

BOARD of APPEALS
Public Hearing
January 17, 2013
7:30 p.m., The Annex

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

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

Chairman Brian Ivanhoe called the January 17, 2013 Town of North Salem Zoning Board of Appeals meeting to order.

The Chairman set the next meeting for Thursday, February 14, 2013.

The minutes of the December 13, 2012 hearing were unanimously approved.

HEARINGS 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.

This application continues to be held over.

BA12-42 Courtney/Nathaniel Morse (585 Grant Road) – **Special Permit** – For the keeping of up to 6 horses for personal use, including construction of a 6-stall barn, outdoor riding ring and paddock fencing and installation of a manure dumpster, per Article XIII Section 250-72.

Mr. and Mrs. Morse were present. Mr. Morse explained that they applied for a special permit in 2010 which was approved, but they did not pursue it then. He stated that they now wish to build a smaller, 5-stall barn and an outdoor ring on their property, which consists of just under 11 acres (10.86).

The Chairman noted that BA12-42 has been carried over for a few months, and he asked about the 2010 approval.

Mr. Morse said the application was approved in 2010.

Mrs. Morse explained that it expired after 18 months because no building permit was applied for/issued.

Chairman Ivanhoe said he received an e-mail of the revised 2012 application, and he noted that the Board members had all been to the subject property previously.

The Board members did not receive the paper copies of the revised application that was to have been sent to them, so the Chairman asked to see the file copy. He asked the Morses to describe the changes from the 2010 application.

Mr. Morse replied that the barn has been turned to be parallel to the driveway. He pointed out that it is also smaller, having 5 stalls, a wash rack, tack room and a half-bath. He explained that the paddocks are along Route 121 (Grant Road).

The Chairman noted the change in configuration of the paddocks from those on the earlier 2012 application, saying it is a better plan.

Mr. Morse said there are now larger but fewer paddocks closer to the road.

The Chairman noted that no area variance is needed.

Mr. Morse stated that Kellard/Sessions (engineers) provided the site plan, and the barn will be built by King Construction.

The Chairman asked if the Morses wish to have a light in the cupola on top of the barn.

Mr. Morse said they do not plan to have a light.

The Chairman explained that the Board would only permit a light in the cupola if blinds were installed.

Mr. Morse said it will not be a problem.

Richard O'Leary asked to be shown where the barn and ring will be in relation to neighbors.

Mrs. Morse pointed out the property lines with the Andrews lot on one side and the McQuade property on the other.

Chairman Ivanhoe asked what the orientation of the barn is now that it is going to be turned.

Mr. Morse said the aisle runs north/south.

The Chairman asked how vehicles will be parked in the gravel drive and what vehicles the Morses anticipate having there.

Mr. Morse stated that his truck will be parked in the courtyard by the house. He said there will be the occasional truck parked at the barn, but the special permit will be for private use and he has only 3 horses so no heavy-duty equipment will be needed.

The Chairman asked if the Morses intend to get a tractor, but Mr. Morse said he would only get a small mower/tractor.

William Monti asked if any stalls will be rented out to boarders.

The Morses replied that the barn will be strictly private.

Mrs. Morse said that, although they have only 3 horses, it just seemed to make sense to build a 5-stall barn.

The Chairman noted that the Morses could keep 2 horses as of right/only need a special permit for more than that.

Gerald Reilly asked how many horses are being asked for.

Mrs. Morse said the original application requests 6, but they are asking for 5 now and have just 3.

The Chairman asked about setback requirements for the ring and paddocks.

Bruce Thompson, Building Inspector, stated that, in an R-4 zoning district, the barn and any dust-producing activities (including manure storage) are supposed to be 150 ft. from the property lines, but the Board may reduce the setback to the minimum residential requirement for the zoning district (R-4 = 75 ft. side yard setback) as part of a special permit application review.

Mr. O'Leary asked if the Morses would need a special permit if they kept to the 150 ft. setback.

The Building Inspector said they would still need a special permit because they want to keep more than 2 horses.

Cynthia McKean asked how large the area is for the riding ring and paddocks, and Mrs. Morse replied that she thinks it is just under 4 acres.

Ms. McKean remarked that it will be a rather concentrated area.

The Chairman asked if the paddocks are to be grass, and Mr. Morse responded that they are.

Chairman Ivanhoe asked what plans have been made for winter and wet weather, explaining that many farms have dry/sand paddocks close to the barn to use then. He said these rings normally have crushed stone rather than sand (less dusty).

Mr. Morse said he and his wife are very sensitive to keeping the paddocks clean/they want their property to look nice.

The Chairman was glad to hear that. He said picking out the paddocks and having the dumpster changed out will help. He said he was concerned about the number of horses in a concentrated area of 3 paddocks that has no winter paddocks.

Mr. Morse said he would be happy to put in a winter paddock.

Chairman Ivanhoe said that will help the operation, and he asked what kind of horses the Morses have.

Mr. Morse said they are hunter/jumper show horses that are only turned out for about an hour a day.

The Chairman noted that that would help maintain the grass in the paddocks, but horses can also be injured in wet, muddy paddocks, so a dry paddock will be a good thing.

Mr. O'Leary asked if the Morses intend to have an optional dumpster port shown on the plans.

Mr. Morse said they are not; they will have a submerged dumpster.

Mrs. Morse said it actually will be the optional dumpster port minus the overhang, which she did not like.

Mr. Morse said the truck will back in and go down a ramp.

Ms. McKean said she was still concerned about all the activity in a concentrated area. She noted that the Morses won't be able to use the ring in the winter and asked if they have any intention of covering it.

The Morses said they do not want the ring covered.

Mr. Morse said the horses will be in Florida for shows during part of the winter. He added that one retired horse that is no longer shown will remain in North Salem but does not require a lot of time outdoors.

Referring to an e-mail from Ashley and Vincent Andrews of 579 Grant Road, Mr. O'Leary asked if the issues raised can be addressed to make things more conforming/less of an issue.

Chairman Ivanhoe stated that he would open the discussion to public comment. He said the review will be a process and discussion, and the application may have to be held over, although the Board tries not to do that.

Mr. Morse said he has met with his neighbors, and he is sensitive to their concerns. He added that aesthetics are important to him and his wife, too, and they want their property

to be in keeping with the spirit of the Town. Mr. Morse said they moved to North Salem wanting to be part of a community that embraces equestrians. He stated that the new barn is smaller than the barn proposed in 2010.

Mr. and Mrs. Andrews were called on. Mr. Andrews said they didn't know about the application until recently. They received the Notice to Property-Owners and met with the Morses. Mr. Andrews said he is concerned about crowding everything into a small area/there is more land to use and the farm would be prettier if it were spread out. He described his own 6.9-acre property with 4-stall barn as mostly being paddock/open space.

Chairman Ivanhoe said it is very attractive and asked what the Andrews' main concerns were.

Mr. Andrews asked if the Morses are asking to lessen the setback requirement or intend to stay at 150 ft.

The Chairman explained that a variance would not be required; the Board may reduce the setback to 75 ft.

Mr. Morse said the proposed site for the barn is at a setback of about 100 ft.

Chairman Ivanhoe noted that the riding ring will be 75 ft. from the side line; the dumpster will be 90 ft. away; some paddocks will be inside the setbacks, which is permitted.

Expressing concern about the barn, Mr. Andrews said it was previously shown lower on the subject property, but now it is higher up. He said he and his wife will be looking at trucks, the dumpster and the end of the barn. He stated that his house is about 175 ft. back from the property line, but the view of the Morses' barn is not what he envisioned. Mr. Andrews also mentioned traffic and lights.

The Chairman asked for the distance from the barn to the Andrews house, and Mr. Andrews answered that it will be 325 ft. or so.

Chairman Ivanhoe noted that the Andrews house will be slightly uphill from the barn.

Mr. Andrews remarked that there will be nothing between the barn and his house. He said he believed the barn could be put on the other side of an existing stone wall further up the hill where he would never see it.

The Chairman asked if Mr. Andrews had other concerns.

Mr. Andrews replied that the prior owner had stated that the back of the property is all wooded, but it is not any more.

Mr. and Mrs. Morse disagreed, Mrs. Morse saying there are acres of trees.

Mrs. Morse showed the Board a vegetation map that includes wetlands and woods. She said she can scarcely walk the fence-line because the trees are so dense. Mrs. Morse

said she and her husband see no area large enough to use, and the septic system is in that corner of the property also.

Mr. Andrews conceded that to put the barn at the rear would require removal of some trees, but Mrs. Morse remarked that there would not be enough room.

Mr. Morse said the site chosen is a beautiful spot; the area drains well and will be flat. He added that additional fencing will be built to match the existing fences and the aesthetic will be uniform. Mr. Morse stated that they will not be trying to run a commercial facility on 4 acres; it is to be a private barn on 4-acres in a flat area with a nice 30-ft. slope.

Ms. McKean said she did not think the objection was to the paddocks but to the manure dumpster and the driveway/non-beautiful aspects of the proposed set-up.

The Chairman said the elevation drawings indicate that the barn will be an attractive building, despite the fact that the Andrews will see it.

Mr. Andrews said he does not want to look at the dumpster.

Mr. Morse said it will be below grade, and he offered to put in shrubs for screening. He remarked that it will not be a large dumpster.

Chairman Ivanhoe stated his opinion that it would probably be best to hold the application over so the Board may go out to both properties (Morse and Andrews) with the plans and look at them with the Morses.

Ashley Andrews noted that the Morses' field gets wide at the bottom and the driveway was moved inward by the previous owner. She thought this might be why the Morses want to push the barn more towards her property. Mrs. Andrews suggested moving the barn downward where the field is wider. She said she has a beautiful patio in a flat area where there are no trees, and she will now be overlooking lots of activity on the neighboring lot. She stated that the previous owner did, in fact, remove a lot of trees. Although putting the barn behind the stone wall might entail removal of additional trees, it would also leave the entire 4-acre area for paddocks and the riding ring. Mrs. Andrews worried that the Morses might want to cover the ring in the future.

The Chairman said it would be necessary to apply to amend the special permit if that were the case and the request might not be approved. He added that the proposed site would not be a good location for an indoor ring, because of its proximity to the Andrews residence.

Mrs. Andrews said their land is all open, and the biggest impact of the Morses' proposal will be harshest on her/she fears it will negatively impact the value of her property.

Mr. Morse stated that his new barn will be nice and not detract from the Andrews' property value. He added that they also have a barn and paddocks.

Chairman Ivanhoe said North Salem is horse country and it is not uncommon to see attractive barns.

Ms. Andrews said she merely thought that a better site could be chosen that would afford her more privacy and the Morses would still have what they want. She said a 4-acre field minus the area taken up by the driveway is not a large enough area for 5 horses.

Chairman Ivanhoe said he had already noted the need for dry paddocks, even though the horses may be out of state in the winter; future owners may keep their horses in Town all year-round. He said the Board would hold the application over and set a date for the Board to go and look everything over in order to try and come to an arrangement that is agreeable to everyone.

Mrs. Morse pointed out that, with the house, patio and driveway in the middle, there is no 4-acre area in the rear section of the property. She stated that the paddocks need to be together because horses do not like to be out alone, and she added that having the barn behind the stone wall and the paddocks down below it would be asking for an accident, because the one horse remaining there could panic while the other horse is being walked to the barn.

The Chairman said he was familiar with restlessness in the last horse waiting to be taken to the barn, and he said sometimes one may choose the calmest horse to be last. He stated that the Board will look at the barn location and would probably not ask that the Morses split the paddocks up.

Mrs. Morse said she thought the Board would see how forested her property is, and she was glad they would be visiting.

Mrs. Andrews asked if she and her husband could participate in the site visit, too.

Mr. Reilly said they could as long as it was agreeable to the Morses.

Chairman Ivanhoe said the Board will visit both properties with the owners of those properties and hear what they want and then meet with everyone together. He stated that the Board will go on Sunday, February 3 at 1 pm and asked the secretary to send the Board members a reminder before that weekend.

The Chairman held the application over to the February meeting.

PUBLIC HEARINGS:

BA13-01 Marian and Robert Falk (58 Bonnieview Street) – **Area Variance** – To decrease the minimum required side and rear yard setbacks in an R-1/2 zoning district, per Article V Section 250-15. A side yard variance of 12 ft. (15 ft. required; 3.4 ft. existing/proposed) and a rear yard variance of 32 ft. (35 ft. required; 3 ft. proposed) are requested for installation of a generator and use of an existing, non-conforming LP gas tank.

Mr. and Mrs. Falk were present. Mr. Falk said he will be trying to squeeze a generator into his yard. He stated that he had a portable generator, but the permanent one he wants now will be cleaner and quieter. He said that he and so many of his neighbors had portable generators that NYSEG could not do repairs when the power was out last fall, because the lines were being backfed. He stated that he sent the Notices to Property-Owners, although many were returned to him, and he asked if there were any questions.

The Chairman remarked that the application was straight-forward.

Mr. Falk explained that given the manufacturer's requirement that the generator be installed away from windows and doors, and the fact that his yard is not very big, he is limited as to where he can have the generator installed, although he had tried not to get too near his neighbor's house. The generator will be pretty close to Sunset place, but it will be at least 40 ft. from any houses. Mr. Falk commented that it is a big unit, so he will help his neighbors out if they need it. He said the 17KW system is safe, and there will be a sign for the power company and an outdoor transfer switch in case they need to turn it off.

Mr. Monti asked how large the propane tank is.

Mr. Falk said he guessed it was a 200-gallon tank, adding that he does not want a huge tank.

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

Mr. Reilly read a draft resolution.

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.

BA13-02 Janice and John Kolb (1A Delancey Road) – **Area Variance** – To decrease the minimum required side and rear setbacks in an R-4 zoning district, per Article V Section 250-15. A side yard variance of 9 ft. (75 ft. required; 66 ft. proposed) and a rear yard variance of 20 ft. (100 ft. required; 80 ft. proposed) are requested for installation of a generator and an underground LP gas storage tank.

Janice and John Kolb were present. Mr. Kolb stated that he and his wife wish to have a 20 KW generator installed 80 ft. from the rear property line where it will be clustered with existing mechanical equipment behind their garage. He said the generator will be installed by a licensed electrician, and the 500-gal. propane tank will be installed by Heritage Propane appropriately off-set for safety.

Mr. O'Leary asked why the tank is being installed all the way in the rear corner, and Mr. Kolb explained that the area is on a knoll where there are lots of shrubs to shield the tank hub from view.

Mr. O'Leary asked if the propane truck will be able to reach the tank from the driveway for deliveries, and Mr. Kolb replied that Heritage Propane had assured him they could reach it.

Mr. Monti asked whether the feed line from the tank to the generator will be buried or placed in a conduit.

Mr. Kolb stated that his belief that a conduit will be set in sand per Code requirements.

Mr. Thompson explained that these kinds of lines are usually direct-burial (no conduit) with marker tape, set in a bed of sand with sand over them.

Mr. Kolb said Bob Daros of Heritage Propane will know how to bury the line correctly.

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

Mr. Reilly read a draft resolution.

Motion by: *William Monti*
Seconded by: *James Murphy*

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

Area variance granted, as requested.

The Board would hear the next two items together.

BA13-03 Auburn Group LLC (364 Hardscrabble Road) – **Special Permit** – For the keeping of up to 100 alpacas and maintenance of a commercial breeding operation including 2 employee dwelling units, per Article XIII Section 250-72.

BA13-04 Auburn Group LLC (364 Hardscrabble Road) – **Area Variance** - To permit the keeping of up to 100 alpacas in an R-4 zoning district (25 permitted), per Article IV Section 250-11 (Column B).

Don Rossi, attorney for the applicant, addressed the Board, stating that Lynn Edens (Auburn Group), Carol Goldberg (realtor) and Michael Sirignano (attorney for the current property-owners) were present.

Mr. Rossi said the 47-acre farm, currently called Red Horse Farm, is one of 2 lots the

applicant is under contract to purchase; both are part of the Fox Warren subdivision. Commenting that it is in a beautiful part of Town, Mr. Rossi said the subject property currently has a special permit for 14 horses. He described the existing buildings, including one with employee living quarters, and 7 to 8 acres of paddocks. Mr. Rossi stated that the property is in the Westchester County Agricultural District, and his client is proposing a farm operation for alpacas. He noted there are many farms in the area, including his client's existing farm to the south of the subject property, for which she has a special permit for horses and 30 alpacas. Other neighboring properties are Autumn Farm and Darlington Hall.

Mr. Rossi said the site is perfectly suited to the proposed use; it is secluded, and no construction is proposed except for some run-in sheds to be put in the paddocks. He explained that alpacas spend nearly all their time outdoors, and the run-in sheds are intended to provide temporary shelter (usually from the sun in summer). Mr. Rossi remarked that this will not be a typical farm in Town, but he feels it is consistent with the benefit of horses although with much less impact. He said alpacas are docile, cause less wear/tear on paddocks than horses, their manure can be used as fertilizer without processing, and they provide beautiful wool. He stated that his client intends to keep the alpacas for breeding and fleece-shearing, which is in keeping with the goals and aims of the Zoning Ordinance. Mr. Rossi said there will be no boarders, trainers or farriers, and fewer hay deliveries and veterinarian visits.

Mr. Rossi remarked that there had been some discussion of the nature of approval needed for the operation; namely whether it is a special permit or an area variance. He said the Zoning Code has some ambiguity regarding breeding farms, in that it does not state what animals may be kept for that purpose. He noted that up to 25 "fur-bearing" animals may be kept as of right. It was Mr. Rossi's feeling that a special permit would be appropriate for more than 25 alpacas, but Mr. Reilly feels that "breeding farm" was intended only to apply to horses and that an area variance would be needed for more than 25 alpacas. Mr. Rossi said he had recently realized that the only provision for employee dwelling units in the Zoning Ordinance is through a special permit, and his client would like to use the 2 existing dwelling units on the subject property. Previously, he thought they would apply for both a special permit and an area variance and accept whichever one the Board thought was appropriate; his preference was for an area variance because it would run with the land, but his client wants the right to use the employee dwelling units.

Mr. Reilly stated that he thought Mr. Rossi's client would apply for both a special permit and an area variance.

Chairman Ivanhoe said the Board was hearing both; if it serves the Code, they could grant both. He said the Board would want the employee dwelling units used, because Ms. Edens may or may not have farm labor on-site. He asked if the operation will involve breeding as well as grazing.

Ms. Edens said it will, and she needs qualified, capable people on-site at all times.

The Chairman asked if, with breeding, the number of alpacas will increase beyond 100.

Ms. Edens responded that that would only happen if she did not sell them as she plans to. She added that she has to plan and project the number of animals.

The Chairman asked if Ms. Edens would start the farm with 100 alpacas.

She said she would not. There will be a core group of about 60, leaving room for an increase when babies are born/the total number goes up and down over the course of a year.

Mr. Monti asked why an area variance would not be appropriate for the employee dwelling units.

Mr. Reilly said they are not part of the variance application.

The Chairman asked what the mechanism is to get/maintain the use of the dwelling units.

Mr. Reilly stated that they should keep to a special permit for inclusion of the living quarters and an area variance for the number of animals.

Mr. Rossi said he initially thought it would be either/or: a special permit or an area variance.

Mr. Monti noted that existing structures include the 2 dwelling units and asked how to legitimize their use.

Mr. Reilly said the existing special permit includes them. He stated that he discussed the situation with Mr. Thompson and with his associate, Roland Baroni; the conclusion they came to was that both applications are needed. He noted that there is no area variance vehicle for employee dwelling units.

Mr. Rossi said that is now why his client has applied for both; a special permit to include 2 employee dwelling units for a breeding farm, and an area variance to cover the increased number of alpacas.

Mr. Thompson said he agreed that the 2 applications should cover everything needed.

The Chairman also agreed, noting that the area variance will run with the land, but the special permit is for 10 years so the Town can monitor the operation.

Mr. Rossi asked if the Board would consider granting the special permit for a period longer than 10 years as the area variance for 100 alpacas will run with the land.

Chairman Ivanhoe said that while the Board believes the land can support 100 alpacas in perpetuity, they want to maintain the standard special permit 10-year time frame so the operation may be reviewed.

Mr. Monti said it is good to have a special permit expire sometimes; or if the property is sold, there is no way to know that a new owner will maintain the same standards. A special permit offers some control.

Mr. O'Leary asked how quality control will work if the area variance runs with the land.

The Chairman said that by granting the area variance, the Board would be saying that they believe the land can support 100 alpacas. The special permit will allow regular review, and a new property-owner would have to re-apply for a new special permit.

Mr. Rossi said that under a special permit, the Board would retain control. If the farm was a mess, the Building Inspector could go out and enforce the conditions of the special permit. When the special permit comes up for renewal, the Board may review/re-consider it again.

Mr. O'Leary said the area variance will state that there is room for the requested number of alpacas, but a special permit will be required.

Mr. Reilly said he believes the variance is necessary because up to 25 animals may be kept as of right. With the granting of this area variance, the next owner may also keep up to 100 alpacas (alpacas only/not other types of animals), but they will need a new special permit for the breeding operation. At that time, the Board would be able to review the operation and make a site inspection. He pointed out that the new owner could keep up to 25 alpacas without applying for a special permit.

Chairman Ivanhoe said he wanted to be sure that a future owner will need to meet the requirements of a special permit.

Mr. Reilly stated that, without the employee-dwelling units, no special permit would be necessary for up to 25 alpacas. For more than 25 animals, a variance is needed. Mr. Reilly said the special permit comes into play, because "breeding farm" does not allow for any change above the number of animals that may be kept as of right.

Mr. Monti asked if the neighboring property-owners in Putnam County were Noticed, and Mr. Rossi replied that they were.

Mr. Monti commented that the next adjacent property on the other side of Darlington Hall is where moderate-income apartments are to be built soon.

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

Mr. Reilly read a draft resolution for the special permit, noting that it is for 100 alpacas via the area variance being granted concomitant with the special permit and includes 2 employee dwelling units.

Motion by: James Murphy
Seconded by: William Monti

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

Special permit granted, as requested.

Mr. Reilly read a draft resolution for the area variance.

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.

Chairman Ivanhoe remarked that a riding trail goes through the subject property from the direction of Darlington Hall and asked if Ms. Edens will continue to allow it to be used.

Ms. Edens said she will/she is part of the group that uses it.

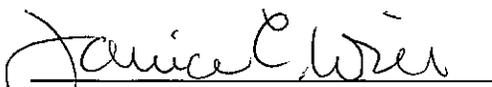
Chairman Ivanhoe said he would like this to be part of the record and included in the resolution.

Mr. Rossi asked that the condition be that the trail may be used with permission of the land-owner.

Ms. Edens said the trail through Red Horse Farm is an important part of the overall trail system, and she has seen evidence that it is used even during the winter.

The Chairman closed the meeting at approximately 8:52 pm.

Respectfully submitted,


Janice Will, Recording Secretary