

BOARD of APPEALS
Public Hearing
October 8, 2015
7:30 p.m., Town Meeting Hall

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

MEMBER ABSENT: James Murphy

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

Chairman Brian Ivanhoe called the October 8, 2015 Town of North Salem Zoning Board of Appeals meeting to order.

The next meeting date was set for November 12, 2015.

The minutes of the September 10, 2015 meeting were unanimously approved.

The following 2 applications were carried over to November at the request of the applicant.

BA15-20 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 breeding barn with 1 employee dwelling unit and a garage with living quarters for 4 employees, a sand ring and additional paddocks/fencing, per Article XIII Section 250-72.

BA15-21 Baxter Road LLC (141 Baxter Road) – **Area Variance** – To decrease the minimum front yard setback from 100 ft. required to 65 ft. proposed for installation of a generator and construction of a farm equipment storage garage per Article V Section 250-15; to permit parking within a required (front) yard per Article VI Section 250-20; and to permit construction of 4 employee dwelling units in a single structure (3 dwelling units permitted) per Article XIII Section 250-72 H (6).

BA15-22 Susan Nakamura (213 Vail Lane) – Area Variance- To increase the maximum permitted height of a fence in a front and side yard, per Article VI Section 250-22. A front yard variance of 2 ft. (4 ft. permitted) and a side yard variance of 1 ft. (5 ft. permitted) are requested for installation of a 6 ft.-high fence.

Robert Sherwood, landscape architect, addressed the Board, stating that his client wishes to install a fence. He noted that per the Zoning Ordinance, 4 ft. fences are permitted within front yards and 5 ft. fences are permitted within side and rear yards, and also that 6 ft. deer fencing is permitted in any yard. Mr. Sherwood said his client wants to have a combination of a 4 ft. chain link mesh fence to keep her dogs contained/safe from predators with extended poles to support 2 ft. of horizontal wiring to deter deer. He added that the fence will be nowhere near the rear yard setback.

Chairman Ivanhoe said the application describes a split rail with mesh fence, but Mr. Sherwood had just used the term chain link fence.

Mr. Sherwood explained that a chain link-style mesh will be on the backside/the split rail on the front, and the fence will run behind a stone wall at the front of the property.

The Chairman asked if the mesh will be black or gray, and Mr. Sherwood replied that it will be black vinyl-coated.

Chairman Ivanhoe asked what size the mesh openings will be.

Mr. Sherwood did not know exactly, but he thought the openings would be somewhat small/not 1 3/8 inch. He displayed some photos of the subject property and pointed out where the fence will be.

The Chairman said he is familiar with the property and asked what the silt fence in one of the photos is for.

Mr. Sherwood explained that his client had a septic repair done and a clover mix planted. He stated that he believes the fence is in keeping with what is acceptable and added that his client could have put up 2 fences (a 4 ft. mesh fence and a 6 ft. deer fence) without applying for a variance, but the combination fence is preferred and requires a variance.

Chairman Ivanhoe asked what the purpose of the fence is.

Mr. Sherwood said his client has dogs/she wants to keep them enclosed, and the added wiring is intended to keep deer out of the dog enclosure.

Referring to an anonymous letter received by the Board, the Chairman asked if Mr. Sherwood's client intends to operate a kennel, and Mr. Sherwood replied that she does not.

The Chairman asked how many dogs she has.

Mr. Sherwood said he did not know/he has not seen them, but there is no application for a kennel.

Chairman Ivanhoe stated that the keeping of more than 3 dogs requires a special permit which he recognized was not part of the application being discussed.

Cynthia McKean noted a lighting schedule on the submitted plan, and asked Mr. Sherwood to explain it.

Mr. Sherwood indicated an existing wall that is to be finished with a column to create an entry, although with no gate; some low-voltage LED lighting will be installed on either side at the entrance, and a tree is to be up-lit farther along the driveway for safety/the driveway is quite dark.

Ms. McKean commented that there is no gate on the proposed fence.

Mr. Sherwood showed where the fence starts at the house, tracing its outline to where it ties in to an existing fence.

The Chairman asked how far the fence will be from the eastern boundary of the property, and Mr. Sherwood answered that it will be 80 to 90 ft. away.

The Chairman commented that the fence will be quite close to the northerly property line.

Mr. Sherwood said that section of the fence is also to be constructed behind an existing stone wall.

Chairman Ivanhoe remarked that the area is nicely wooded and he asked if Mr. Sherwood's client would consider putting more of a woodland buffer between the fence and the neighboring property.

Mr. Sherwood thought she might, but he also said he could bring the fence in a little and staple the deer-fencing on to the trees instead of using extended vertical fence supports.

The Chairman said it would really not even be visible that way. He noted that the house to the north will be a good distance from the fencing. He recommended that Mr. Sherwood try to keep back from the perimeter if he puts some of the fencing on the trees so that it may be maintained without going on to the neighboring property and suggested a distance of 6 ft. from the stone wall.

The Building Inspector said that would be adequate for maintenance.

The Chairman stated that perimeter deer-fencing is generally discouraged, but he can understand people wanting to protect a part of their property. He asked that the fencing be kept 6 ft. off (behind) the wall at the property line so that if the neighbor puts in a fence, there will be a corridor left for animals to pass through.

Indicating a note on the plan stating, "connect to existing fence", Ms. Douglas asked if it means the mesh and wire fence is to be continued around the pool.

Mr. Sherwood said it does not mean that; the new fence will just run up to/connect to that split rail fence.

Ms. Douglas asked about a note indicating removal of a section of existing fence, and Mr. Sherwood explained that there is a short section of fencing behind the house that will be taken out.

The Chairman called on Eugene Kesicke of 215 Vail Lane, who stated that the property line and the stone wall may not be the same. He explained that an original survey shows the wall goes off the property line initially by about 1.5 ft., goes back and forth, and farther northeast it is 6 ft. off the property line/onto his lot.

The Chairman said he was familiar with the neighborhood topography and issues with property lines and stone walls, etc.

Mr. Kesicke said the subdivision deeds state that the stone walls are not property lines.

Mr. O'Leary pointed out that the section of the stone wall that the fencing is to be installed behind is pretty much parallel to/on the property line.

Mr. Kesicke said a surveyor from Insite was at the subject property recently and told him that the property line starts on the corner where the stake is and immediately jogs 1.5 ft. northward; at that point, the wall is on his property. Mr. Kesicke said the applicant has a wood pile there which he was told is temporary; he didn't make an issue of it, but he wants to be sure it is understood that the stone wall is not the property line.

Mr. O'Leary asked Mr. Kesicke to show him exactly what area he was referring to, and Mr. Kesicke indicated the section of wall.

Mr. Reilly asked how this changes anything if the applicant is to keep that section of fencing 6 ft. back from the wall.

Mr. Kesicke thought the fence was to be 6 ft. from the property line, so his point was that it was important to note that the stone wall is not the property line/an accurate survey is needed.

The Chairman stated that if the fence is installed 6 ft. back it will not be on Mr. Kesicke's property/the wall will be used as a guide.

Mr. Kesicke asked why the applicant would not put in an invisible fence, but the Chairman pointed out that it would not keep deer out.

Mr. Kesicke commented that a 6 ft. fence probably won't keep them out either; he was not opposed to the fence, he just didn't understand why invisible fence wouldn't be used to keep the dogs contained.

Mr. Sherwood said the fence is also intended to keep predatory animals (coyotes, bobcats) out and at least deter deer. He added that the dogs will probably only be out for a few hours a day.

Chairman Ivanhoe said fencing is a fact of life in Town; he does not like to see perimeter fencing and has an electric fence for his dogs, but people have the right to employ a fence.

Ms. Douglas asked Mr. Kesicke if he will be able to see the fence from his house, and Mr. Kesicke replied that he will be able to see it from October to early May.

The Chairman started to say that the black vinyl coating decreases a fence's visibility, but Mr. Kesicke said he thought the fence was going to be chain link.

Mr. Sherwood said his client has a right to put up the 4 ft. fence; the variance is only needed for the 2 ft. of deer-wires on top.

Mr. Reilly stated that because the applicant requires a variance for the 6 ft. total height of the fence, the Board has the right to put conditions on all of the fencing/even the 4 ft.-high part.

The Chairman added that the application may also be withdrawn and 2 fences put up. He commented that the black plastic mesh does tend to disappear from view.

Mr. Kesicke agreed that was true, but he added that it is not true of chain link.

Mr. Sherwood said the 4 ft. fence will be black mesh and the heavy-duty deer fencing will also be vinyl-clad.

Mr. Kesicke said his neighbor has a right to have a fence, but he wants to be sure it is done properly, and he also said he would not want to see the number of dogs growing over time.

Chairman Ivanhoe said the number of dogs is not currently an issue; Mr. Kesicke could let the Building Inspector know if there are ever a lot of dogs.

Mr. Thompson stated that up to 3 dogs may be kept in an R-4 zoning district, and there may also be puppies up to the age of 6 months per the Ordinance.

Howard Hellwinckel of 44 Finch Road (abutting on the east side of the subject property) stated that the nature of the neighborhood was always to keep it as natural as possible, but the applicant's fence will diminish the viewscape and lower the value of neighboring properties as a result.

The Chairman said that from where Mr. Hellwinckel's house is, the fence won't be in his viewshed.

Mr. Hellwinckel stated that he can see into the yard/the fence will very visible since the applicant had some trees cleared, and he added that Stonewall Farms has a restrictive covenant about keeping the area natural-looking.

Chairman Ivanhoe said he used to live in Stonewall Farms and he believes the covenant Mr. Hellwinckel was referring to applied to trails being maintained.

Mr. Hellwinckel said it also applies to driveways, etc.

The Chairman asked if the restrictive covenants didn't expire/the homeowners association disband.

Mr. Hellwinckel said that was true, but the natural environment was the reason people purchased property there/the fence will change that.

Ms. Douglas asked if the applicant would consider planting some trees behind the fence on the side of the property where it is close to the property line.

Mr. Sherwood said that as things are, one will see the trees more than the fence.

Ms. Douglas said she did not really know what the fence will look like, and some people seemed to have a problem with it; she just wanted to see a happy medium reached.

Mr. Sherwood said that aesthetically, if a row of trees is planted, that is what one will see.

Mr. O'Leary commented that the Hellwinckel property is over 100 ft. away from where the fence will be; the applicant could choose to put up 2 separate fences/the proposed fence is better.

Mr. Sherwood said the variance request is only for the side and front yard/none is needed for the rear, and only a length of 70 to 75 ft. will be within the side yard setback.

The Chairman pointed out to Mr. Hellwinckel that the applicant could build an 8 ft. concrete wall if it were outside the setbacks, and the proposed fence poses no harm to the environment and no public safety issues. He thanked Mr. Hellwinckel for his comments and closed the public hearing.

Mr. Reilly asked for a specific description of the fence material.

The Chairman said the resolution should specify black, poly-clad mesh and he asked Mr. Sherwood how big he thought the openings in the mesh would be.

Mr. Sherwood replied that they would be smaller than the openings of 1 3/8 inch used for pool code fencing but not as small as what is used for chicken coops.

Mr. Reilly suggested stating what size openings would be the largest allowed/not the smallest.

It was agreed to state that the mesh opening shall not be less than 1 inch, because larger spacing would make the fence even less visible.

The Chairman asked if the deer wires will be galvanized metal or something else.

Mr. Sherwood said they will be black-clad like the mesh below, with black vertical support posts.

Mr. Reilly noted that the submitted plan indicates 2 inch metal posts and stainless steel wires, but Mr. Sherwood said he will not use those wires/the wires will be black-clad.

Mr. Reilly read a draft resolution including the finding that the applicant could have achieved the same desired result with installation of 2 separate fences but chooses to combine the 2 types of fencing, and also that much of the fence is permitted as of right. The specifics of the fencing materials and the fence's placement as discussed during the public hearing were included as conditions.

Motion by: *Cynthia McKean*
Seconded by: *Lisa Douglas*

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

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

BA15-23 Robert Ruhlman (17 Harvey Road) – Area Variance – To increase the maximum permitted height of a fence in a rear and 2 side yards, per Article VI Section 250-22. A variance of 1 ft. is requested for installation of a 6 ft.-high fence (5 ft. permitted).

Robert Ruhlman stated that deer caused a lot of damage to his plants last year, so he would like to put up a fence. He described the fence as being constructed of plastic-coated metal mesh with cedar posts set in cement with 2 horizontal wires running along on top. Mr. Ruhlman said the fence is to be 275 linear ft. with a gate on the side and at the rear. He added that he wasn't sure whether the wires are metal or vinyl-clad.

Mr. Ruhlman told the Board that he spoke to 2 of his 4 neighbors, and they had no objection to the fence, adding that no one was present to contest his application.

Chairman Ivanhoe thanked Mr. Ruhlman for his clear, specific explanation of what he wants to do.

Ms. McKean asked if the 5 ft. fence is already present.

Mr. Ruhlman said it is not; it will all be new.

The Chairman noted that the application states the openings in the mesh will be 2 in. x 4 in.

Mr. Ruhlman said he will attach the deer-wires to trees wherever possible.

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

Mr. Reilly read a draft resolution.

Motion by: *Lisa Douglas*
Seconded by: *Cynthia McKean*

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

Area variance granted, as requested.

Meeting adjourned at approximately 8:15 pm.

Respectfully submitted,



Janice Will, Recording Secretary