

Mr. Reilly asked what Mr. Giannini thinks about the fence.

Ms. Rosmarin stated that her neighbor said he would not object, and he hopes that once the work on his property is finished/plants are put in, she won't think it looks so intrusive.

Mr. Monti said he also spoke to Mr. Giannini, who told him he is working with a landscape architect. Mr. Monti noted that he didn't see a plan, but it sounded as though Mr. Giannini will have substantial plantings put in. Mr. Monti suggested that Ms. Rosmarin consider waiting to see what Mr. Giannini plants on his property before investing in her fence.

Ms. Rosmarin said she hopes she won't need the fence, but she wants to be able to have it put up if she feels the need for it.

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

Mr. Reilly read a draft resolution, noting that the fence will be installed 10 ft. from the property line, the good side of the fence will face the neighboring property, and the next-door neighbor does not object to the fence.

Motion by: Cynthia McKean
Seconded by: William Monti

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

Area variance granted, as requested.

Michael Liguori, attorney, rose to speak to the Board, explaining that he was representing both of the next 2 applicants. The Board decided to hear the applications together.

BA12-24 Auburn Group LLC (301 Hardscrabble Road) – **Area Variance** – To decrease the minimum required side yard setback in an R-4 zoning district, per Article V Section 240-15. A setback variance of 38 ft. is requested (75 ft. required; 37.5 ft. existing/proposed) for an as-built well house.

BA12-25 Robert Tompkins (261 Hardscrabble Road) – **Area Variance** – To decrease the minimum side yard setback in an R-4 zoning district, per Article V Section 250-15. A setback variance of 48 ft. is requested (75 ft. required; 27.97 ft. existing/proposed) for an as-built shed.

Mr. Liguori explained that the requested variances are a result of a proposed lot-line change between the 2 subject properties. Although the lot-line application has been

presented to the Planning Board, they may not act on it until the area variances have been granted.

Displaying a partial survey, Mr. Liguori indicated the Tompkins driveway right on/over the lot-line between the 2 properties. In addition, Mr. Tompkins has been leasing space in the area of the lot-line from the adjoining property-owner, Auburn Group LLC that he will now acquire as part of the lot-line adjustment.

Mr. Liguori stated that existing old structures are already non-conforming; a concrete-block shed of Mr. Tompkins' on the leased land will become slightly less non-conforming; a well-house on the Auburn Group property will become a little more non-conforming.

Chairman Ivanhoe commented that he saw no issues with the applications. He asked if the well-house is still used.

Mr. Liguori said it is not, but it could be used. He said he believes it used to serve the Tompkins property, and it has been agreed between the 2 parties that if Mr. Tompkins ever needs to utilize the well, he will have the right to do so.

The Chairman asked if the agreement is a kind of easement.

Mr. Liguori said it is and will be recorded in the Clerk's office as an easement limited and personal to Mr. Tompkins.

The Chairman asked if the Tompkins shed is being used.

Mr. Liguori said he didn't think so. He said no new construction is proposed.

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

Mr. Reilly read draft resolutions, including findings that the variances are only necessary because of the proposed lot-line adjustment, the Planning Board favors the granting of the variances, and there were no objections to either application.

BA12-24 Auburn Group LLL

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

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

Area variance granted, as requested.

BA12-25 Tompkins

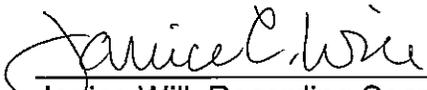
Motion by: *Richard O'Leary*
Seconded by: *William Monti*

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

Area variance granted, as requested.

All items on the agenda having been covered, the Chairman closed the meeting at approximately 9:05 pm.

Respectfully submitted,



Janice Will, Recording Secretary