

**BOARD of APPEALS**  
**Public Hearing**  
**April 14, 2016**  
**7:30 p.m., Town Meeting Hall**

**MEMBERS PRESENT:** Richard O'Leary  
Cynthia McKean  
Emily Barrett  
Nzingha Milanes  
Brian Ivanhoe, Chairman

**OTHERS PRESENT:** Bruce Thompson, Building Inspector  
Paul Taft, Assistant Building Inspector  
Janice Will, Recording Secretary  
Members of the Public

***Chairman Brian Ivanhoe called the April 14, 2016 Town of North Salem Zoning Board of Appeals meeting to order.***

The Chairman stated that Gerald Reilly, Counsellor to the Board, would not be present at the meeting. The Chairman would do his best to recite draft resolutions as applications are voted on, but Mr. Reilly will prepare the actual resolutions aided by the meeting minutes.

The next meeting date was set for May 12, 2016.

The minutes of the March 10, 2016 meeting were unanimously approved.

**HEARINGS HELD OVER:**

**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.

*These two applications are still under SEQRA review by the Planning Board.*

**PUBLIC HEARINGS:**

**BA16-08** 39 Fields Ln LLC (39 Fields Lane) – **Area Variance** – To increase the maximum height of a wall-mounted sign from 24 in. permitted to 37 in. proposed and to increase the height of its lettering from 12 in. permitted to 37 in. proposed, per Article IX Section 250-40.1 (A).

Merv Blank, owner of 39 Fields Lane, was present. He stated that he first had his business at 31 Fields Lane, with the same 3 red letters on the building as those he wants to put on 39 Fields Lane now. He explained that there is a monument at the bottom of the drive to 39 Fields Lane that he will take down per the Planning Board's request, and the Planning Board recommended in its referral to the ZBA that the area variance be granted.

Chairman Ivanhoe asked if the sign will be illuminated, and Mr. Blank replied that it will not.

The Chairman asked if Mr. Blank will need to return to the Planning Board after the variance is granted.

Mr. Blank was not sure.

The Building Inspector stated that the Planning Board has approved the sign permit application pending approval of the variance, so Mr. Blank might need to see them once more.

Noting there were no further questions or comments, the Chairman closed the public hearing. He recited the specifics of the variance for the resolution.

**Motion by:** *Emily Barrett*  
**Seconded by:** *Richard O'Leary*

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

***Area variance granted, as requested.***

**BA16-09 Paul D'Agostino (2 Orchard Drive) – Area Variance** - For demolition of an existing, non-conforming dwelling and construction of a new one-story single-family residence in an R-1 zoning district per Article V Section 250-15. The following variances are requested:

- Decrease the side yard setback from 20 ft. required to 14 ft. existing/proposed, a variance of 6 ft.
- Decrease the rear yard setback from 50 ft. required to 5 ft. existing/proposed, a variance of 45 ft.
- Increase the maximum development coverage from 20% permitted to 26% existing/proposed, a variance of 6%.
- Increase the maximum building coverage from 10% permitted to 13% existing/proposed, a variance of 3%.

Paul D'Agostino stated that he purchased the subject property recently, and the existing house is uninhabitable. He wants to demolish the old house and construct a new one on the same footprint except for extending it another 4 ft. toward the front of the lot.

The Chairman said he assumed there was a letter of approval from the Pietsch Gardens co-op board, and Mr. D'Agostino replied that he included it in the application.

Chairman Ivanhoe said he had not seen any exterior light fixtures on the elevation drawings, but if there are to be any, they must be invisible at their source. He added that if Mr. D'Agostino wants any flood lights, they must have cowls on them. The Chairman asked if the property will be connected to the new sewer system.

Mr. D'Agostino replied that it (the sewerage grinder pump) is already in place.

There were no more questions, and the Chairman closed the public hearing. He recited the specifics of the variance, including the findings that the variances are not egregious and the new house will have a positive impact on the neighborhood.

**Motion by:** *Emily Barrett*  
**Seconded by:** *Nzingha Milanes*

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

**Area variance granted, as requested.**

**BA16-10** Copernicus Holdings LLC (893 Peach Lake Road) – **Area Variance** – To decrease the minimum side yard setbacks for a commercial horse-boarding operation (Use Group “a”) per Article V Section 250-15. A decrease in the eastern side yard setback from 75 ft. required to 69 ft. proposed (a variance of 6 ft.) and a decrease in the side yard setback from the center line of the existing stone wall running south to Dingle Ridge Road from 75 ft. required to 29 ft. proposed (a variance of 46 ft.) are requested for construction of a farrier’s shed.

Don Rossi, attorney, was present for the applicant. He explained that the subject property is known as Sweetwater Farm. Mr. Rossi stated that the proposed location for the farrier’s shed offers ease of access for the blacksmith and is near enough to the barn without being in the way of the farm’s activities.

Chairman Ivanhoe remarked that blacksmiths like to be right near the barn, but that would be disruptive in this case. He noted there were no elevation drawings of the shed included in the application.

Mr. Rossi described the shed as having board-and-batten siding in harmony with the existing structures.

Jennifer Hinman of Sweetwater Farm distributed copies of a photograph of the shed.

The Chairman asked if there will be any exterior lights on the shed, and Ms. Hinman answered that there will only be interior lights.

Chairman Ivanhoe said it will be good to have the farrier’s shed out of the farm’s traffic flow.

Noting there were no questions, the Chairman closed the public hearing and recited the specifics of the variance.

**Motion by:** *Nzingha Milanes*  
**Seconded by:** *Emily Barrett*

**Mr. O’Leary:** *Aye*  
**Ms. McKean:** *Aye*  
**Ms. Barrett:** *Aye*  
**Ms. Milanes:** *Aye*  
**Chairman:** *Aye*

**Area variance granted, as requested.**

**BA16-11** G R LLC (451 & 376 Grant Road; 1-29 Bogtown Road) – **Special Permit** – For the renewal of Special Permit BA05-55 for the maintenance of a commercial boarding/breeding operation for up to 50 horses, including the following: 4 additional horses; construction of a two-bedroom caretaker’s cottage; relocation of an existing 4-stall barn; construction of a circular horse-walker, per Article XIII Section 250-72.

Don Rossi was also present for this application, explaining that the applicant was out of the country and sorry to miss the meeting. He said the application is for a renewal and amendment of Special Permit BA05-55.

Mr. Rossi stated that, pursuant to a conversation with Gerald Reilly, counsellor to the Board, he would like to remove the cottage from the application; construction of the cottage was approved in 2006 but never built. Mr. Rossi disagreed with Mr. Reilly's position that the area variance would have expired because the cottage was not constructed within 36 months of the issuance of the variance, but he would remove the cottage from the application. Mr. Rossi stated that his client has multiple options for the cottage; she could apply for a special permit for an accessory apartment, or the cottage could even be considered a single-family dwelling as there is no other single-family residence at 451 Grant Road. He added that with the removal of the cottage from the application, the Board could grant the special permit.

Chairman Ivanhoe asked if without the cottage, everything else will be the same.

Mr. Rossi said it will not be the same; a 4-stall barn has been moved from the very front of the property to a more central area, and a circular horse-walker has been built in that area also. He further explained that the 4-stall structure was originally a run-in shed, but it is a 4-stall shed-row now for the 4 additional horses that his client wants to have.

The Chairman said there is a treadmill somewhere else on the property and asked if it will be removed/the circular horse-walker used instead.

Mr. Rossi said the treadmill is to remain.

Chairman Ivanhoe asked if the stall-count is now 54, and Mr. Rossi said it is with the inclusion of the shed-row with 4 stalls.

The Chairman asked if what is now a 4-stall shed-row used to be a chicken coop that he thought he remembered.

Bruce Thompson said the Chairman was correct. He added that when the applicants wanted to re-build the structure, he noted that it was over the property line, and so he could not issue a building permit for it unless it was moved back. Building Code would have permitted a move of just 5 ft., but there was a grade problem, so the barn was moved to a level area near the other barns.

Mr. Rossi stated that the subject property is in the Agricultural District and has an ag use.

Chairman Ivanhoe commented that the farm is beautifully run and always looks good.

Mr. O'Leary thought that if the applicant wants another dwelling in the future, the cottage could be the principle residence on either of 2 of the 3 lots.

Mr. Rossi agreed that was possible, noting that the special permit covers all 3 separate lots owned by the applicants. He said they might do that, or the previous variance could

be amended to cover construction of the cottage, and the special permit would be amended as well to include it. He added that there are no architectural drawings yet.

Ms. McKean asked if anyone lives on the lot where the horses are now.

Mr. Rossi replied that all of the grooms live there. He explained that the area variance permitted the present number of grooms (8) with a new dwelling to be a house for the trainer (*another apartment at 376 Grant Road is the residence of another employee*).

Chairman Ivanhoe called on Michael Sirignano, attorney, who said he had been retained by Nancy Lewis of 36 Hilltop Road.

Mr. Sirignano said his client had concerns about the application for several reasons, one of which had been the cottage that Mr. Rossi has now removed from the application. Mr. Sirignano said there is a large, commercial-type generator that is enclosed on 3 sides and open on one; the open side faces Ms. Lewis' property and the 3-sided enclosure pushes the noise toward her. Mr. Sirignano said the generator was not part of the original special permit, but he thought the applicant should have returned to the Board before getting the generator installed. He stated that it is in a sensitive location due to its proximity to the Hilltop Road neighbors and also because it is in a wooded buffer area. He said the generator runs random tests for long periods of time and sounds like multiple power mowers, and he wanted to ask that it either be further enclosed or moved/he was not sure what would be permitted by the Building Code.

Mr. Thompson said generator enclosure-guidelines come from the manufacturers, so he did not know what could be done.

Paul Taft thought it would not be good to try and put some kind of roof over the generator, as it could interfere with the exhaust.

Mr. Sirignano moved on to another topic, saying that in the stand of trees planted as a screen many have failed, so he would like to ask that better screening be implemented. Mr. Sirignano said he also wanted to be sure that the protections enumerated in the original special permit resolution, pertaining to operating hours, lighting, etc., be included in this special permit. He went on to say that there is evidence of dumping of organic materials/brush near the Lewis property that should be cleaned up.

Chairman Ivanhoe asked if it is all organic material.

Mr. Sirignano said it is, and he asked that another Hilltop Road resident, William Crawford, be permitted to address the Board.

Mr. Crawford asked if the circular horse-walker is proposed or existing, and the Building Inspector replied that it is existing.

Mr. Crawford commented that the trees in the buffer area are dying and dead, adding that his children have been bitten by horse flies, too. He said that when the farm was first

purchased he attended a tour of it which was wonderful, and he was shown where the manure dumpster would be placed and told about its removal schedule.

The Chairman said the farm is inspected annually, adding that he felt sure the manure dumpster is removed regularly. He asked if the applicant uses fly-predators.

Mr. Rossi said he did not know.

The Chairman said fly-predators really should be used, but there are also lots of deer flies in the area that could have bitten the Crawford children. He said he figured there was probably a 40-yard dumpster used, but Mr. Rossi said he really didn't know.

The Chairman said he thought the paddocks might be picked out daily, although that would not be typical for a farm the size of Stay Sail. He added that there are no paddocks near the Crawford property, but the Board could ask that they be picked out. Chairman Ivanhoe also noted that use of fly-predators would have been a condition in the previous special permit.

Mr. Sirignano commented that there are to be four additional horses now.

Chairman Ivanhoe replied that part of fly-control is regular paddock-picking, and Stay Sail Farm has always had high standards.

Mr. Crawford agreed that the farm is clean and well-maintained, but he was concerned that "regular" paddock-picking is not specific not enough as a requirement.

Mr. Rossi said that if the paddock-picking is irregular and the farm not well-maintained, the Board has recourse.

The Chairman remarked that it is hard for the Board to monitor, but large farms typically pick-out paddocks every couple of days, which is enough because there are multiple paddocks employed. He said that if Mr. Crawford notices manure accumulating, he may call the Building Inspector.

Mr. Sirignano asked if the farm manager could be asked to provide a description of the farm's current practices.

Chairman Ivanhoe thought this could be done, and he added that the use of fly-predators will be included in the resolution.

Mr. Rossi stated that he has not discussed the farm's routine/fly control with his client, but he would not like to see a condition imposed in the resolution.

The Chairman said the Board would recommend but not demand that fly-predator be employed. He also said that if neighboring farms do not use fly-predators, the system does not work.

Mr. Rossi said he will get the operating procedure from the farm manager.

Mr. Crawford said a rooster on the subject property crows at all hours of the day, and the Chairman remarked that sometimes they do.

Nancy Lewis stated that the hen house used to be near her (and Mr. Crawford's) property, and the rooster was right there.

Mr. Rossi said the only hen house he was aware of was on the other side of Grant Road.

Ms. Lewis said she doesn't hear the rooster any more.

Mr. Rossi explained that the hen house is on the left side as one approaches the house.

Chairman Ivanhoe said it seemed as though the rooster was no longer a problem, and he asked if it is free-range.

Mr. Crawford said he didn't know, but Ms. Lewis said it came into her yard once.

Mr. Rossi said the coop is moved regularly so the grass around/under it will not become denuded.

Returning to the subject of the generator, the Chairman wondered if the special permit should have been amended to include it.

Mr. Thompson thought not because it is not a structure and said it had not required a variance either, as it was not in any setback.

Mr. Rossi said his client would be happy to take steps to reduce noise emanating from the generator and also change the time of the test-run, probably to a weekday. He added that the test-run will be the minimum length required and at the least offensive time of day.

Chairman Ivanhoe said the generator was installed with the necessary permits, but as the subject was raised, the Board wanted to help.

Ms. Lewis said changing the test-run time will help, as the generator is very loud.

Mr. Rossi said his client will do all she can.

Ms. Lewis commented that the generator is not screened from view at all, and she added that in the past the Board asked that nothing be constructed in the wooded area of the property.

Mr. Rossi said that if fencing is okay, that will be done; if the generator can be covered, that will be done; if trees for screening are wanted, that will be done.

The Chairman said Mr. O'Leary suggested fencing a short distance from the rear of the generator would bounce sound back onto the subject property/away from Hilltop Road. The Chairman added that trees planted as screening should help with the noise also, but he did not think a roof could be put over the generator.

Mr. Thompson said moving a fence back from the generator to reflect noise will accomplish more than planting trees. He went on to say that programming the generator to test-run once a week, mid-week at midday would be best.

Mr. Rossi stated that he needs to see what the manufacturer's recommendations are before promising anything.

Chairman Ivanhoe said he would ask that the minimum number of times and shortest possible duration be programmed. He added that if Ms. Lewis has heard the generator after a storm, the power may have gone out/triggered the generator-run.

Ms. Lewis said she has heard the generator when there is power on.

The Chairman asked about the buffer zone of trees that were to be planted when the previous special permit was granted.

Mr. Rossi said the resolution called for staggered rows of evergreens, which were planted.

Chairman Ivanhoe said this needs to be maintained so that it will work as a screen.

Ms. Lewis said the trees were planted too close together, and now they are dying.

Chairman Ivanhoe stated that the trees should be 15 ft. to 20 ft. center-to-center.

Mr. Rossi said the tree buffer will be re-established.

Ms. Lewis said there was still the matter of the organic debris dumped in the woods.

Mr. Rossi said it will be cleared out. He further stated that he did not want the debris-clearing imposed as a condition in the special permit; he will convey to his client that the area needs taking care of, and it will be done.

The Chairman remarked that when there are branches and trees down, farms typically chip and use them.

Mr. Rossi was unsure what his client knows about this.

Noting that the farm is in the Agricultural District, Chairman Ivanhoe asked if the Watershed Agricultural Council has looked at the operation.

Mr. Rossi did not know.

The Chairman thought the Board should be able to recommend strongly that best management practices be employed and also that another area of the farm be used for composting and organic matter.

Mr. Rossi said he will make these suggestions to his client. He added that he was at the farm that very day and did not notice any dumping, although he will tell his client about the fallen trees.

Ms. Lewis said one tree is very large, and use of the area for dumping started when the tree, which was never cut, first fell.

Chairman Ivanhoe commented that it would be good forestry to leave the fallen tree where it is.

Mr. Rossi stated that his client wants the entire farm to be nice/look good.

Mr. Sirignano stated that there is a utility right-of-way that looks like a trail between Stay Sail Farm and the neighbors on Hilltop, and any planting should be done outside that area.

Mr. Rossi said he is not familiar with the easement or any trail rights, but he will advise his client not to plant anything in the easement unless she has a right to do so.

Ms. Lewis requested that the generator be screened with trees if the applicants decide to put a fence behind it.

The Chairman agreed to this request, and he asked the Building Inspectors to look into suggestions for the applicant re sound-deadening of the generator.

Mr. Taft stated that a certain amount of clearance is necessary for air-flow out of the generator; it should be looked at to see how the exhaust is angled.

Mr. O'Leary thought it should be left up to the applicant to decide what to do.

The Chairman recalled another Town resident with a generator, who did some research and turned up a kind of sound-deadening material that is put within the generator enclosure; the resident also put in plantings behind the generator cabinet for further muffling of sound.

Mr. Sirignano asked if perhaps another muffler would be a good solution.

Mr. Rossi said his client will do whatever the manufacturer approves.

Mr. O'Leary commented that changing the existing 3-sided enclosure that is currently open to the neighbors and the poorly-timed test-runs should go a long way toward clearing up the problem.

Chairman Ivanhoe said the resolution will be discussed with the Board's attorney, Mr. Reilly.

Mr. Rossi said he will look into the manufacturer's suggestions.

Mr. Thompson stated that there are a lot of alternatives, and he believes the applicant will be cooperative.

Ms. McKean thought the fence should be screened with plantings.

The Chairman closed the public hearing. He stated that the cottage will be left out of the resolution per the applicant's request. Chairman Ivanhoe said the following will be conditions in the resolution:

- The buffer area between Stay Sail Farm and the properties on Hilltop Drive will be replanted and maintained.
- The weekly generator test-run will be re-programmed for normal days, times and duration.
- Organic matter is to be composted elsewhere on the subject property/away from the Hilltop Road properties and not in the wooded buffer area.
- Generator noise is to be reduced with fencing and/or sound-deadening material on 3 sides.

Mr. Rossi asked that the test-run requirement be per the manufacturer's suggestion, and the Chairman agreed.

Other conditions will be:

- Strong recommendation that fly-predators be employed.
- Best management practices for manure-picking to be followed.

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

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

**Special permit granted, as requested, with specific conditions per discussion and agreement.**

The meeting was adjourned at approximately 9 pm.

Respectfully submitted,

  
 Janice Will, Recording Secretary