BOARD of APPEALS
Public Hearing
May 9, 2013
7:30 p.m., The Annex

MEMBERS PRESENT:	**Richard O'Leary** **William Monti** **James Murphy** **Brian Ivanhoe, Chairman**
MEMBER ABSENT:	**Cynthia McKean**
OTHERS PRESENT:	**Gerald Reilly, Counsel** **Bruce Thompson, Building Inspector** **Janice Will, Recording Secretary** **Members of the Public**

Chairman Brian Ivanhoe called the May 9, 2013 Town of North Salem Zoning Board of Appeals meeting to order.

The Chairman set the next meeting date for Thursday, June 13, 2013.

Chairman Ivanhoe noted that a recently-received letter from Gail and Sal Pantezzi of 669 Titicus Road included a challenge of the March 14 meeting minutes. He said the secretary reviewed/compared the minutes and the video, and he looked at the video also. The Chairman asked for a motion to refute the challenge/accept the minutes as they stand.

To re-affirm acceptance of the March 14, 2013 meeting minutes; based upon the allegations, the Board re-examined and subsequently reapproved the minutes as they were approved at the April 18, 2013 meeting.

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

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

The minutes of the April 18, 2013 hearing were unanimously approved.

HEARING CARRIED OVER:

BA13-17 Union Hall General Store LLC (2 Keeler Lane) – **Use Variance** – To increase the number and type of items sold on the premises, per Article IV Section 250-10, -11 and -12 (d).

The Board received a letter dated May 9, 2013 from Michael Liguori, attorney for the applicant, requesting that this application be held over again until the June 13, 2013 meeting.

William Monti said he did not see in this application from a tenant, requesting a permanent change in permitted uses, anything to indicate that the property-owner is a party to the application. He asked Mr. Reilly if the owner wouldn't have to be part of such an application.

Mr. Reilly replied that it was his understanding from the rules of the Town (but not the Code), which are parroted in the application procedure, that of necessity the owner must make application. Mr. Reilly further stated that the applicant's attorney, Michael Liguori of Hogan and Rossi, told him that he had submitted something from the property-owner, but the secretary did a complete check of the application file, and there is nothing from the owner. Mr. Reilly said that if Mr. Liguori/his client brought a letter from the property-owner, saying she authorizes the application, it could be accepted even now/it would not be necessary to re-apply. He noted that Mr. Liguori had asked to have the application held over until June, so he now has the opportunity to get a written statement from the property-owner (or have her attend the meeting) indicating that she understands and approves of the application.

Mr. Monti asked if Mr. Liguori is cognizant that his client's file does not contain anything from the property-owner authorizing the application, and Mr. Reilly responded that Mr. Liguori is cognizant.

Mr. Monti asked if there is a way to permit this kind of request, other than granting a permanent change, maybe handle it like a special permit.

Mr. Reilly answered that, in his opinion, the only way these changes can be made is via a use variance. He added that the Legislature could change the permitted uses or and make it a different kind of district, but that is not what is on the agenda.

Mr. Monti asked if there isn't any way to consider granting such a request so that it becomes a special permit and is only for the applicant/not the property.

Mr. Reilly said it would require legislation to allow a special permit.

Mr. Monti then asked if the Board grants the use variance without the knowledge of the property-owner, could the Board be subject to some kind of legal action.

Mr. Reilly stated that the owner would have to file an Article 78 proceeding, asking the Courts to disavow the ZBA's determination.

Mr. Monti stated that an area variance was granted for the subject property in 2007, including some restrictions on lighting, etc., and he asked if the property is in compliance with those conditions. He remarked that if members of the public were present, they could probably comment on the lighting.

Chairman Ivanhoe recalled that the ZBA asked the Planning Board to eliminate 3 exterior lights, and he thought there had been something about lights being left on at night.

Mr. Monti said the Board had asked that lights be turned off at a specific time of day.

Mr. Reilly said the Board must recognize SEQRA at the next meeting, because a use variance is an Unlisted Action, whereas area variances are Type II Actions. He said the Board will have to determine there is no environmental impact.

The Chairman asked why this issue hadn't come up at the first hearing meeting.

Mr. Reilly said the application includes a Short Environmental Assessment Form. He explained that the Board hasn't come to a resolution yet/it is usually in the resolution; given the degree of interest/involvement in this application, he would recommend that the Board discuss it publicly.

Noting the volume of recent submissions, Mr. Monti asked if the Board should ask that any future submissions must be received by May 30.

Chairman Ivanhoe asked how people would find that out.

Mr. Reilly said everyone had assumed the application would be heard at this meeting.

Mr. Monti said he was merely concerned about the possibility of receiving another very large submission at the last minute.

The Chairman said that if the Board receives another substantial submission just before the June hearing, they will have to decide whether they need time to study it or find it to be just more of what has already been submitted.

Mr. Reilly said that if it is from someone who has been present at the hearings and/or has spoken, it might be an easier decision.

Mr. Murphy said he went to the Union Hall recently and noticed that the handrail along the steps from the parking lot up and around to the front entrance has no support.

The Chairman commented that if the application had been heard at this meeting, the condition of the railing would have been brought up and its repair included in the resolution.

The Building Inspector said he hoped it had happened recently and was not a long-standing problem.

The other Board members admitted they did not know how long the railing has been in this condition.

Mr. Thompson said he will bring it to the owner's attention.

Noticing a man sitting at the back (Robert Benedict of 7 Lakeview Road), the Chairman stated that there would be no public hearing of the Union Hall General Store application at this meeting, but the gentleman could come to the June meeting.

Mr. Benedict said he might submit something in writing.

The Chairman said that would be fine, and he asked Mr. Benedict to please have his submission in by May 30.

Bruce Buchholtz, a Town Board member and resident of 6 Wheeler Road, asked if the ZBA will only be accepting written comments.

Chairman Ivanhoe explained that the public hearing was closed in March but no decision has been made yet as to whether or no to re-open the public hearing for additional public comment.

PUBLIC HEARINGS:

BA13-22 Michael Strong (31 Hilltop Drive) – **Area Variance** – To decrease the minimum combined side yard setbacks in an R-1 zoning district, per Article V Section 250-15. A variance of 10 ft. is requested (20 ft./50 ft. required; 20 ft./59 ft. existing; 20 ft./40 ft. proposed) for installation of a storage shed.

Michael Strong addressed the Board, thanking them for their consideration of his application. He explained that he submitted a building permit application based on a survey he received when he purchased the subject property. Indicating a wedge-shaped area on one side of the lot, he said he recently found out that he does not own that area and as a result needs a variance for the shed.

Mr. Strong explained that he wants to install the shed where it is shown on the application because it is a flat area with no water run-off problems. He said the shed will require no grading in this location.

Chairman Ivanhoe asked if Mr. Strong intends to have any lights on the shed.

Mr. Strong answered that he does not/there will be no electricity at all.

The Chairman mentioned a stand of trees to the south.

Mr. Strong said the trees are another factor in the choice of location for the shed; he doesn't want to disturb the roots or remove the trees. He added that one diseased tree will have to be removed.

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

Mr. Reilly read a draft resolution, noting that there were no objections to the application and there will be no lighting installed.

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

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

Area variance granted, as requested.

BA13-23 Barbara Howard/James Gadsden (315 Mills Road) – **Special Permit** – For the keeping of up to 30 horses and maintenance of a commercial boarding operation and riding academy, including 3 employee dwelling units and the hosting of horse shows, per Article XIII Section 250-72.

Barbara Howard and her husband, James Gadsden, were present. Ms. Howard said she was asking to renew the special permit she has had since they purchased the property. She said the special permit was amended once to include a new indoor riding ring, but no changes are proposed now.

Chairman Ivanhoe said the application was straightforward. He remarked that the farm is well-run and appears to be flourishing. He said he had no particular comments, adding that he assumed the farm has an annual fire-safety inspection.

Ms. Howard said her last special permit did not require a centrally-monitored alarm system in all of the barns, but she is looking into getting a system that meets the Building Inspector's approval now.

Mr. Thompson stated that Chase Meadow is an unusual farm with a long history of horse-boarding, including site plan approval for horseshows. He added that the number of shows hosted annually has not increased.

Ms. Howard said the farm hosts 7 shows per year.

Chairman Ivanhoe said he would certainly want to keep the shows part of the special permit.

The Building Inspector said the shows are operated in line with the approved site plan. He said he had explained to Ms. Howard the need for a central-station alarm system. He commented that the Town was in flux and considering a more restrictive law after a terrible horse-farm fire at the time of the issuance of the last special permit (the law was not changed), and the ZBA included the alarm requirement afterward.

Mr. Reilly stated that the 2000 special permit does not mention horse shows.

Ms. Howard said the permit references the previous special permit that belonged to the former owners and lists the details of the number of horse shows.

Chairman Ivanhoe suggested the shows will go into the new resolution.

Mr. Reilly said appropriate language regarding the shows will be included.

The Chairman said the Board encourages large farms to use fly-control methods.

Ms. Howard stated that she employs a fly-predator system that works very well.

The Chairman commented that the systems work best when neighboring farms all employ them.

The Building Inspector said the Watershed Agricultural Council is working with Chase Meadow, which is always a plus in terms of best management practices.

Ms. Howard stated that she is the chairperson of the East of Hudson WAC. She explained that she is working with WAC because she was concerned about sediment getting into the pond that feeds into the river. WAC is putting in gravel around a new, larger catch-basin and routing the flows to vegetative areas so sediment coming off the driveway and into the pond will be minimized.

Chairman Ivanhoe said it is a good program.

Mr. Monti said it was nice to hear of someone taking a pro-active stance.

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

Mr. Reilly read a draft resolution, noting that the Building Inspector had stated that the applicant has adhered to the conditions of the previous special permits. He noted that language regarding the alarm system and hosting of horse shows will be included in the resolution, and he added that the applicant is pursuing installation of an alarm system with the assistance of the Building Inspector.

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

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

Special permit granted, as requested.

The following 2 applications were heard concurrently.

BA13-24 Frances Sweeney Fraenkel (753 Titicus Road) – **Area Variance** – To decrease the minimum required side yard setback in an R-4 zoning district, per Article V Section 250-15. A setback variance of 30 ft. is requested (75 ft. required; 45 ft. proposed) for construction of a detached 3-car garage.

BA13-25 Frances Sweeney Fraenkel (753 Titicus Road) – **Special Permit** – For the construction and maintenance of an accessory apartment on the second floor of a detached garage, per Article XIII Section 250-68.

Elizabeth O'Leary of David Dunn Architect was present for the applicant. She explained that the proposed 3-car garage is intended to replace a 2-car garage damaged by last October's storm, and her client wishes to have an accessory apartment on the second floor. The new garage is to be built approximately where the old garage was. Ms. O'Leary displayed a site plan and indicated the proposed garage, adding that the apartment will have 997 sq. ft. She stated that her client owns the 2 adjoining lots on the east side, adding that both lots are vacant.

The Chairman commented that the new garage will be nearly within the other's footprint, and he asked if the old garage had been non-conforming.

Ms. O'Leary said it was; the old garage had a side yard setback of 50 ft., and the new one will have a 45 ft. setback.

The Building Inspector stated that the Zoning Ordinance (including setback requirements) was changed in 1987; prior to then, the garage and the subdivided 2-acres lots next door were conforming.

It was noted that the survey included in the application was dated 1980.

Chairman Ivanhoe remarked that the garage will be a nice-looking building, and he asked what kind of lighting is to be installed on the side facing Hunt Lane and up the hill.

Ms., O'Leary said there are lights at the garage doors; those and any other exterior fixtures will have concealed light sources and downward-aimed shades.

The Chairman asked if the garage will be painted white to match the house, and Ms. O'Leary said it will.

Chairman Ivanhoe asked what the roof will be constructed of, and Ms. O'Leary said it will be black-painted metal.

Chairman Ivanhoe noted the 2-bedroom apartment, commenting that there is plenty of acreage and plenty of room for parking.

Mr. Monti questioned the layout of the 3-car, 2-door garage, asking what would happen if the inner/rear car had a fire.

Ms. O'Leary said the owners will probably not usually have 3 cars in the garage but wanted the footprint to accommodate the size of the apartment upstairs.

Chairman Ivanhoe remarked that one would not get into any car and drive out of a garage if it was on fire. He asked the Building Inspector is there is any Code standard for "stacked" parking.

Mr. Thompson replied that there is nothing specific in the Residential Code that addresses that situation. On another subject, he said he had forgotten to ask what the square footage of the main house is so he can compare it to see what percentage of the house-size the apartment is.

Ms. O'Leary consulted the application and told the Building Inspector the main house is 8000 sq. ft.

The Chairman asked where the stairs up to the apartment are located.

Ms. O'Leary said there is a stairway hall separate from the garage on one long side of the building.

The Building Inspector explained that there is a Code requirement of a 1-hour fire separation.

Mr. Monti recalled a past hurricane that caused tremendous wash-down from the subject property, and he asked if Ms. O'Leary knew if anything had been to correct the problem.

Chairman Ivanhoe recalled Hurricane Floyd also, saying a wall was washed right off the subject property onto Route 116.

Ms. O'Leary did not know, although she did say the property is extremely well-maintained generally.

The Chairman said he knew the storm drains on Hunt Lane were worked on/improved after the storm.

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

Mr. Reilly read a draft resolution of the area variance, noting that the new 3-car garage will replace a pre-existing, non-conforming 2-car garage, the variance is minimal and there were no objections. Mr. Reilly noted that Mr. O'Leary would recuse himself from the votes because he disclosed his involvement with the project in the application.

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

Mr. O'Leary: ***Abstain***
Mr. Monti: ***Aye***
Mr. Murphy: ***Aye***
Chairman: ***Aye***

Area variance granted, as requested.

Mr. Reilly read a draft resolution of the special permit, stating that the apartment is larger than 750 sq. ft. but less than 25% of the size of the main house. He added that the special permit will be specific to the property-owner and not run with the land.

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

Mr. O'Leary: ***Abstain***
Mr. Monti: ***Aye***
Mr. Murphy: ***Aye***
Chairman: ***Aye***

Special permit granted, as requested.

The Chairman closed the public meeting and, after 2 members of the public left the room, the Board went into executive session to discuss litigation regarding an Article 78 proceeding.

The Chairman ended the executive session and re-opened the public meeting.

To adjourn at 8:36 pm:

Motion by: William Monti

All in favor.

Respectfully submitted,

Janice Will, Recording Secretary