

BOARD of APPEALS
Public Hearing
May 14, 2015
7:30 p.m., The Annex

MEMBERS PRESENT: Richard O'Leary
Cynthia McKean
Brian Ivanhoe, Chairman

MEMBER ABSENT: Lisa Douglas
James Murphy

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

Chairman Brian Ivanhoe called the May 14, 2015 Town of North Salem Zoning Board of Appeals meeting to order.

The minutes of the April 9, 2015 meeting were unanimously approved.

The next meeting date was set for June 11, 2015.

The Chairman announced that as only 3 Board members were present, a unanimous decision would be required for all applications. He explained that anyone who would rather have their application held over until June in hopes of being heard by a full Board could do so at no additional cost to them.

PUBLIC HEARINGS:

BA15-08 Comfortside Partners LLC (24 and 46-60 Baxter Road) – **Special Permit** – For the keeping of up to 25 horses and maintenance of a commercial boarding operation/riding academy, per Article XIII Section 250-72.

David Nash addressed the Board, stating that he was present to request renewal of a previous special permit, BA00-58, which has expired. He explained that he was not aware that it had expired until it was brought to his attention recently that he needed to re-apply.

Chairman Ivanhoe explained that because BA00-58 expired, the application would be considered for a new special permit and not a renewal. He remarked that he is a neighbor and familiar with the subject property, and it is beautifully maintained and has been used to keep horses for many years. He noted that no changes were being proposed and asked if the manure dumpster is to remain in the same place.

Mr. Nash replied that it is/there is a removal service that comes to change the container regularly.

Cynthia McKean said she had questions about the apartments. She said she did not know when they were constructed, but the fire code now would require fire walls between the apartments and the barn spaces.

The Chairman asked the Building Inspector to explain about Code requirements.

Mr. Thompson explained that when BA00-58 was issued in 2001, there was a condition that although the 2 apartments already existed, Mr. Nash needed to get Certificates of Compliance for them. Mr. Nash hired an architect, Roger Bennett, to prepare plans that met Code requirements, including a 2-hour fire separation between the barns and the apartments, but Mr. Nash did not pursue the issue/never got a building permit. Mr. Thompson stated that the Assistant Building Inspector, Paul Taft, made a fire safety inspection in January of this year, at which time no one was living in the apartments; now there are seasonal occupants in both barns/apartments (Comfortside and Paradise). Mr. Thompson said it was noted that the buildings/apartments were well-kept and clean, and the alarm system tested satisfactorily. Re Code-compliance, he said that even doing the work per Title 9 (in effect in 2001) will require the 2-hour fire separation for the apartments to qualify for CC's.

Mr. Nash explained that he decided in 2002 not to go ahead with the plans because of the expense involved. He said he had the impression from his attorney, Don Rossi, that the age of the apartments would have allowed them to remain as they were/grand-fathered them. He added that later on he decided not to use the apartments.

The Chairman asked if the apartments are used now, and Mr. Nash said they are.

Chairman Ivanhoe said he remembered grooms residing there in 2001 or 2002 (when he kept horses there) and that the grooms vacated the apartments after that. He noted that the horse-boarding operation is run by people other than Mr. Nash. The Chairman said he was under the impression that Mr. Nash now intends to decommission the apartments.

Mr. Nash said the Chairman was correct.

The Chairman asked what can be done if the apartments are reoccupied in Mr. Nash's absence/without his knowledge.

Mr. Thompson suggested Mr. Nash remove the kitchens and return the apartments to non-habitable space, adding that the bathrooms could be left in.

Chairman Ivanhoe remarked that Mr. Nash may do what he wishes, but grooms' apartments are a valuable asset/help to attract good farm labor. He suggested Mr. Nash might want to reconsider his options. The Chairman asked the Building Inspector exactly what Mr. Nash would need to do to legalize the apartments.

Mr. Thompson stated that a 2-hour fire separation installed to UL design standards must be put in, adding that it is unusual construction and would need to provide the required separation horizontally and vertically.

The Chairman said he assumed that the plans Mr. Nash has indicate the fire separation, and Mr. Nash said they do.

Richard O'Leary asked if the 2001 Code requirements are less stringent than the current Code, and Mr. Thompson said they are.

Chairman Ivanhoe asked what would become of the status of the apartments in the future.

Mr. Thompson said that once they are abandoned they no longer have a grandfather status; to come back into existence, they would have to be brought up to current Code standards. Mr. Thompson reminded the Chairman that the Board requires someone living on the premises of any commercial boarding operation, and an employee named Fernando (not a groom) does reside in the Crane house next door.

The Chairman said Mr. Nash should be aware of all his options, suggesting that the Board could grant the special permit and give him 60 days to bring the apartments up to Code/he could let them know after 30 days if he needs more time. The other option would be abandoning the apartments, but then they will cease to exist; to be used again in the future, they would need to meet current Code standards which are considerably more extensive and include installation of sprinklers. The Chairman said he only knows of a few grooms' apartments built recently.

To make sure he understood, Mr. Nash repeated that he could either bring the apartments up to 2001 Code requirements or abandon them altogether.

The Chairman said Mr. Nash was correct, and he added that the Board would need to make sure the apartments are rendered uninhabitable if he chooses to decommission them.

Mr. Nash asked if he needed to decide what he will do right then.

Mr. Reilly suggested Mr. Nash think about it while the Board heard the other applications on the agenda and then the discussion could be continued at the end of the meeting.

The Chairman commented that the application could be held over to the June meeting, but there is currently no special permit in effect/grooms are living on the farm. He expressed concern that this might be an insurance liability for Mr. Nash and would be less than an ideal situation. Chairman Ivanhoe suggested Mr. Nash take some time to consider what he wants to do, and Mr. Nash agreed.

BA15-09 Emily/William Barrett (82 Blackberry Ridge Road) – **Area Variance** – To decrease the minimum required side yard setback in an R-1 zoning district, per Article V Section 250-15. A variance of 13 ft. is requested (20 ft. required; 7 ft. proposed) for construction of a shed.

Mr. and Mrs. Barrett were present. Mr. Barrett explained that they have frontage on 2 streets and their house is only 13 ft. from Blackberry Ridge Road/they thought the best place for a shed would be between their house and the house next door. He stated that

the Bloomerside Co-op approved the plan for the shed, but when the Building Inspector came out to look he raised the issue of fire safety with the shed so close to the house. The Barretts then decided to get an 8 ft. x 12 ft. shed instead of the originally requested 10 ft. x 12 ft. one. Mr. Barret said he was aware that storage of a golf cart and generator in the shed was also a fire-safety issue. Mr. Thompson suggested constructing the shed with a 2-hour burn-time, so they will use Hardiboard instead of ordinary wood. Mr. Barrett explained that given the driveway on the opposite side of the house and the patio/deck at the rear, the right side, (where there is a curb cock and community water tank out front) is the only place to conceal a shed.

The Chairman asked if the smaller size shed wouldn't require less of a variance, but Mr. Thompson said it will be the same because the shed will be moved 2 ft. farther away from the house.

Ms. McKean noted a retaining wall on the submitted drawing.

Mrs. Barrett explained that it is necessary to level the sloping ground by about 2 ft. for the shed.

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

Mr. Reilly read a draft resolution, noting that there is no other suitable location for the shed and that it was approved by the Co-op.

Motion by: *Cynthia McKean*
Seconded by: *Richard O'Leary*

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

Area variance granted, as requested.

BA15-10 Marian Zakerin (6 Lakeside Drive) – **Area Variance** - For construction of a new two-story single-family residence in an R-1 zoning district 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). The following variances are requested:

- Decrease the combined side yard setbacks from 40 ft. required to 19 ft. proposed (30.27 ft.existing), a variance of 21 ft.
- Decrease the rear yard setback from 35 ft. required to 27 ft. proposed (16 ft. existing), a variance of 8 ft.
- Increase the maximum development coverage from 25% permitted to 27% proposed (23.8% existing), a variance of 2%.
- Increase the maximum building coverage from 10% permitted to 19.8% proposed (12.3% existing), a variance of 9.8%.
- Increase the F.A.R. from 0.2 permitted to 0.38 proposed (0.12 existing), a variance of 0.18.

Ms. Zakerin and her architect, Phillip Ceradini, were present.

Mr. Ceradini stated that the Bloomerside Co-op has approved the plan to demolish an existing ranch house and construct a new 2-story one. He said there will not be much change to the existing footprint, although that the new house will be moved uphill/ back about 10 ft. farther from the lake. He explained that the Co-op did ask that the house be kept to the height of the existing house (23.1 ft.), so the new house is designed to back into the hill at the rear, giving it a lower profile as viewed from the road.

Mr. Ceradini stated that the house is to be constructed in a shingle-style with a stone base/cedar.shake top floor and architectural shingles on the roof.

Chairman Ivanhoe remarked that the house is nice-looking.

Mr. Ceradini said the house will not be a detriment to the neighborhood; in fact he thinks it will be an improvement. He noted that there is a lot of glass on the lake side to take advantage of the view.

The Chairman said it was good that Mr. Ceradini managed to keep to the height limitation requested by the Co-op, and he commented that the property is now part of the Peach Lake Sewer System.

Chairman Ivanhoe asked that any exterior lighting not be visible at its source.

Mr. Ceradini said any lighting will be dark-sky compliant.

Mr. O'Leary asked if the Board had received a copy of the letter from the Co-op and if there were any conditions.

Mr. Reilly showed Mr. O'Leary the April 15 letter from Bloomerside and added that none of the Co-op's conditions are issues for the ZBA.

The Chairman agreed, noting that their main concern seems to be damage responsibility, given the amount of demolition proposed. He remarked that the Building Department will monitor the area of disturbance.

Mr. Ceradini said appropriate precautions will be taken to ensure that debris does not get into the lake.

Mr. Thompson said the work will also be restricted by the necessary wetlands permit.

Mr. O'Leary wondered how the Co-op chose the height limit of 23 ft. 1 in.

Ms. Zakerin explained that her previous architect conducted a balloon test to determine the height at which the neighbors will still have their views of the lake. She said a tree on her property obscures the view somewhat, but she does not intend to take the tree down.

Mr. O'Leary asked if the 23 ft. measurement on the new plans is to the top of the ridge.

Mr. Ceradini said that was right/he did not include the cupola or the chimney.

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

Mr. Reilly read a draft resolution, noting that the new house will probably improve the appearance of the neighborhood and won't impact the lake-views of others, and also that the applicant agreed to move the house 10 ft. farther back from the lake.

Mr. Thompson stated that the Town did not require that the house be moved back 10 ft.

Mr. Ceradini said he and his client wanted to move it back and the Co-op approved it. He added that it would be helpful in getting the required wetland permit also.

Motion by: *Cynthia McKean*
Seconded by: *Richard O'Leary*

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

Area variance granted, as requested.

(BA15-08 continued)

Chairman Ivanhoe asked Mr. Nash if he had decided what he wants to do.

Mr. Nash said he wants to discuss the options with his wife (bring apartments up to Code or decommission them), and they need time to think.

Mr. Reilly stated that both the Chairman and the Building Inspector felt the application should not be held over, and he suggested that the special permit be granted with a condition that Mr. Nash will have 60 days to either dismantle the apartments (vacated and kitchens removed) or take steps to bring them up to Code. Mr. Reilly noted that the Chairman suggested that Mr. Nash could let them know in 30 days if he needs more time for the work to bring the apartments up to Code if that is what he decides to do. Mr. Reilly remarked that Mr. Nash needs the special permit for his insurance coverage.

The Chairman said he thought this was a good solution, and the Board would grant the special permit with the condition that Mr. Nash will have 60 days to dismantle the apartments or bring them up to 2001 Code requirements.

Ms. McKean remarked that there are no CC's for the apartments now and asked what the insurance implications are for the immediate present.

Mr. Reilly replied that the applicant is aware that no one should reside in the apartments without the CC's, and Mr. Thompson agreed.

Mr. Nash asked if the Board would grant the special permit for 25 horses for 10 years and repeated that he never realized that these permits expire/he was not notified.

Mr. Reilly said the 10-year expiration is stated in the special permit conditions.

Mr. Nash asked what will be stated in the special permit about the apartments.

Mr. Reilly said the special permit will include 2 grooms' apartments with the condition that they will be updated to qualify for CC's or be decommissioned, in which case they will not be a part of the special permit any longer. He added that any future owner who wants the apartments included will be obligated to bring them up to current Code standards.

Mr. O'Leary stated that the apartments are valuable, and it will be easier to bring them into compliance with 2001 Code requirements than to construct new ones compliant with the 2015 Code.

Chairman Ivanhoe commented that someone will pay a lot of money in the future for such a large parcel, and that person might just go ahead and have new apartments built; however, he did agree that they have significant value.

The Chairman closed the public hearing.

Mr. Reilly read a draft resolution including the condition about the apartments and noted that the special permit will otherwise be the same as the 2001 permit.

Motion by: **Richard O'Leary**
Seconded by: **Cynthia McKean**

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

Special permit granted, with condition per discussion and agreement.

The meeting adjourned at approximately 8:30 pm.

Respectfully submitted,


Janice Will, Recording Secretary