

**BOARD of APPEALS**  
**Public Hearing**  
**November 12, 2015**  
**7:30 p.m., Town Meeting Hall**

**MEMBERS PRESENT:** Richard O'Leary  
Lisa Douglas  
James Murphy  
Brian Ivanhoe, Chairman

**MEMBER ABSENT:** Cynthia McKean

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

***Chairman Brian Ivanhoe called the November 12, 2015 Town of North Salem Zoning Board of Appeals meeting to order.***

The next meeting date was set for December 10, 2015.

The minutes of the October 8, 2015 meeting were unanimously approved.

*The following 2 applications were carried over to December 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).

**BA15-24 Steven Roberts (21 Vail's Lakeshore Drive) – Area Variance-** For construction of a deck and covered porch 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 15 ft. proposed, a variance of 25 ft.
- Increase the maximum development coverage from 25% permitted to 29% proposed, a variance of 4%.
- Increase the maximum building coverage from 10% permitted to 23.3% proposed, a variance of 13.3%.
- Increase the F.A.R. from .200 permitted to .261 proposed, a variance of .061.

Richard Vail, architect, was present for the applicant. He showed the Board a site map of the subject property and indicated the proposed deck and covered porch and explained that the Board granted his client a variance for a deck in 2012, but the deck was not built/the variance has expired. Mr. Vail stated that the current proposal is for a somewhat smaller deck on the water side of the property with a catwalk along the side of the house that will lead to a covered porch on the street side of the house. He pointed out that the house is close to the front property line and the lot is narrow; the proposed porch will not be any closer to the street than the house is now. Mr. Vail said the porch will be constructed one step up from grade and have a masonry floor.

Chairman Ivanhoe asked about lighting for either the deck or the porch.

Mr. Vail said he and his client had not discussed it yet, but he thought perhaps there will be some recessed lighting in the ceiling of the porch but no floodlights.

The Chairman said there will be a condition in the resolution that any lighting employed must not be visible at its source.

Lisa Douglas asked if recessed lighting would be permitted, and the Chairman said it will/there simply may be no bare bulbs.

The Chairman noted for the record that the application includes a letter from the Vail's Grove Co-op Board approving the proposal.

James Murphy said he is familiar with the site and had no objection to the proposed deck and porch.

Richard O'Leary commented that the deck stairs are at a different angle than was proposed in 2012.

Mr. Vail explained that he altered the stairs a little to work with the slope of the property and connect to the patio below the deck.

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

Gerald Reilly read a draft resolution.

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

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

**Area variance granted, as requested.**

**BA15-25** 112 Titicus Road LLC – **Area Variance** – To decrease the minimum front yard setback for a free-standing sign, per Article IX Section 250-40.1(B). A variance of 8 ft. is requested (10 ft. required; 2 ft. proposed).

Ralph Mackin, Jr., architect, addressed the Board, stating that there has been a pre-existing, non-conforming sign in front of the subject property for many years; now that his father is retiring/giving up his office in the building, a new sign for just the architect's office is wanted. Mr. Mackin explained that the presence of a large tree forces placement of the free-standing sign within the front yard setback (the tree would obscure the sign if it were to be placed 10 ft. back).

Chairman Ivanhoe stated that the Planning Board approved the replacement sign and that no lighting is proposed.

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

Mr. Reilly read a draft resolution.

**Motion by:** Lisa Douglas  
**Seconded by:** Richard O'Leary

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

**Area variance granted, as requested.**

**BA15-26** Rebecca Bose (295 Titicus Road) – **Special Permit** – For the keeping of up to 2 horses for personal use and installation of a run-in shed, manure dumpster pad and paddock fencing, per Article XIII Section 250-72 and Article XIV Section 250-79(A) (because the non-conforming lot is subject to R-2 bulk requirements).

Rebecca Bose stated that she is in contract to purchase the subject property, where she would like to keep 2 horses for her personal use. She said she would like to install a run-in

shed, 2 paddocks/fencing and a small manure dumpster to be placed at the end of the driveway and screened from view with fencing. She provided the Chairman with a letter from the next-door neighbor, Patricia Carey, stating that she supports the application.

Chairman Ivanhoe said Ms. Bose did an excellent job on her application, noting that it was clear and concise. He was pleased that she stated her intention to use fly-predators, and he asked if the dumpster will be accessed straight down the driveway.

Ms. Bose said that is her intention, adding that the 4 ft. x 6 ft. box will be gated and have a lid on it.

The Chairman suggested Ms. Bose do something to ensure that the lid will not blow open, as it would make quite a bit of noise. He commented that the dumpster will probably not need to be emptied very often.

Ms. Bose offered to have the dumpster emptied even when it is not full so odor will not be a problem.

Chairman Ivanhoe suggested installing a somewhat larger dumpster that can be changed-out less often, creating less noise.

Ms. Bose replied that she could do that; she had thought the Board would prefer a smaller dumpster.

The Chairman asked about medical paddocks.

Ms. Bose replied that there will be 2, 20 ft. x 20 ft. run-outs in front of the run-in shed.

The Chairman commented that this location will be easy for use in winter. He asked if there is to be just a single fence between the 2 medical paddocks; a space of at least 8 ft. would be best, or a higher than usual fence to keep them separated if there is not room for an 8 ft. space. He said bringing the paddock fencing out from either side of the run-in shed would provide more room.

Ms. Bose said each medical paddock will have a gate for easy access.

Chairman Ivanhoe asked if the run-in shed will have Dutch doors on the back.

Ms. Bose said she would like that/she will have to look into the structures and see what is available.

The Chairman said Dutch doors are good for maintenance and also safety, so he would recommend them. He asked Ms. Bose how she will manage water to the run-in shed.

Ms. Bose said that at least initially she will tote buckets from the house and use a hose in warm weather.

Chairman Ivanhoe asked where the larger paddocks will be, and Ms. Bose pointed them out on the survey. She said the front one will be most visible to others/she wants to keep it in good condition; the back one is larger and will be used most.

The Chairman asked if Ms. Bose intends to turn the horses out together in the larger paddock.

She answered that she hopes to; she only has one horse now, but she wants to get a companion for him/he can't be alone.

The Chairman said that then the 8 ft. aisle between the medical paddocks will not be needed. He asked if Ms. Bose intends to install any lighting.

Ms. Bose described a solar-powered motion-detector type of light she might get.

The Chairman said they should not have bare bulbs, and Ms. Bose replied that they don't; they are quite small but bright.

Mr. O'Leary asked what base material will be used in the medical paddocks.

Ms. Bose answered that she will talk to the person who sets up the paddocks, but she thinks it would be stone dust. She went on to say that she wants to use whatever is recommended that won't be muddy.

Chairman Ivanhoe explained that the top soil should be stripped, the base tamped down, and then crushed stone is good to put down.

Ms. Bose said Alan Keeley will do the work/she plans to ask his advice.

The Chairman called on Janis Nagi, who said Ms. Bose has taken care of her horses and does a great job. She added that Ms. Bose is very experienced and will take excellent care of her property.

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

Mr. Reilly read a draft resolution, noting that the manure dumpster will have a lid and also that the nearest neighbor provided a letter in support of the application.

**Motion by:** James Murphy  
**Seconded by:** Lisa Douglas

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

**Special permit granted, as requested.**

**BA15-27** Christine M: and Michael Fitzgerald (353 Hardscrabble Road) – **Appeal** – To overturn a determination by the Building Inspector that the right to the non-conforming commercial use of the subject property is limited to 1 building (CO # 465, issued December 5, 1969) and does not include outdoor use of the property, per Article XVII Section 108(A) and -109.

Michael Sirignano, attorney, Christine and Michael Fitzgerald were present. Mr. Sirignano said his clients were present to appeal a decision by the Building Inspector that one structure (used for 71 years) on the subject property may be used for a permitted, non-conforming use in the R-4 zoning district, but concluded with a narrow interpretation that the use is limited to the building's footprint. Mr. Sirignano said he would ask the Board to clarify Mr. Thompson's ruling; his clients and their tenant need this, and it will be helpful to Mr. Thompson also.

Mr. Sirignano stated that the issue is whether use of the areas immediately around the building for parking and loading and enclosed storage are permitted accessory uses to the non-conforming business use, which he covered in detail in his 11/11/15 letter to the Board. He said he would not ask the Board to rule that the outdoor spaces may be used for any other separate business uses (as would be permitted in a commercial zone); he was asking the Board to recognize the historic uses of the parking area and storage facilities and rule that these outdoor spaces may be used as long as they are incidental to the business in the building (a pool business for over 30 years). Mr. Sirignano said Fred Markey of Christe Pools was present and would describe the historic use of outdoor areas over the past 30 years.

Mr. Markey said the storage containers are used for dry storage of pool chemicals, filters, heaters, pumps, etc. which allows him to get a discount by purchasing in bulk early in the season. He said it would be difficult to run the business without use of the storage facilities. Mr. Markey stated that the availability of the containers allows him to buy a pallet or 2 of cement and have it on-site rather than purchasing it by the bag/by the job, and the enclosed storage is also better for tools, pipe-fittings and wheelbarrows. He said there is no room for the pool chemicals in the main building, and they cannot be stored outdoors as they dissolve and create fumes if they are exposed to moisture.

Mr. Sirignano asked Mr. Markey to describe the larger equipment he has historically kept in the yard.

Mr. Markey said he usually has 5 or 6 pick-up trucks, one dump truck, a skid steer and a mini-excavator which is on-site unless he is building a new pool.

Chairman Ivanhoe asked where these vehicles are kept.

Mr. Markey responded that they are usually to the right of the 3 containers; some smaller trucks are parked between the containers.

Mr. Sirignano asked about employee parking, and Mr. Markey replied that he has 4-5 employees and a secretary, and they park on the gravel area.

Mr. Markey explained that he could not afford the price initially being asked for the subject property; so he was forced to look for another location for his business; however, he would prefer to keep it at 353 Hardscrabble as it is more convenient for him to service the majority of his customers from there.

Mr. Sirignano said Mr. Markey needs clarity re use of the property.

The Chairman asked if Mr. Markey has a lease.

Mr. Markey said he originally had a 10-year lease; when it ran out, there was never another one. He added that he has a good relationship with the property-owners.

Mr. Sirignano said Mr. Markey took over the business originally owned by Tom Christe, and he does not seek any kind of expansion of that business. He added that there is a sliding wooden gate which blocks the equipment from view. Mr. Sirignano also noted that there are no Certificates of Occupancy for the containers on the property, but correction of this will be pursued if their continued use is to be permitted.

Mr. Reilly said he thought the Board really needed to see a site plan that delineates all the aspects of the non-conforming use as is, including the containers, parking areas, etc., because there is not one now. He explained that in his experience non-conforming uses sometimes expand/spread; a site plan would prevent this; with an accurate site plan, the Board's approval (if they approve the request) will be based on a document.

Mr. Sirignano said this would be an expense to his clients; a series of Google maps would show that nothing has changed for 30-40 years.

The Chairman said the existing survey could be added to in order to show everything.

Mr. Reilly said the existing survey is not really adequate, because it shows none of the things the Board is asking about. He said a site plan will also be needed if any area variances are needed. Mr. Reilly further stated that his reading of the Statute is that use of the property for the existing pool business may not be changed to any other non-conforming business use/may only be changed to a conforming use.

The Chairman thought the pool company and the previous non-conforming uses would be permitted non-conforming uses, but Mr. Reilly disagreed.

Chairman Ivanhoe said that then the Board would be considering use of the subject property for the pool business only.

Mr. Sirignano said that was not the basis for the appeal.

Mr. Reilly responded that when application is made to legalize the containers, the approval will be for their use by a pool business only.

Mr. Sirignano thought a somewhat different business with the same intensity of use as the pool business might be wanted in the future.

Chairman Ivanhoe said that can be discussed in the future. He said it was his understanding that permission for the existing use by the pool company will expire in January, and the Board does not want to see that happen. He said he wanted to understand what the Board would be considering; he noted the need to legalize the containers and asked if there is documentation concerning the dedicated curb cut/driveway to the business area of the property.

Mr. Sirignano said it is not disputed by the Building Inspector.

The Chairman said the parking areas as accessory use to the main building would not be an issue; parking must be permitted for a business, and there is a separate driveway. He read Note #5 from Mr. Sirignano's letter to the Board, "As previously noted, Appellants do not assert a right to use said outdoor areas for separate business/commercial uses which are unrelated to the permitted non-conforming use of the Building." Chairman Ivanhoe asked if Mr. Sirignano meant the applicants were only asking to use the outdoor areas for the pool business.

Mr. Sirignano said the Chairman was correct; they are not suggesting any sublet of parts of the subject property for other businesses.

The Chairman stated that the main building, containers and parking areas are all related to the pool business. He said he would open up the discussion to questions from the other Board members, and then they would have to decide what they will be voting on or if they will decide they need to see a site plan before they vote.

Mr. Sirignano asked if the Board would consider voting to approve the appeal subject to submission of a site plan.

Mr. Reilly suggested to the Board that if they approve, he would ask for a detailed site plan and he will write up a resolution overturning Mr. Thompson's determination which he will forward to the Board, Mr. Sirignano and the Building Inspector before the December meeting; the Board would then vote in December/the right to the non-conforming pool business will not be lost. He added that if Mr. Markey puts some of his supplies back on the subject property there will be no risk of abandonment of the use, and there will be time to handle the determination properly with no open issues remaining.

Mr. O'Leary asked what triggered the application to the Board at this time – change in ownership?

Mr. Sirignano said his clients were attempting to sell the property, and the question of permitted uses in and around the building came up/they want clarity.

Mr. O'Leary asked if Mr. Markey owns the property.

Mr. Markey stated that he has been renting the property; he could not afford the initial asking price and moved his business to another location. Mr. Markey said the price has come down now, and he would prefer to be in North Salem. He said he did some work on

his new business location and has been offered a good price for it, which was why he started making inquiries about 353 Hardscrabble Road.

Mr. O'Leary asked who lives in the house at 353 Hardscrabble Road, and Mr. Sirignano said Ms. Fitzgerald lives there; there are a house and garage with accessory apartment accessed by a separate driveway from the one used for the business.

Mr. O'Leary asked if Mr. Markey would live there if he purchases the property.

Mr. Markey replied that he didn't know if he would or not; if it was stipulated that he had to live there to have the business, he would do so. He said otherwise, he would probably rent out the house and apartment.

The Chairman said the Ordinance would not require that Mr. Market live on the subject property in order to have his business there, and Mr. Reilly agreed.

Mr. O'Leary asked if there are bulk/setback issues for the buildings or parking areas.

Mr. Thompson said the only issue at present is the use.

Mr. O'Leary asked if the containers need permits, and Mr. Thompson said they do to be recognized as permanent structures.

Mr. O'Leary said it looked as though they may be within the setback.

Mr. Thompson said it was possible; this is one reason why a site plan is needed which includes them.

Mr. Markey thought the containers might not have been considered permanent structures.

The Building Inspector said that might be true but once something is present for 6 months, it is considered permanent/must comply with zoning requirements.

Mr. Sirignano said if the survey shows there is a problem with the setback of the containers, they will be moved or application will be made for a variance.

Mr. Thompson stated that if the subject property has 300 ft. of street frontage, R-4 setbacks would be required (75 ft.).

Mr. O'Leary asked if the purpose of the application was to determine if parking was allowed in conjunction with the non-conforming use.

Mr. Sirignano said the enclosed storage is part of the issue also.

Mr. O'Leary reiterated that the containers appear to be within the setback.

Mr. Sirignano said the basis of the application is the use of the containers and parking as accessories to the non-conforming business/not their locations.

Mr. Reilly said the Building Inspector had determined that the containers and outdoor areas were an expansion of the non-conforming business use, which would not be permitted; the applicants were asking the Board to overturn that determination and allow use of the containers/outdoor areas, subject to providing a site plan and getting whatever approvals are needed.

Mr. O'Leary asked if it wouldn't be an issue for the Planning Board if it is considered an expansion of the non-conforming use.

Mr. Reilly said it would not; it is up to the ZBA to decide that the storage buildings/outdoor areas are legitimate or not.

Mr. Murphy said he understood the issues but asked what the Board would vote on.

Mr. Reilly said they would not vote at this meeting; in December they will be asked to vote whether or not to overturn Mr. Thompson's opinion that the areas outside the footprint of the main building may not be used for any storage or parking for the business.

Chairman Ivanhoe added that Mr. Sirignano was saying that the parking and storage are accessory to/in support of the business which is a permitted non-conforming use.

Mr. O'Leary asked how the Board could support the use of buildings that have no CO's, and Mr. Reilly replied that the applicants will apply for building permits to legalize them.

Ms. Douglas asked why a site plan is necessary, given how long the business has existed.

The Chairman said it will provide specific documentation of what exists on the property, including the containers.

Mr. Markey stated that he has never had a complaint about his operation of the business on the property.

Mr. O'Leary asked if the neighbors received Notices of the appeal application, and Mr. Sirignano said they did.

Chairman Ivanhoe opened the meeting up to members of the public for questions/ comments.

Robert Tompkins of 261 Hardscrabble stated that he was asked as a long-time neighbor to recall things about use of the subject property. He remembered the man who built the structure used for business/used it to make piano strings; later there was a mail order business (including several trucks) run there in the 1970's; and there was a plumber at some point. He added that the pool business has always been kept immaculate, and the gate hides the containers from view. Mr. Tompkins said the containers will certainly require variances. He said it sounded as though the question was whether the only business to be permitted would be a pool business.

The Chairman said that could be decided at another meeting.

Mr. Reilly agreed and noted that the pool business was approved by the Building Department in 1983.

Mr. Markey asked if a small electrician's or plumber's business, including a few vans, wouldn't be allowed.

Chairman Ivanhoe responded that the Board would require an application for a use variance for a different business.

Mr. Markey said he/the applicants were being asked to provide a site plan and asked if a different business would have to do the same thing in the future.

The Chairman said the site plan being requested at present was to help the Board vote on Mr. Markey's business; a different business would have to make application for a change of use so the Board could see what they want to do.

Mr. O'Leary was confused by use of the term "site plan", because it sounded to him like something the Planning Board reviews.

Mr. Reilly stated that the site plan will be a survey with details of all that is in place on the subject property now and include existing setbacks which will also serve to indicate if an area variance will be required, adding that there is no site plan in existence at present. He told the Chairman that the public hearing should remain open, and he will prepare a resolution overturning the Building Inspector's determination to be voted on in December (to be shared with Mr. Sirignano prior to the December meeting). Mr. Reilly added that they will, hopefully, see the site plan then also.

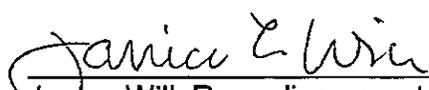
Mr. Sirignano asked for a sense of the Board for his clients and Mr. Markey, given the time-sensitive nature of the application.

The Chairman stated that the Board members present were in favor of approving the appeal, based on the evening's discussion and findings; submission of a site plan in December will enable the Board to vote on something specific and documented.

Mr. Sirignano said he had not wanted to see his clients incur the expense of getting a survey done, but given the positive sense of the Board, they will do it.

The meeting was adjourned at approximately 8:45 pm.

Respectfully submitted,

  
Janice Will, Recording secretary