

**BOARD of APPEALS  
Public Hearing  
December 10, 2015  
7:30 p.m., Town Meeting Hall**

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

**MEMBERS 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 December 10, 2015 Town of North Salem Zoning Board of Appeals meeting to order.***

The next meeting date was set for January 14, 2016.

The minutes of the November 12, 2015 meeting were unanimously approved.

*Believing that some applications would take much longer to deliberate than others, the Chairman opted to take them out of their agenda order.*

**BA15-28** Susan Nakamura (213 Vail Lane) – **Area Variance** – To increase the maximum 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; 6 ft. proposed) and a side yard variance of 1 ft. (5 ft. permitted; 6 ft. proposed) are requested.

Robert Sherwood, landscape architect, addressed the Board, stating that his client was granted a variance for fence height in October. Mr. Sherwood explained that she wishes to alter the location of some parts of the fence, but the Building Inspector told her that the variance was granted only for the fence as depicted on the submitted site plan, so she would need to re-apply.

Mr. Sherwood said that originally part of the front section of fencing was to be 6 ft.-high deer-fencing installed behind an existing stone wall, but now a 4 ft.-high fence will be put directly on top of the 18 in.-high wall. He explained that another section of fencing on the north side of the property is to be moved back farther from the property line so that it may

be installed behind existing plantings, and a small section near the house will be changed slightly in order to accommodate a gate.

Chairman Ivanhoe commented that the changes are small yet an improvement over the original plan, because the fence will be less noticeable.

Richard O'Leary said it appeared that the fence along Vail Lane will be somewhat closer to the road but also shorter, and Mr. Sherwood said that was correct.

Cynthia McKean asked if Mr. Sherwood thought a 4 ft.-high fence would actually keep deer out.

Mr. Sherwood replied that the 4 ft.-high wire mesh fencing will be installed on top of the 18 in.-high stone wall.

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

Gerald Reilly read a draft resolution.

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

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

**Chairman:** *Aye*

**Area variance granted, as requested.**

**BA15-32** Charles Haggerty (10 Memorial Drive) – **Area Variance** – For construction of a deck and addition to a non-conforming single-family residence and creation of a parking area, per Article V Section 250-15, Article VI Section 250-20 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:

- a. Allow parking within the required front yard.
- b. Decrease the combined side yard setback from 40 ft. required to 9 ft. proposed.
- c. Decrease the rear yard setback from 35 ft. required to 5 ft. proposed.
- d. Increase building coverage from 10% permitted to 33.8% proposed.
- e. Increase development coverage from 25% permitted to 36.55% proposed.
- f. Increase Floor Area Ratio from .20 permitted to .31 proposed.

Christopher Harrigan, architect was present for the applicant. He said the subject property is in the Pietsch Gardens Co-op, and the non-conforming lot is subject to R-1/2 bulk requirements. He explained that the house currently consists of 630 sq. ft., and his client would like more space for a functional kitchen, an additional bathroom and a deck. Mr. Harrigan pointed out that anything to be added to the house would require numerous

variances, given the very small size of the lot. He added that the proposal was approved by the Co-op.

The Chairman said that if any exterior lighting is to be installed, the Board will require that it not be visible at its source.

Mr. O'Leary asked if the addition to the house will have a basement/lower level.

Mr. Harrigan answered that it will have a crawl space with flood openings, as the property is in a flood zone. He added that mechanical equipment and a washer and dryer will be installed in the new pantry area.

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

Mr. Reilly read a draft resolution including the condition that any exterior lighting to be installed may not be visible at its source.

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

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

**Area variance granted, as requested.**

**BA15-29** Ralua LLC (1 Bloomer Road) – **Area Variance** – For changes to an existing garden center in an NB zoning district. The following variances are requested:

- a. Increase maximum fence height in a side yard from 5 ft. permitted to 6 ft. proposed, per Article VI Section 250-22.
- b. Allow parking within the required front and rear yards, per Article VI Section 250-20.
- c. Decrease the minimum front yard setback from 20 ft. permitted to 0 proposed for installation of a seasonal structure (bike rack), per Article V Section 250-15.
- d. Increase the maximum permitted development coverage from 60% permitted to 82% proposed (66.68% existing), per Article V Section 250-15.
- e. Permit an off-street loading berth between the street line and a principal building, per Article VIII Section 250-35(B).

Renea Dayton identified herself as the proprietor of Hayfields and explained that the variances were being requested to bring the site plan up to date re the existing conditions and also to allow installation of a bike rack. She said the bike rack will discourage bikers from leaving bicycles strewn around and also serve to block an unused entrance.

The Chairman asked Ms. Dayton to show the Board where the fence is on the site plan.

Mr. O'Leary asked which side yard has the fence requiring a variance.

Ms. Dayton indicated a greenhouse at the rear of the property and explained that there is a partial fence behind it and then a break; she wishes to connect the two sections of fencing. She said the Planning Board approved the fence, but it will require an area variance for the part within the setback.

Chairman Ivanhoe said he had not seen a referral letter from the Planning Board, and Ms. Dayton said it was part of the variance application.

The Chairman found the referral letter and noted its inclusion in the application.

Mr. Reilly said he was present at the Planning Board meeting when Ms. Dayton's site plan was discussed; they studied the plan in detail but need the area variances noted before they make a recommendation.

Mr. O'Leary asked if just the small section of the fence near the gate requires a variance, and Ms. Dayton said that was correct.

Mr. O'Leary asked what the hatched areas on the plan indicate, and Ms. Dayton explained that they are storage areas.

Noting the variance request for parking within the front and rear setbacks, the Chairman asked Ms. Dayton to explain.

She said there is not enough room for 2-way traffic with the existing parking along the curb, so the Planning Board asked that the parking area be moved closer to the street.

Mr. O'Leary asked about the bike rack, and Ms. Dayton said it is to be installed at an existing entrance that will be chained/closed up.

Chairman Ivanhoe asked if the parking spaces will be delineated on the ground.

Ms. Dayton replied that the Planning Board did not want the spaces outlined that way; the planters will serve to indicate individual parking spaces.

Mr. O'Leary remarked that just a corner of the rear parking area will be within the setback.

The Chairman asked if any work will be done to the concrete surface.

Ms. Dayton said new gravel has been put in; some pavement was added to flatten the surface of one area. She went on to say that the development coverage variance requested is not for anything additional/it is just to correct the site plan for what is already present on the lot.

Mr. O'Leary noted the proposed loading area in front of the left-side parking area, and Ms. Dayton said the Planning Board asked that it be moved there from the front of the building.

Mr. O'Leary asked if the concrete pad is proposed or existing, and the Chairman said it is existing.

Mr. O'Leary said it appeared that nothing on the Detail page of the plans requires a variance.

Chairman Ivanhoe asked where the refuse container will be.

Ms. Dayton pointed it out on the proposed site plan, adjacent to the right rear parking area. She explained that it is not on the existing site plan drawing, but it is already there; the Planning Board requested the stockade fence enclosure.

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

Mr. Reilly read a draft resolution including the finding that the Planning Board, in their referral letter of November 17, 2015, recommended granting the requested variances.

The Chairman asked that there be a condition included that there may be no lighting that is visible at its source.

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

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

**Area variance 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 250-108(A) and -109.

Chairman Ivanhoe stated that the Board heard this application in November, and now Mr. Reilly has provided a resolution that they will vote on.

Mr. Reilly said the applicants have now also provided a 1999 survey, and the Building Inspector made a site visit to confirm the locations of buildings, etc. as shown on the survey. Mr. Reilly said a copy of the draft resolution was also provided to counsel for the Fitzgeralds. He noted that the public hearing remained open.

The Chairman said he had read the resolution.

Michael Sirignano, attorney, stated that the submitted survey makes clear the need for area variances for the storage containers, and application for variances will be made separately.

Mr. Sirignano said his clients have a new lease with Mr. Markey (Christe Pools). He went on to say that his only objections to the resolution were paragraphs 14 and 15 which he felt

were not a part of the application or germane to it, although he was aware that Mr. Reilly felt differently. Mr. Sirignano said the application dealt only with the ancillary use of storage structures and outdoor areas; future consideration of the use of the subject property for another, similar use, is an issue for another time. He asked the Board not to adopt paragraphs 14 and 15 of the draft resolution.

Mr. Reilly responded that it was the Board's responsibility to determine whether Mr. Thompson's letter was correct, and it appeared that they would change it to allow the use of the outdoor property. He said the determination would affect the owner and anyone who purchases the property in the future, and it was his opinion that once there is proposed to be a change from one non-conforming use to another, application for a use variance would be necessary for purposes of notification or it would not be permitted.

Mr. Sirignano said he read the Ordinance differently, but he also did not think Mr. Reilly's point was germane to the application; in fact, the Building Inspector spelled out the earlier, different business uses of the property in his letter. He said he thought it inappropriate to go into possible future changes without a full hearing. A plumbing business with the exact same number of trucks, etc. might be wanted.

Chairman Ivanhoe said a plumbing business has never existed on the property; there were an import/export business and a piano repair shop.

Mr. Reilly said the only use that should be considered by the Board is the pool business; prior uses and future uses would not be permitted per the Code. He noted that the Town permitted the pool business on the property, and the Board may only grant the request for the existing pool business. With regard to past non-conforming uses of the property, Mr. Reilly pointed out that they ceased/were abandoned; the Board's acceptance of the history of the use of the property does not mean they are uses that may be taken up now.

The Chairman said he understood that with the abandonment of those previous uses, permission to conduct them would have expired because they are non-conforming.

Mr. Reilly said it was his opinion that by removing paragraphs 14 and 15, the Board would be misleading potential purchasers and neighboring property-owners.

Mr. Sirignano felt the Board was being encouraged to adopt an advisory opinion, and they had not been asked whether or not a pool business is the only legitimate business that may ever be on the subject property. He said Mr. Reilly could be proven to be correct at some time in the future, but it is not the issue at present.

Chairman Ivanhoe said that if the resolution is not that specific and a change is proposed in the future, the Board would like to have the opportunity to see what is wanted.

Mr. Sirignano stated that he did not want there to be an obligation to apply for a use variance, adding that this would be prejudicial to his clients.

Mr. Reilly said the Board was considering only whether the pool business is a legal non-conforming use of the property per the submitted facts, which is not advisory; it is an

opinion regarding the existing use and the business's continued use of storage buildings and parking areas.

Mr. Sirignano said paragraphs 14 and 15 go beyond that, and he added that the local law may change in the future.

Mr. Reilly stated that the existing North Salem Code does not permit a change from one non-conforming use to another non-conforming use, which is what is put forth in paragraphs 14 and 15.

Mr. Sirignano said that question was not being asked.

The Chairman asked Ms. McKean and Mr. O'Leary what they thought about paragraphs 14 and 15.

Mr. O'Leary thought the issue was similar to that of the former Lakeland Lumber property, where a very specifically-described new use was allowed. He asked what the difference really is between a painter, a wallpaper-hanger or a screen-repair person operating in the same place. He stated that a definition of "use" was beyond him, but he thought it could be more broadly defined.

Mr. Reilly reiterated that the Ordinance does not allow a change from a non-conforming use to another non-conforming use; it may only be changed to a conforming use. He said it would be deceptive to leave the issue open/it was incumbent on the Board not to do so.

Ms. McKean thought the "tradesman's office" use permitted at Lakeland Lumber was different/allowed for larger storage, etc.

Mr. O'Leary said it seemed the Board was trying to limit negative impacts on the neighborhood, which is what paragraphs 14 and 15 aim to do; the resolution states that the pool company use is allowed because it is existing and will have no additional impact on the neighborhood.

Mr. Reilly stated that if the term "use" is generic/non-specific, it has no meaning. He said there is no case authority that allows changes of use to be generic instead of specific; if a use is to change, the analysis of a non-conforming use must be gone through again/non-conforming uses are meant to be done away with. Mr. Reilly remarked that allowing an existing non-conforming use protects the property-owner.

Mr. O'Leary asked if pool businesses are listed as permitted uses in other, non-residential zoning districts in Town.

Bruce Thompson said they are not specifically listed, but perhaps they might fall under the tradesman offices use.

Mr. Sirignano said he agreed that non-conforming uses may not be expanded, but he does not agree that they may not be changed. He added that 250-80 of the Ordinance states

that non-conforming uses may not be expanded or extended above the existing level of intensity.

Mr. Reilly said 250-80 addresses expansion if it was clear at the time when the use was established that it would be expanded; for example, a cemetery. He stated that a deli converting to a supermarket would not be acceptable.

Chairman Ivanhoe agreed with Mr. Reilly and said he felt comfortable with a statement that future changes to other non-conforming uses would require for application for a use variance.

Mr. Sirignano disagreed and asked the Board not to adopt paragraphs 14 and 15.

Mr. O'Leary commented that if the Zoning Ordinance lists specific uses/business types and pool business-use is not listed, one would infer that a pool business-use is not permitted in Town. He thought not every possible type of business could be listed, which would leave room for a little flexibility.

Mr. Sirignano posed the possibility that another pool business could come in and be much busier, moving trucks in and out many more times in a day, whereas a plumber's business might actually more closely replicate the amount of daily activity created by the current pool business. He said that paragraphs 14 and 15 actually grant permission for a pool business no matter how active or inactive, and he thought it was a bad policy to limit the use this way.

The Chairman thought that what Mr. Sirignano described would be an expansion of the pool business use, which is not permitted.

Mr. Sirignano said what he described was merely a more active business of the same size.

The Chairman disagreed, citing a past instance of a restaurant in a residential zoning district that wanted to add to their use of outdoor areas to include weddings with music, etc.

Mr. O'Leary said he understood Mr. Sirignano to mean that the same number of trucks and could be going in and out more times in a day.

Chairman Ivanhoe thought the Building Inspector would be made aware if the impact on the neighborhood was increasing. He asked if there were any comments from members of the public.

Michael Fitzgerald asked to speak. He said he felt the unilateral decisions being considered would have an economic impact on him/his daughter, noting he had already lost one buyer when they were told they could not operate a certain business on the property.

Mr. Sirignano said the prospective buyer was a one-man excavation company.

Continuing, Mr. Fitzgerald said he would like to move forward now, but what was being proposed would restrict the salability of his property/take value out of it. He added that the property has always been understood to be commercial, having been used that way for many years.

The Chairman commented that it is in a residential zone.

Mr. Fitzgerald felt the limitation to a pool business use was arbitrary and would hurt him and his daughter. He added that in May, even the pool business was not recognized as a legal non-conforming use of the property; now that it is, the Board wants to restrict it to only that one business use.

The Chairman noted that it remains a residential property in a residential zone also, but Mr. Fitzgerald said the one building is only suitable for a commercial use.

Mr. O'Leary said he still found it similar to the issues with the lumber yard, but it would be awkward to go against the Town's attorney's advice.

Mr. Reilly said the lumber yard change of use was permitted based on a reading of the Ordinance that a less offensive non-conforming use may be approved.

Mr. Thompson said it reads that a use which is more like a conforming use (though still non-conforming) than the existing non-conforming use may be permitted.

Mr. Reilly said that if the section of the Ordinance still exists and Mr. Fitzgerald has a similar proposal for a more conforming use than the pool business, he could make application to the Zoning Board.

Chairman Ivanhoe asked Mr. Fitzgerald why a prospective buyer wouldn't come to the Board as a contract vendee and apply for a use variance; if it is granted, the buyer would go ahead with the contract.

Mr. Fitzgerald asked why have the prejudicial statement that only a pool business may be conducted on the property, adding that the proprietor of the existing pool business would be unlikely to take the next step that the Chairman was proposing.

The Chairman conceded that it is another hurdle, but it is the only way for the Board to manage properties that have pre-existing non-conforming commercial uses; otherwise, the owner could sell it, a new business could move in, and the Town would not have the opportunity to review what will occur on such a property in a residential district. He added that pre-existing non-conforming uses are tenuous; if such a use is abandoned, the right to it is lost; if a change of use is desired, the property-owner has to go through the process of getting permission for the change.

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

Mr. Reilly read the draft resolution for the record.

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

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

**Request granted.**

*The following 2 applications were discussed together.*

**BA15-30** Joseph Bryson (2 Fields Lane) – **Use Variance** - For the re-establishment of a gas station with addition of an accessory convenience retail store, pumping of gasoline, and continued operation of an existing tow-repair business, per Article IV Section 250-11 and the Table of General Use Requirements for the R 1/2 zoning district.

**BA15-31** Joseph Bryson (2 Fields Lane) – **Area Variance** – For the operation of a gasoline station with convenience store and tow-repair business in an R-1/2 zoning district, per Article V Section 250-15, Article VI Section 250-20 and -22 (C), Article VIII Section 250-35 (B), and Article XIII Section 250-73 (B, C, and D), the following variances are requested:

- a. To allow application of Use Group "L" (retail gas/convenience store) lot area and bulk standards as permitted in the GB zoning district.
- b. Decrease the gas station access point distance from the intersection of the designated street line from 100 ft. required to 40 ft. proposed.
- c. Decrease the front yard setback from 35 ft. required to 13 ft. proposed for installation of 4 fuel pump islands with a canopy.
- d. Decrease the rear yard setback from 50 ft. required to 40 ft. proposed for installation of a diesel fuel pump island.
- e. Increase the maximum height of a fence in a side yard from 5 ft. permitted to 7 ft. for a fence and 11 ft. for a retaining wall.
- f. For areas where the required 10 ft.-wide landscaping cannot be provided, a variance of 10 ft. is requested.
- g. Decrease the side yard setback from 20 ft. required to 11 ft. proposed for a trash enclosure and to 1 ft. for an off-street loading berth.

The Chairman stated that the Board was in receipt of a letter from the Planning Board which is still in the process of its review of the proposals for 2 Fields Lane. The Board of Appeals was asked by the Planning Board to consider the use and area variances.

Mr. Reilly explained that the Board would not vote on the applications yet, because the Planning Board has not made its SEQRA determination yet.

Richard Pearson and Mark Petrero of JMC Site Development Consultants were present for the applicant.

Chairman Ivanhoe noted that convenience stores are typical accessories to gas stations.

Richard Pearson stated that he has been working on the project with the Planning Board for about 2 years, and he was before the ZBA for input/hoped to get a sense that the use and area variances will be granted. He said the site was a Getty station for years, but now the fuel pumps are gone. He noted that the towing/repair business never ceased to operate, and it includes a second, small building on the site.

Mr. Pearson said it was originally planned to modify the existing gas station structure, but he now feels that demolition and new construction will be best. He displayed a site plan with a new, somewhat smaller building than the existing structure and angled fuel pumps set under a canopy. Mr. Pearson explained that the numerous area variances are for conditions that are actually very similar to the existing conditions. He showed the Board a landscaping plan and stated that one area of proposed landscaping is actually in a NYS DOT right-of-way, for which a permit from the State will be required.

Mr. Pearson pointed out features of the new building and the gas pump canopy, including a stone veneer on the lower portion of the building, shingle-style roofing on both the building and the canopy, and a cupola on the building.

The Chairman asked what color the roof will be.

Mr. Pearson said it will be gray. He remarked that the Planning Board put a lot of emphasis on appearance of the site, and the property-owner is anxious to get the project approved and move forward.

The Chairman asked to be taken through the area variances.

Mark Petrero explained the reasons for the variances. He noted that although the gas pump canopy will require a setback variance, there will be a landscaped area directly in front of it. He said the diesel fuel pump is at the rear/separate from the gas pumps at the front so that trucks and horse trailers can be accommodated. Mr. Petrero stated that a 6.7 ft.-high fence is necessary to conceal the trash enclosure, and the retaining wall with safety fence on top at the back of the property will only be visible (if at all) from Route 684. He said Use Group "L" bulk requirements call for a 10 ft. landscaped buffer area; the maximum extent of landscaping possible has been provided, but there are areas where it cannot be provided.

Chairman Ivanhoe asked about the omission of the required landscaping in one area due to the presence of concrete, wondering if some kind of large planters couldn't be used.

Mr. Petrero said the Planning Board prefers the submitted plan; the un-landscaped areas are to be left that way in order to enable vehicle maneuverability around the site.

Mr. O'Leary commented that the safety fence at rear appears to be in front of the retaining wall.

Mr. Petrero said it is represented that way so that each layer may be seen, but it will actually be on top of the wall.

Mr. O'Leary asked what the wall will be constructed of.

Mr. Petrero said it will either be large blocks or cast in place.

The Chairman asked again about the un-landscaped area at the rear, and Mr. Petrero pointed out that there is a deep buffer area between the subject property and Route 684.

Mr. Thompson asked how it was determined that the area for the proposed diesel fuel pump is considered to be on a rear property line.

Mr. Petrero said it was carried over from the work of the previous engineer.

Mr. Pearson said that was correct, adding that it is a uniquely-shaped property, and the diesel pump will be in a little notch that is being called out as a rear line.

Mr. Thompson thought it was incorrect and pointed out that if it remains a part of the side yard line, variance #4 (d.) will not be needed.

Mr. O'Leary asked which property lines are which.

Mr. Thompson stated that both Fields Lane and Hardscrabble Road are front yards, and the lot then has 2 side yards and no rear yard. He added that he did not see in the Zoning Ordinance where a rear yard is required.

Mr. Reilly agreed, saying the Ordinance does not require a rear yard.

The Chairman said he would strike the requested rear yard setback variance request.

Ms. McKean asked about the height of the pump island canopy.

Mr. Petrero explained that clearance of 14.5 ft. is required, and then there is another 4 ft. to the top of the canopy roof.

Mr. Pearson stated that the 4 ft. roof depth is needed for fire suppression equipment to be recessed into in the roof of the canopy.

Ms. McKean said it appeared that the canopy will be lower than the building behind it.

Mr. Petrero said that if the cupola is included, the building will certainly be taller; otherwise the building including the roof will be about 20 ft. high.

The Chairman remarked that the cupola is a little superfluous on the building, given the style and the flat roof-center.

Mr. Petrero said the Planning Board had not asked for it, but he thought they liked the cupola; on the other hand, he did not think they would insist on it.

Mr. Pearson offered to speak to the project architect and the Planning Board about the cupola.

Mr. O'Leary thought it would really only be visible from the highway, as it is so far in from the edge of the roof.

Chairman Ivanhoe noted the windows in the cupola and said the Board would specify that there may be no lighting. He said he thought the building was attractive, although he was not sure how it would look in relation to the canopy.

The Chairman asked if the dormers on the roof are functional, and Mr. Petrero said they are just decorative.

Chairman Ivanhoe suggested that smaller dormers might look better. He described attractive old gas stations on the Taconic and Hutchinson River Parkways.

Mr. O'Leary thought the dormers could be scaled down.

The Chairman said he would just like to see the building more historically correct. He remarked that there is a lot of glass on the front of the building, although he liked the divided lights in the upper portions of the windows.

Mr. Petrero said that is for security so that the pumps may be seen from the cashier area inside the building and also to let light in.

The Chairman suggested that more divided-light windows and more historically-correct doors would be better/less institutional-looking.

Mr. Petrero said that is not preferred by the applicant; the open look with dividers at the top is desired.

Mr. Pearson said that when they return to the ZBA, they will bring the architect and the owner or his representative to discuss appearance of the building with them.

The Chairman said he would like that. He said the submitted drawings are of a substantially-improved structure over what was presented in the past, but he would like to fine-tune the details even more if possible. He asked what the darkened panels at the ends of the front elevation are.

Mr. Petrero said they are opaque glass panels for the restroom and the cashier's area.

Chairman Ivanhoe said the Board might prefer solid (wooden), panels with some decorative design.

Mr. Pearson said he thought the architect would work with the Board on those kinds of changes.

The Chairman said he would like to see what type of lighting is proposed for the front of the building.

Mr. Pearson said they are still working with the Planning Board on lighting issues.

Mr. O'Leary asked where the stone pillar with the BP sign will be located, and Mr. Petrero indicated it at the extreme left of the front.

Ms. McKean asked what the sign will be made of.

Mr. Petrero replied that the pillar will have a stone veneer with a capstone, and the sign itself is a pylon to be illuminated by an LED strip in the capstone.

Commenting that Mr. Petrero meant the sign will be of some kind of polymer, the Chairman asked if it could be made to look more like a wooden sign. He added that the site is a gateway to the Town.

Mr. O'Leary said he would like to see some of the architectural details redone per the Board's suggestions.

Amy Serra of 6 Old Salem Center Road was called on and commented that she had been unaware that there had been any repair business on the subject property.

The Chairman said he recalled that one bay of the gas station had been used for repairs.

Ms. Serra asked how many bays the new building will have.

The Chairman said there will not be any/there will just be the convenience store, but it was his understanding that the towing and repair business will be in another, smaller building on the site.

Mr. Thompson recalled that the smaller building has been used in the past by another, small business, and he believes the owner mainly wants it for his towing business.

Mr. Pearson agreed, adding that the owner probably wants to maintain the right to have a repair business as well.

The Chairman stated that this was not part of the applications before the Board.

Ms. Serra asked if the BP sign will be lit.

The Chairman explained that a light strip recessed in the capstone on the pillar will be aimed down onto the sign.

Ms. Serra asked if there will be any sign on top of or exterior lighting on the building.

Mr. Petrero said there will be no signs, but there may be lighting on the building which would be aimed downward.

The Chairman stated that the public hearing would remain open.

Mr. Reilly asked that the applicant acknowledge the requirements for the granting of a use variance, i.e. establish that no permitted uses are appropriate, and provide economic proof so the ZBA may consider the application based on facts submitted. He also said the ZBA should provide the Planning Board with an indication of their feeling about the applications, including their suggestions about the physical details.

The Chairman added that he was aware that new drawings would be an expense, but it might help to communicate to the client and the architect that the ZBA's thoughts on the cupola were that the building might look more historically-appropriate without it or with a better-scaled one and also smaller dormers, offering as a reference some of the historical rest-stops along the Taconic.

**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).

Chairman Ivanhoe stated for the record that the contents of the special permit and area variance applications above were approved in the past, but those approvals have expired because no building permits have been issued. He went on to say that he did have one issue with the new submittal, which was that the plans indicate that the driveway is to be paved; this was not approved/the driveway is not to be paved and the plans should be changed to reflect this.

Tasos Kokoris, architect, was present for the applicant and said he understood. He offered to explain the proposed project if the Board wanted him to.

Mr. O'Leary asked if any quantities have changed or anything has been relocated, and Mr. Kokoris replied that nothing has changed.

Ms. McKean recalled a walk-through when the previous special permit and area variances were applied for.

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

The Chairman said the resolution should again include a condition that the new driveway must be unpaved, and he asked Mr. Thompson if revised plans shouldn't be requested.

The Building Inspector said he thought another part of the plans explained that pavement is only for certain gradients which he did not believe any part of the driveway exceeds. He pointed to an area well up onto the property closer to the proposed exercise ring where the gradient is steep.

The Chairman said gravel can even be used in areas like that.

Mr. Kokoris said something called oil and chip is normally used.

The Chairman stated that Baxter Road is a designated historic road, and the bridle trail crosses the driveway also.

Mr. Thompson read from the second page of the plans that pavement is to be employed in areas where there is a slope greater than 8%.

The Chairman pointed out that there is a note right on the site plan which states that the driveway will be asphalt. He asked that the site plan drawing be changed to indicate a gravel driveway, except for a notation that the steeper area will be paved.

Mr. Thompson said some paved areas may be required for compliance with the storm-water pollution prevention plan. The area he thought might require pavement is 1600 ft. onto the property and will not impact the neighborhood.

Mr. Kokoris said he was comfortable with identifying any areas that will be paved.

Mr. Reilly stated that the resolutions will be the same as those approved in 2012 and will include mention of the notation change re gravel and asphalt.

**Motion by:**            **Richard O'Leary**

**Seconded by:**       **Cynthia McKean**

**Ms. McKean:**        **Aye**

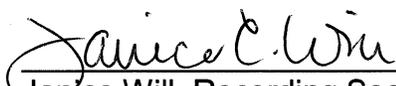
**Mr. O'Leary:**        **Aye**

**Chairman:**           **Aye**

***Special permit and area variance granted, as requested.***

The meeting was adjourned at approximately 9:50 pm.

Respectfully submitted,

  
Janice Will, Recording Secretary